

# POLICE CIVILIAN REVIEW BOARD

## Investigation Report

Internal Affairs Case Number S 2020-0012

Complainant: (Race/Gender)	C- Bernardo Palacios-Carbajal (H/M) (Deceased)
Alleged Policy Violation:	Excessive Force-OIS Fatal
Subject Officer: (Race/Gender)	S- Off. Kevin Fortuna (W/M) S1-Off. Neil Iversen (W/M)
Subject Officer's Years of Service:	S- 5 years S1-5 years
Date of Alleged Incident:	5/23/20
Date Investigation Requested:	5/23/20
Date Filed with Internal Affairs	5/26/20
Date Investigation Completed:	7/13/20
Panel Members:	Turner Bitton Catalina Pillar Dennis Busch Jessica Andrew Rebekah Myers
Date of Panel Meeting:	7/14/20
Interviews Conducted:	8

**It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.**

### **Synopsis:**

This case is an Officer Involved Shooting (OIS) matter. As such it was heavily covered by the media wherein the names of the citizen and the officers have been publicly released. Therefore, CRB will not redact the names within this report.

Any OIS is investigated extensively by the protocols established by the SLCoDA's Office. As such, the OICI (Officer Involved Critical Incident) protocols activated an outside investigative agency taking the lead, in this case

the SLCo Sheriff's Office/Unified Police Department, working hand-in-glove with the full-time professional investigators who work directly for the DA. As noted below, this report will utilize the facts developed by this Protocol Team to the extent they are relevant to what transpired and how that affects our review of the situation.

All the available evidence was reviewed by CRB. As noted elsewhere, the ME's office ordered a Toxicology Report but at the time this report was prepared, the results were not available. It is possible additional evidence could become available at a later date, for instance if the second suspect is ever identified, and if that evidence could lead to a different conclusion, this matter could be re-opened.

The below comes directly from the SLCPD's policy manual and is proffered here in order to understand the authority/restrictions/limitations that officers are held accountable for:

### **Authority to Use Deadly Force**

Peace officer's use of deadly force:

A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

- The officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death.
- Effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
  - The officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; and
  - 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.
- 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.

If feasible, a verbal warning should be given by the officer prior to any use of deadly force.

### **Considerations in Use of Deadly Force**

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical. Officers should consider:

- Other methods of effecting an arrest.
- The direction in which the firearm is to be discharged because of the possibility that innocent persons or property may be struck.
- The age of the suspect and the offense committed.
- Light conditions (extreme caution must be used at night or when other conditions obscure the officer's vision).
- The danger of firing while running or jumping.

It should be noted that the SLCPD's policy on the use of deadly force exceeds the minimum requirements established by the State of Utah, which in turn meets or exceeds the federal standards.

The following comes from the DA's report and reflects the known facts surrounding this incident. On occasion, some words that were in the letter were changed if it was a simple misspelling but no change in intent was made.

## **SUMMARY OF FACTS AND FINDINGS**

The following summary of facts was developed from the OICI protocol investigation.

Should additional or different facts subsequently come to light, the opinions and conclusions contained in this investigation may likewise be different.

Early in the morning on May 23, 2020, a little after 2:00 a.m., SLCPD dispatchers received a 911 call from a person who reported that a man entered the caller's motel room and robbed the caller at gunpoint. Police officers were dispatched to the Utah Village Motel at 271 West 900 South in Salt Lake City, Utah. As SLCPD Officer Iversen and SLCPD Officer Kilgore arrived, dispatchers advised the officers that another 911 call came in, this time reporting that two men<sup>3</sup> had kicked in a motel room door and robbed the caller at gunpoint. The officers got out of their patrol cars and saw a man, later identified as Bernardo Palacios-Carbajal, standing outside the motel rooms looking through bags he was holding. The officers ordered the man to show his hands, but he ran. Officer Iversen followed.

Officer Iversen pursued Mr. Palacios-Carbajal across a parking lot, through an alley, and across 900 South to a parking lot at the corner of 900 South and 300 West. As Mr. Palacios-Carbajal ran over the curb and sidewalk, he tripped and fell. In an interview with OICI Protocol investigators, Officer Iversen said he saw Mr. Palacios-Carbajal drop an object. Mr. Palacios-Carbajal picked up the object and started to run when he fell again, and, again, the object fell to the ground. Mr. Palacios-Carbajal picked up the object a second time, stood up, and started to run. Mr. Palacios-Carbajal ran a few steps when he fell a third time and dropped the object again.

Officer Iversen saw Mr. Palacios-Carbajal fall three times. At the first fall, Officer Iversen heard a metallic sound as the object hit the ground. Officer Iversen couldn't tell what it was. Officer Iversen yelled: "Drop it! Drop it! Drop it! Drop it!" Mr. Palacios-Carbajal picked up the object, took a few more steps and fell, dropping the object a second time. Officer Iversen yelled: "Show me your hands! Show me your hands!" Officer Iversen saw Mr. Palacios-Carbajal pick up the thing he dropped a second time. Officer Iversen saw Mr. Palacios-Carbajal fall the third time and drop the object. Officer Iversen was about fifteen to twenty feet away. In his interview with protocol investigators, Officer Iversen said when the object fell the third time, he confirmed it was a gun. Mr. Palacios-Carbajal picked up the gun the third time and started to run. Officer Iversen fired his police weapon at Mr. Palacios-Carbajal.

SLCPD Officer Fortuna had heard the radio traffic and drove to the parking lot. He pulled up to the parking lot in his police vehicle as Mr. Palacios-Carbajal fell the third time and dropped the gun. Officer Fortuna told protocol investigators that he saw it was a gun when it hit the ground. Officer Fortuna ordered Mr. Palacios-Carbajal: "Drop the gun! Drop the gun!" but Mr. Palacios-Carbajal picked up the gun and started to run away. As Officer Fortuna was about fifteen to twenty feet away from Mr. Palacios-Carbajal, he aimed his police weapon and fired at him.

Both officers described how, after Mr. Palacios-Carbajal was on the ground, he rolled over onto his back and raised his right arm with the gun in his hand. Officer Fortuna said he saw the gun pointed at the officers. Both officers later recounted they fired until they believed Mr. Palacios-Carbajal was no longer a threat. Officer Fortuna said Mr. Palacios-Carbajal's arm

dropped, his hand released the gun, and the gun landed on Mr. Palacios-Carbajal's stomach, still pointed in the officers' direction. The officers slowly approached Mr. Palacios-Carbajal, removed the gun, and began first aid. Mr. Palacios-Carbajal died from the gunshot wounds.

### **RELEVANT LEGAL STANDARDS**

As relevant here, law enforcement officers who used deadly force are entitled to the legal defense of justification when (see Utah Code Ann. § 76-2-404 (1)):

- (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 DEVELOPED DURING OICI INVESTIGATION**

The following facts were developed from the investigation of the matter. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On May 23, 2020, around 2:00 a.m., a person called the police to report a man had pointed a gun at his head and robbed him. The caller described the robber as a Hispanic man who appeared to be in his twenties, wearing a black shirt and black pants with short hair and a beard. The caller said there was another Hispanic man who also appeared to be in his twenties, wearing a red hoodie sweatshirt with a red bandana and his hair in a ponytail. SLCPD dispatchers sent officers to assist and investigate.

SLCPD Officer Iversen and SLCPD Officer Kilgore arrived at the Utah Village Motel at 271 West 900 South in Salt Lake City, Utah. As they arrived, another person called police to report that two men came in their motel room with guns and robbed the caller at gunpoint. Dispatchers informed the officers that one of the suspects was a Hispanic man who appeared to be in his thirties, about five feet, seven inches tall,

wearing dark/black clothes. The caller said she believed the man might be standing out in front of Room 3. The officers got out of their police vehicles and walked towards the motel rooms. Officer Iversen saw a Hispanic man, later identified as Bernardo Palacios-Carbajal, standing near the motel rooms with bags in his hands, and looking through the bags. Officer Iversen shined his flashlight on the man and ordered him to show his hands. The man dropped the bags<sup>5</sup> and ran.

Officer Iversen pursued Mr. Palacios-Carbajal as he ran south on 300 West. As he ran after Mr. Palacios-Carbajal, Officer Iversen unholstered his police handgun and held it in his hand. Mr. Palacios-Carbajal turned east and ran through the parking lot of Trails, a strip club that had just closed for the night and from which patrons were leaving. Officer Iversen broadcast the foot pursuit on the radio. SLCPD Sgt. Schneider had arrived in the area and saw Mr. Palacios-Carbajal run past him. Sgt. Schneider called out on the police radio that the man had a gun in his pocket and was reaching for it. Sgt. Schneider joined in the foot pursuit. Mr. Palacios-Carbajal continued to run north up an alleyway and out onto 900 South. Twice during the foot chase, as Mr. Palacios-Carbajal rounded the corners of buildings, Officer Iversen slowed to ensure Mr. Palacios-Carbajal had not stopped running and was not waiting for Officer Iversen around the corner. Officer Iversen told protocol investigators that he didn't want to come upon Mr. Palacios-Carbajal and be shot by him.

Mr. Palacios-Carbajal crossed 900 South and ran northbound towards the small parking lot of Granary Storage at the intersection of 300 West and 900 South. Officer Iversen said he ran as hard as he could and closed the distance. Mr. Palacios-Carbajal tripped over the curb at the sidewalk next to the parking lot. Although he didn't confirm it as a gun in the moment, Officer Iversen saw Mr. Palacios-Carbajal drop an object on the pavement. Officer Iversen later told protocol investigators that he heard something metal hit the asphalt. Officer Iversen said he was concerned. Officer Iversen stopped his approach to Mr. Palacios-Carbajal while he tried to figure out what Mr. Palacios-Carbajal had dropped. Officer Iversen yelled: "Drop it! Drop it! Drop it! Drop it!" Mr. Palacios-Carbajal picked up the object, took a few more steps and fell, dropping the object a second time. Officer Iversen yelled: "Show me your hands! Show me your hands!" Again, Officer Iversen saw something on the ground but couldn't yet tell what it was. Officer Iversen maintained his distance from Mr. Palacios-Carbajal. Officer Iversen said he raised his police handgun and took the "slack out of the trigger" in case he needed to shoot; again, he tried to determine what Mr. Palacios-Carbajal had dropped. Mr. Palacios-Carbajal picked up the object a second time and started to run. Officer Iversen again yelled: "Show me your hands! Show me your hands!" Officer Iversen said he was concerned about the item Mr. Palacios-Carbajal kept picking up. Officer Iversen took a few steps towards Mr. Palacios-Carbajal.

Mr. Palacios-Carbajal fell a third time. As he fell, he dropped the object again, and this time, Officer Iversen saw and confirmed it was a gun. Officer Iversen was about fifteen to twenty feet away. Mr. Palacios-Carbajal picked up the gun the third time. Officer Iversen said his concern turned to a fear for his life and the lives of the

others in the area as he saw Mr. Palacios-Carbajal hold the gun in his hand and start to run again. Officer Iversen said he saw Mr. Palacios-Carbajal bring the gun up to his waist and bring his left hand in to the gun. Officer Iversen said he believed Mr. Palacios-Carbajal was about to use the gun against the officers. Officer Iversen later explained: "There's only one reason someone's going to pick up a gun three times, being chased by the police, being told to drop it-he's going to try to kill me."

SLCPD Officer Fortuna was in his patrol car when he heard dispatchers broadcast the robberies at the motel and subsequent foot chase on the radio. Officer Fortuna drove to the location. Officer Fortuna arrived at the parking lot at the corner of 900 South and 300 West and saw Mr. Palacios-Carbajal on the ground, having tripped, with a gun next to him. Officer Fortuna ordered Mr. Palacios-Carbajal: "Drop the gun! Drop the gun!" but Mr. Palacios-Carbajal picked up the gun and started to run away. Officer Fortuna said he believed Mr. Palacios-Carbajal was about to use the gun against the officers to kill them. Officer Fortuna said that he was aware Mr. Palacios-Carbajal reportedly used a gun against at least two people very recently and was running with a gun away from officers towards a residential neighborhood and towards officers who were arriving to assist with the foot pursuit.

Both Officer Fortuna and Officer Iversen fired their weapons at Mr. Palacios-Carbajal after he picked up the gun the third time and started to run. Each officer was about fifteen to twenty feet away. After being struck by bullets, Mr. Palacios-Carbajal fell to the ground and rolled over, raised his right arm, and lifted his head. Officer Iversen later recounted how he saw Mr. Palacios-Carbajal turn his body over and raise his arm with the gun in his hand pointed at the officers. Both officers continued to fire at Mr. Palacios-Carbajal until each believed Mr. Palacios-Carbajal no longer posed a threat to the officers. Officer Iversen said he saw Mr. Palacios-Carbajal's arm drop and his hand release the gun with the gun on Mr. Palacios-Carbajal's chest. The officers and other SLCPD personnel moved in to secure the scene and render first aid to Mr. Palacios-Carbajal, who died from the gunshot injuries.

**Bernardo Palacios-Carbajal, referred to C, is considered the Complainant, along with the SLCPD, in this matter.**

Mr. Palacios-Carbajal died from the wounds he received during this encounter.

**Off. Kevin Fortuna, referred to as S, is the subject of this matter and provided the following:**

On June 4, 2020, OICI protocol investigators interviewed Officer Fortuna with his attorney present. Officer Fortuna said he was working a patrol shift on May 23, 2020 when dispatchers advised him of a call from someone at motel in the area of 1000 South 300 West in Salt Lake City, Utah. The caller reported that a person came into a motel room and pointed a gun at the caller. Officer Fortuna said dispatchers received a second phone call shortly thereafter stating that someone had kicked in the caller's motel door and robbed the caller at

gunpoint. Officer Fortuna said dispatchers told the officers that two males wearing dark clothing were involved.

Officer Fortuna said that the nature of the second call about an armed robbery escalated his concern. Officer Fortuna said he had responded to several "man with a gun," and armed robbery calls. Officer Fortuna said, in his experience, a suspect who had robbed someone at gunpoint usually doesn't remain at the scene to commit more crimes. Officer Fortuna said he was more concerned about a man who had reportedly robbed two separate people.

Officer Fortuna said he checked the area near the motel when the second call came in. Officer Fortuna said he heard Officer Iversen call out a foot pursuit in the area of 1000 South and 300 West. Officer Fortuna said as he drove towards the foot pursuit, he heard another officer (he believed it may have been Sgt. Schneider) on the police radio say that the man had a gun in his pocket, or that he was reaching for a gun in his pocket. Officer Fortuna said he pulled up into a parking lot on the northeast corner of 900 South 300 West. Officer Fortuna said he looked to the west and saw a man running with Officer Iversen in pursuit.

Officer Fortuna said he drove his police car up to the driveway to the parking lot as the man, followed by Officer Iversen, approached. Officer Fortuna said he got out of his police car as the man stumbled over the curb next to the parking lot. Officer Fortuna said when the man fell, he saw a large, dark colored handgun next to him.

Officer Fortuna said he ordered the man to drop the gun several times. Officer Fortuna said the man grabbed the gun as he stood up and started to run away. Officer Fortuna said he feared the man could have easily turned around and started shooting at the officers that were nearby and arriving in the area. Officer Fortuna said he was concerned by the way the man held the gun. Officer Fortuna said it seemed as though he held the gun in a way that he would be ready to use it. Officer Fortuna said the man was "beelining it for the corner of the building" in the parking lot. Officer Fortuna said he believed the man could have used the corner of the building to his advantage to shoot back at the officers. Officer Fortuna said he was very concerned about the man being able to travel around the corner of the building. Officer Fortuna said he was also aware of other people in the area as well as a residential neighborhood nearby. Officer Fortuna said he worried that if the man rounded the corner, he could have gone into the neighborhood.

Officer Fortuna said the man's actions caused him to fear for his life and the lives of the other officers around. Officer Fortuna said he had previously experienced people who, in the presence of police officers, typically want to distance themselves from a gun. Officer Fortuna said in this instance, the man had the opportunity to leave the gun on the ground. Officer Fortuna said when the man picked up the gun, he felt that the man "probably was going to use that gun." Officer Fortuna said when he used deadly force, he was aware that the man was alleged to have committed two prior violent felonies, and an officer had reported he had seen the man reach for the gun during the foot pursuit.

Officer Fortuna said he estimated he fired ten shots at the man. Officer Fortuna said he

fired until he believed the man no longer posed a threat to the officers, by which he meant that the man was no longer moving. Officer Fortuna said that after the man fell to the ground, he rolled over onto his back and had the gun on his stomach. Officer Fortuna said he and other officers approached the man. Officer Fortuna said he saw the man's gun lying on the man's stomach. Officer Fortuna said a police officer pushed the gun off the man and Officer Fortuna kicked the gun away. Officer Fortuna said he and Officer Iversen separated themselves from the other officers who started to render first aid.

### *Follow Up Questions*

Protocol investigators asked Officer Fortuna some follow up questions through his attorney. On June 9, 2020, Officer Fortuna's attorney provided Officer Fortuna's answers to protocol investigators.

Officer Fortuna was asked: "Did you see the suspect pick up the gun?" Officer Fortuna replied: "Yes. This was answered in the interview: 'The suspect had stumbled over the curb at that time, and I saw a large, dark colored handgun next to him. Gave commands to drop the gun several times. He proceeded to grab the gun, pick it up and started to run away.'"

Officer Fortuna was asked: "Why did you shoot the suspect in the back?" Officer Fortuna replied: "When the suspect picked up the gun the third time he was holding it in a way that made me believe he was ready to use it and given everything else he had done and the information I had, I believed I was in immediate danger of being shot. Although he was facing away from me, he appeared to have the gun in a ready position and could quickly turn and shoot me or others." Officer Fortuna then quoted passages from his interview, much of which is set forth above.

Officer Fortuna was asked: "Why did you shoot so many times?" Officer Fortuna referenced passages of his previous interview and added: "The suspect continued to move after he went to the ground. He started to roll towards us after he went down and it looked like to me that he still had the gun. I was concerned that he was going to shoot us from the ground. I continued to shoot until the suspect stopped moving."

Officer Fortuna was asked: "Why did you move to the right?" Officer Fortuna replied: "The way we train is that once we shoot we get off line so that if someone returns fire then you are not in the same position as when you started shooting. I moved to the right because the suspect was rolling to his left and so moving to the right increased the distance from his gun."

Officer Fortuna was asked: "Did you see the gun orient to you after the suspect was on the ground?" Officer Fortuna replied: "Yes. As I explained in the interview: 'I know he fell forward, and then he rolled around onto his back and the gun was placed on his stomach. So he placed the gun on his stomach. You could probably infer there was an attempt to kind of point it towards us again, and he just never had the chance to. Like I said, where it was, it was pointed in all of our direct... it had ended up on his stomach, facing in our direction.'"



Officer Fortuna was asked: "Had he not picked up the gun when he ran, could that have possibly changed the outcome? Why?" Officer Fortuna replied: "If the handgun was left on the ground I would have most likely not have deemed him an imminent threat and it would have likely changed the outcome."

Officer Fortuna was asked: "Why did you continue to fire your weapon after the suspect fell to the ground?" Officer Fortuna replied: "I was concerned about the suspect shooting us from the ground given the behavior I observed." Officer Fortuna referenced passages from his interview. Officer Fortuna also replied: "The suspect continued to move after he went to the ground. He started to roll towards us after he went down and it looked like to me that he still had the gun. I was concerned that he was going to shoot us from the ground. I continued to shoot until the suspect stopped moving."

Officer Fortuna was asked: "What did you see that made you continue shooting while you were moving laterally?" Officer Fortuna replied: "I continued shooting because I believed that he still had the gun in his hand. It appeared that he still had the gun in his hand when he went down to the ground and when he rolled over towards us and pointed the gun towards us. I was concerned that he could shoot me at any time. I feared for my safety and the safety of the other officers and other people who were in the area."

### ***Follow Up Interview***

On July 1, 2020, Officer Fortuna was asked follow up questions in an interview with his attorneys present.

Officer Fortuna was asked about what kind of mental list he made as he listened to the police radio while traveling to the scene. Officer Fortuna replied he heard radio traffic about two aggravated felonies that had just occurred. Officer Fortuna explained the significance in receiving a report about two aggravated felonies as distinguished from one: "it makes it seem a lot more legitimate. This person is now a danger to more than one person, it could be multiple people, we don't know what his mentality is at that point; he's already shown the intent that he doesn't really care about other people's safety or anything." Officer Fortuna said he also noted Sgt. Schneider's report that the foot pursuit subject had a gun. Officer Fortuna said when he saw Mr. Palacios-Carbajal stumble and "a large black handgun on the ground, it all pieces that together-that this is a very potentially dangerous subject."

Officer Fortuna said he unholstered his firearm when he got out of his car after he arrived at the parking lot. Officer Fortuna explained that he unholstered his weapon because he assessed the information he learned about the incident while en route. Officer Fortuna said: "the information I had arriving on scene is: two aggravated felonies with a gun had been committed; you have a subject fleeing from the scene of these two aggravated felonies; during that, another officer gets on the radio and says he sees the subject reaching for a gun in his waistband or pocket or whatever; and, when I arrived on scene, I see the handgun on the ground next to him."

Regarding the point in time when Officer Fortuna arrived at the parking lot and Sgt. Schneider yelled: "Tase him! Tase him!" Officer Fortuna was asked whether he heard Sgt. Schneider yell: "Tase him!" Officer Fortuna replied that he did not. Officer Fortuna was asked whether he heard anyone yell anything about a Taser; Officer Fortuna replied that he did not.

Officer Fortuna was asked whether he considered using a Taser as he approached and interacted with Mr. Palacios-Carbajal. Officer Fortuna replied that he did not consider using a Taser because of several factors. Officer Fortuna explained that when he arrived at the parking lot, he saw Mr. Palacios-Carbajal pick up a "large, black handgun." Officer Fortuna said that "all [his] training and experience, on our use of force continuum...is, you meet whatever force is potentially used against you with greater or equal force. So I'm not going to step down in my continuum when someone has a gun." Officer Fortuna explained that a Taser would be a "step down" in the use of force continuum because a Taser is not a lethal weapon, and a handgun is.

Officer Fortuna explained the other factors that caused him not to opt for a Taser in the situation. Officer Fortuna said that it was raining, and Mr. Palacios was wearing a jacket. Officer Fortuna said: "now you're shooting a Taser at a moving target, there's eight degrees of difference in the probes, so the further he gets away, the less accurate the Taser is, and the less likely it is that it would stick in his thick, wet clothing. So, it didn't seem to me like a viable option."

Officer Fortuna was asked: "Was letting the subject run away a viable option, in your mind?" Officer Fortuna replied: "No, for the fact that our job, and what the public expects is that, if an aggravated felony is committed, and we can capture the subject, we're going to do what we can to prevent someone from terrorizing the neighborhood."

Officer Fortuna was asked: "How about, instead of using deadly force in the moment you decided to use deadly force, was continuing to pursue [Mr. Palacios-Carbajal] or close the distance or approach him-was that a viable option in your mind?" Officer Fortuna replied: "It was not. Like I said-the handgun's within reach, so the closer I get, the more dangerous it is for me. We're always taught 'distance is our friend' in law enforcement; you have the subject basically running to the edge of a building which now, he has cover and we're in an open parking lot with no cover, and him, picking up a handgun, in my mind, he has every intent to use it at that point, 'cause, why else would you pick up a handgun when police are pursuing you?"

Officer Fortuna was asked, in the context of ordering Mr. Palacios-Carbajal to drop the gun: "What's going through your mind if you're saying 'Drop the gun!' You see that it is a gun, the person picks up the gun-what does that mean to you?" Officer Fortuna replied: "To me, I felt that he was going to use it, a threat to use that gun at that point."

Officer Fortuna was asked: "Was there anything else about [Mr. Palacios-Carbajal's] actions, in addition to picking up the gun, that caused you to believe he may have used it against you?" Officer Fortuna replied: "The way, when he picked it up off the ground, he wasn't running with it down, it wasn't up, it was kind of up in his waist. Whether he was

manipulating it or getting ready to turn around, I can't speak as far as what his intentions were, but that seems like a pretty deliberate action to have it kind of up in a ready position."

**Off. Neil Iversen is the subject of this matter and provided the following:**

From the OICI report:

On June 4, 2020, protocol investigators interviewed Officer Iversen with his attorneys present. Officer Iversen said that, while on duty on May 23, 2020, dispatchers relayed that a person had called police to report a man had come into a motel room with a gun. Officer Iversen said he was the backup officer for the call. Officer Iversen said he drove towards the motel. As he did so, Officer Iversen said he noticed there were "tons of people" in the area as one of the nearby strip clubs had just closed.

As officers arrived at the motel, dispatchers advised officers that another person called to report two men with guns had come in their motel room and robbed them. Officer Iversen said the computer in his car relayed information about the suspects, including a physical description. Officer Iversen said one of the suspects was described as a Hispanic male. After he parked his patrol vehicle in the motel parking lot and got out of the vehicle, Officer Iversen said he saw a man outside the motel rooms, "messaging around with some bags." Officer Iversen said he illuminated the man with his flashlight so he could see him better. Officer Iversen said he and the other police officer next to him ordered the man to show his hands. Officer Iversen said the man ran.

Officer Iversen said he called out on the radio that he was in a foot pursuit with a man running away. Officer Iversen said that the man matched parts of the dispatcher's description of the robbery suspects, but, in his interview, Officer Iversen couldn't remember specifically which parts matched. Officer Iversen said he unholstered his gun as he ran because of the reports that a man had threatened people with a gun twice previously. Officer Iversen said the man ran down the street, around the front of the strip club, and around a corner. Officer Iversen said he hesitated a moment to make sure the man was still running and not waiting for Officer Iversen. Officer Iversen said he stopped based on his awareness that police officers have been shot by fleeing suspects who have then waited for the officer and killed the officer. Officer Iversen said he saw the man running towards a north-south alleyway. Officer Iversen said he hesitated again to make sure the man wasn't waiting for him, and then followed.

Officer Iversen said as he pursued the man, he found it difficult to get information out over the radio due to the amount of radio traffic going on. Officer Iversen said he realized other police officers were involved in the chase, too. Officer Iversen said that as he was able, he broadcast a physical description of the man, his clothing, and their direction of travel.

Officer Iversen said he ran as fast as he could and started to close the distance to the man as they approached 900 South. Officer Iversen said he saw the man fall down. Officer Iversen said he heard the sound of metal hitting the asphalt. Officer Iversen said he could see a "black thing," and he thought to himself: "What is that? What is that?" Officer Iversen said the man picked up the thing he had dropped. Officer Iversen said the man got up and started to run but fell down again. Officer Iversen said the man dropped the thing again, and Officer Iversen

thought to himself again: "What is that? What is that?" Officer Iversen said he "took the slack out of the trigger" as he raised and pointed his gun.

Officer Iversen said the man picked up the thing again, began to run, and tripped and fell a third time. Officer Iversen said the thing fell on the ground again. Officer Iversen said this time, he saw it was a gun. Officer Iversen said to himself: "He has a gun." Officer Iversen said the man picked up the gun again, and stood up straight, and started to run again. Officer Iversen said that at that time, it was "kind of a weird run, like his hands were up in front of him almost like a high step." Officer Iversen said: "But at that point when he picked [the gun] up and brought it in front of him again, I thought, 'I have to shoot; he's going to turn and shoot me.'"

Officer Iversen said he pulled the trigger on his gun and, as he did so, he heard a shot fire from right next to him. Officer Iversen said as he fired, he thought to himself: "Nothing's happening." Officer Iversen said he felt like time slowed down and he needed to focus. Officer Iversen said: "I said to myself, 'If you don't focus, this guy's going to shoot you.'" Officer Iversen said that he saw the man's gun come from his left side, and Officer Iversen said to himself: "You have to focus, he's turning to kill you, to shoot [you.]" Officer Iversen said he saw the man on the ground and saw the man's hand with the gun "come up in the air." Officer Iversen said the man started to turn towards the officers. Officer Iversen said: "The gun's pointing at me, and then his arm just falls and he lets go of the gun and his arm falls to his side, and the gun's on his chest."

### *Follow Up Questions*

Protocol investigators asked Officer Iversen some follow up questions through his attorney. On June 9, 2020, Officer Iversen's attorney provided Officer Iversen's answers to protocol investigators.

Officer Iversen was asked if he saw the suspect pick up the gun. Officer Iversen replied that he had seen the suspect pick up the gun, as he had stated in his interview. Officer Iversen's reply included quotes from his interview: "he had picked up his firearm three times and was in possession of it..." And: "He picks it up again, runs and trips and falls, and drops it a thirdtime. As soon as it hit the ground this time, however it was positioned, I don't remember, I just remember immediately going, 'that's a gun. He has a gun.' He picked it up again..."

Officer Iversen was asked why he shot the suspect in the back. Officer Iversen replied that he was concerned that the suspect was going to turn and shoot me, other officers, or that the suspect was going to run for cover and shoot people. Officer Iversen said: "It is important to know that when I was called to the scene, I knew that people had been threatened with a gun." Officer Iversen included passages from his interview, which are set forth above. Officer Iversen also explained: "With bringing both hands in front of him [after he picked up the gun the third time] I was concerned that he was preparing to shoot the gun. I believed that he intended to use the gun on me, other officers or civilians."

Officer Iversen was asked why he shot "so many times?" Officer Iversen replied that he "started shooting when he picked up the gun the third time because I feared for my safety, the safety of other officers and the safety of civilians in the area." Officer Iversen referenced statements in his interview, which are set forth above. Officer Iversen also said: "We are trained to continue shooting until the threat is eliminated. When the suspect went to ground, it was dark and he was some distance away, but it appeared that he fell facing away from us, but as he rolled over towards us it appeared to me that he still had the gun in his right hand and brought the gun across his body pointing the gun towards us. I was concerned that he would fire at us from the ground."

Officer Iversen was asked: "Why did you move to your right?" Officer Iversen replied: "We are trained to shoot and move off of the location where we shot. Just so you are not in the same position where the suspect last saw you so that the suspect has to reacquire your new position. We are also trained that it is harder for a suspect to hit a moving target. I was moving because I was concerned the suspect was going to shoot at us."

Officer Iversen was asked: "Did you see the gun orient to you after the suspect was on the ground?" Officer Iversen replied: "As mentioned above, in response to Question 3: When the suspect went to ground, it was dark and he was some distance away, but it appeared that he fell facing away from us, but as he rolled over towards us it appeared to me that he still had the gun in his right hand and brought the gun across his body pointing the gun towards us. I was concerned that he would fire at us from the ground."

Officer Iversen was asked: "Had he not picked up the gun when he ran, could that have possibly changed the outcome? Why?" Officer Iversen replied: "Yes, because the decision was made to shoot based upon the suspect picking up the gun the third time."

### ***Follow Up Interview***

On July 1, 2020, Officer Iversen answered follow up questions in an interview with his attorneys present. Officer Iversen was asked, after he arrived at the hotel, and as he started to pursue the subject, what were the circumstances that caused him to unholster his firearm? Officer Iversen said that he was only aware of one robbery call as he arrived at the motel, but, in waiting for another officer to arrive and preparing to walk to the motel, another robbery call came in. Officer Iversen said as the officers approached the motel, the second robbery call came in with additional information: "a lady in room fourteen, who, as we were walking up, had called in and said two armed men were just in her motel room." Officer Iversen said: "At that point, we're walking up the property towards the motel, and we have a man in room three who called in and said that he was threatened with a gun or something with an armed suspect or armed men. And now, as we're approaching, what's happening right now is in room fourteen, a woman's called in and said two armed men were just in her motel room. Now it's extremely concerning that, at this moment, there may be two armed men on the property." Officer Iversen said: "And that's why, instead of just walking up and meeting with people, I stopped short. And I stopped short so I can look and survey, because I believe that two armed

men are somewhere there." Officer Iversen said he stopped and paused "to orient [himself] to the motel and observe and make sure we're not walking into something blindly."

Officer Iversen explained he was "observing and I'm counting from room three up to fourteen, and I'm like 'oh, there's fourteen-that's where two armed men were just alleged to be.' Just to the right is a guy and he seems extremely agitated and I think he's rummaging with some bags... at that moment, I believe that guy is a suspect." Officer Iversen said he ordered the man to show his hands, but instead, the man took off running. Officer Iversen said he unholstered his weapon because he believed "he was an armed suspect." Officer Iversen said he pursued.

Officer Iversen was asked about unholstering his weapon as the foot pursuit began. Officer Iversen explained: "It's not common-we go months without unholstering our firearm- it's not a common thing." Officer Iversen explained that chasing an armed suspect "at any moment if he turns, or he doesn't even have to turn, he can just put the gun under his side, put the gun over his shoulder and fire back at me- whatever he decided to do- I would have to perceive what's happening to me and unholster my firearm and try to return fire and that reaction time would probably be longer than one and a half seconds. And we know from studies and from training that a person can shoot two to three rounds a second. And so, if I was able to unholster my gun without being killed first, I'm already shot at or shot six plus times. And so unholstering that gun and having it out is taking time off my perception... of what's happening to me and allows me to respond to the threat faster." Officer Iversen explained this was going through his mind as he pursued Mr. Palacios-Carbajal.

Officer Iversen explained the particular danger a gun, as distinguished from a knife or a club, presents. Officer Iversen said that with a gun, "we're taking our distance out of the equation. If I see somebody all the way across the parking lot, that firearm is going to negate what we have between us, the space between us. If it was a pipe or a bat, we have distance which equals safety which equals time for us to react, where now, a gun just removes the distance, takes away the safety, and is an immediate threat."

Officer Iversen was asked to further explain his previously mentioned decision not to shoot the two times he saw Mr. Palacios-Carbajal drop an object and pick it up. Officer Iversen said he didn't fire because, although he "knew it's not a purse, it's not a wallet, it's not a phone, it's a heavy, metallic black object that's hitting the ground. The first two times he drops it, I know it's a gun- I can't see it's a gun, if that makes sense. I knew it was a gun but I didn't see it as a gun, I didn't want to be wrong. I don't want to shoot somebody because-- everything's there, ninety-nine percent of the information that it's a gun is there, other than seeing the gun completely."

Officer Iversen was asked whether letting Mr. Palacios-Carbajal run away was a viable option. Officer Iversen replied: "Absolutely not." Officer Iversen explained: "I'm pursuing an armed suspect from at least two different crimes at two different motel rooms. He's already used violence against these people, allegedly. As I approach, and I'm shining my light at people, the bar's letting out, there's people in the parking lot, there's people across the street, there's traffic and cars, and so allowing an armed suspect to just run away, puts everybody getting into their car at risk, puts people being out and about at risk, from him taking a hostage,

carjacking somebody, making them drive somewhere, shooting another officer responding that have no idea what they're responding to, it puts them at risk. And then we have residences in that area, too. So allowing somebody to run into a house for hostages, to barricade himself, it really makes the entire situation extremely dangerous for everybody, to just allow an armed man to run."

Officer Iversen was asked whether continuing to pursue Mr. Palacios-Carbajal was a viable option, instead of using deadly force. Officer Iversen replied: "When he picked up the gun the third time, after I told him not to drop it-and repeatedly picked it up and picked it up and picked it up that third time, and I finally put that last little piece together that that's a gun that he's continually [picking] up against my commands-every time he drops it I tell him to drop it, to leave it. Now, the third time he picks it up, he brings it up and I'm like 'that's a gun, for sure' but he brings it up and his other hand comes up like he's taking a more of a solid hold of the firearm, and at that moment I said, 'he's turning, he preparing, we're about to get in a gun fight and I'm going to have to shoot him.'" Officer Iversen explained he wasn't going to continue to pursue or chase Mr. Palacios-Carbajal because at that moment, Officer Iversen said he was convinced that Mr. Palacios-Carbajal was preparing to "engage me, to shoot me, to kill me."

Officer Iversen was asked whether he heard Sgt. Schneider or anyone else yell: "Tase him!" Officer Iversen replied that he did not. Officer Iversen said he had already decided that he would not use the Taser in this situation. Officer Iversen explained: "I'm chasing an armed suspect that I believe has a gun... I'm chasing someone that has a deadly weapon. And so for me to be holstered with my firearm in the holster and pull my Taser out, and then attempt to Tase this man...I know, 'cause my training department keeps records, last time I heard, we were around forty percent of Tasers actually being effective. And so I'm not going to shoot a non-lethal weapon... against someone with a lethal weapon..." Officer Iversen also explained he saw Mr. Palacios-Carbajal running with a loose, flowing jacket and thought: "there was no way he's going to be Tased, with this loose, flowing jacket on." Officer Iversen explained that heavy or loose fitting clothing often prevents both prongs from connecting, rendering the Taser ineffective.

Officer Iversen was asked whether, during the events, Officer Iversen recognized that Mr. Palacios-Carbajal was not complying with any of Officer Iversen's commands or orders and whether that factored into his decision to use deadly force. Officer Iversen answered: "Absolutely, because, especially at the end of the pursuit and the shooting, I have an armed man that has picked up his gun three times, as I'm screaming at him to drop it, and he picks it up and he picks it up and he picks it up a third time and there's for sure/no doubts in my mind that it's a gun, and he picks it up that third time-he's told me from the very beginning when I told him to show me his hands and he turns and makes a movement and takes off, all the way up until the end... he's showing me that he'll never comply. And so to pick that gun up a third time and to bring it in is saying like 'not only will I not comply, but I'm going to kill you, I'm going to shoot you.'"

Officer Iversen was asked: "If [Mr. Palacios-Carbajal], the third time, dropped the gun, and you know it's a gun, and you shout 'Drop the gun!'-if he had dropped the gun, would you have shot him?" Officer Iversen replied: "No. No, because that's what I'm screaming at

him to do, is to drop it... if he were to leave it there and just take off running, and there's nothing in his hands, there's no threat to me at that point."

***Additional Witnesses, police officers:***

**Officer Anderson**

On May 23, 2020, protocol investigators interviewed SLCPD Officer I. Anderson. Officer Anderson said he heard the robbery call involving a gun on the police radio and responded because he knew the area and the complainant. Officer Anderson said he heard the second caller who reported that people entered her motel room and she had been robbed at gunpoint.

Officer Anderson said he heard the first officers arrive at the motel and then heard the foot pursuit called out on the radio. Officer Anderson said as he arrived in the area, he saw a man run across the road being pursued by a police officer. Officer Anderson said he saw the suspect fall or trip. Officer Anderson said he saw the man reach in his pockets or waistband.

Officer Anderson said he saw a handgun in the suspect's hand. Officer Anderson said he didn't see actions the officers were taking; Officer Anderson said his focus was on the man with the gun. Officer Anderson said he heard other officers yelling commands to the man. Officer Anderson said as he got out of his car, the pursuing officers opened fire at the man. Officer Anderson said he saw the man lying on the ground with a gun. Officer Anderson said he and other officers approached the man lying on the ground. Officer Anderson said an officer moved the handgun away from the suspect and other officers started first aid.

**Officer Welch**

On May 23, 2020, protocol investigators interviewed SLCPD Officer C. Welch. Officer Welch said he heard police radio traffic about armed robberies at the motel and the foot pursuit. Officer Welch said he was a few blocks away on 300 West traveling southbound. Officer Welch said he drove towards the foot pursuit.

Officer Welch said he arrived at the scene of the OICI from a different direction than other arriving officers. Officer Welch said he saw an officer running in the road on 900 South. Officer Welch said in his peripheral vision he thought he saw the suspect running when he heard the first shots fired. Officer Welch said he turned left on 900 South and moved out of the way of the shots being fired. Officer Welch said he didn't see the suspect's actions. He said his focus was on the officer running in the road on 900 South. Officer Welch said his first opportunity to see the events of the OICI occurred when the first shots were fired.

**Officer Kilgore**

On May 23, 2020, protocol investigators interviewed SLCPD Officer Sarah Kilgore.



Officer Kilgore said she was on duty when she was assigned as the main officer on a report of "threats in progress" against the residents at the Utah Village Motel. Officer Kilgore said police radio dispatchers said that a Hispanic male dressed in black threatened people with a gun.

Officer Kilgore said she and Officer Iversen walked across the parking lot to make contact with the motel occupants. Officer Kilgore said she saw a man dressed in black standing near the motel rooms. Officer Kilgore said the man was pulling or tugging at something.

Officer Kilgore said she yelled: "Hey, let me see your hands! Stop!" Officer Kilgore said Officer Iversen yelled: "Let me see your hands!" Officer Kilgore said the man started to run.

Officer Kilgore said she started to look for the other man, as dispatchers reported that two suspects were involved. Officer Kilgore said she and Officer Iversen ran after the man. Officer Kilgore said Sgt. Schneider arrived broadcast on the radio that the man who was running had a gun. Officer Kilgore said Sgt. Schneider started to run after the man, too. Officer Kilgore said they ran down an alleyway towards 900 South. Officer Kilgore said she heard Officer Iversen yelling commands to the suspect to stop and show his hands.

Officer Kilgore said she ran out of the alleyway onto 900 South. Officer Kilgore said she saw many police cars with lights and sirens on arriving in the area. Officer Kilgore said she heard Sgt. Schneider broadcast on the radio that the suspect had a gun and was reaching for it.

Officer Kilgore said several shots were fired as she arrived at 900 South. Officer Kilgore said she holstered her handgun and called out "shots fired" on the radio.

Officer Kilgore said she went back to the Utah Village Motel and made contact with the initial complainants. Officer Kilgore said she talked with three people who had encountered the suspect dressed in black who had run from the motel. Officer Kilgore said she had the three people fill out witness statements. While doing so, Officer Kilgore said she was told there was another victim in another motel room.

Officer Kilgore said she met with a man identified as Michael. Officer Kilgore said Michael was pistol whipped by the man with the gun in the robbery. Officer Kilgore said she saw injuries on Michael's head but he didn't want to be transported to the hospital due to the cost of the ambulance. Officer Kilgore said she transported Michael to the hospital to have his injuries treated.

Officer Kilgore said while investigating the robberies at the motel, she was approached by a man from the Trails club who said he was looking for his friend. During the discussion,

Officer Kilgore said she learned of another robbery with a gun against a club patron

in which a man dressed in black held a gun to the patron's stomach and robbed the patron.

### **Sgt. Schneider**

On May 23, 2020, protocol investigators interviewed SLCPD Sgt. Schneider. Sgt. Schneider said he was near the motel when he heard a call about threats with a gun and a suspect dressed all in black. Sgt. Schneider said he arrived near the motel and pulled into the Trails club parking lot. Sgt. Schneider said he saw officers approaching a man at the front of the motel.

Sgt. Schneider said he saw the man run right past him. Sgt. Schneider said as the man ran, he saw the man "messaging around with his waistband." Sgt. Schneider said he broadcast on the radio that the man was running eastbound and that the man might have a gun and that he was doing something with his waistband. Sgt. Schneider said as the man ran past him, it didn't look like the man was listening to the police.

Sgt. Schneider said he followed the officer following the man. Sgt. Schneider said he saw the suspect and officer cross 900 South and run into the parking lot. Sgt. Schneider said he saw the suspect had tripped and fallen. Sgt. Schneider said he saw the man "scrambling for something on the ground." Sgt. Schneider said he saw the man stand up and start running again but stopped and picked up something from the ground. Sgt. Schneider said he heard the officers yelling: "Drop the gun!" Sgt. Schneider said he moved to his right as the other officers opened fire. Sgt. Schneider said after the man fell, he was still moving. Sgt. Schneider said he saw the man move in a way that he thought he was still reaching for the gun. Sgt. Schneider said he saw the man raise up and Sgt. Schneider said he was about to fire his own weapon at the man. Sgt. Schneider said the man's head went down and the officers stopped firing.

### ***Follow Up Interview***

On July 1, 2020, Sgt. Schneider was interviewed and asked follow up questions. Sgt. Schneider was asked, in reference to running down the alley after Mr. Palacios-Carbajal had passed him, what he saw, specifically with regards to a gun. Sgt. Schneider said that he first saw Mr. Palacios-Carbajal rounding the corner of the motel and running towards him. Sgt. Schneider said, based on his training and experience, "when people run, they're usually running with their hands on their sides, pumping their arms. When he ran by me, he was focused on the front of his body, I'll say his waistband area. I observed his hand around what I perceived to be the butt of a gun, the handle of a gun. Does that mean that I actually saw the gun: I cannot say a hundred percent...from all the indicators that I noticed from my fifteen years in SWAT and all the training that we've done, all the classes that I've taught, there was a gun, I believed to be, in that area."

Sgt. Schneider was asked, as he approached the officers in the parking lot, what it was that he saw and heard that made him yell: "Tase him!" Sgt. Schneider replied: "When I was coming across the street, the individual fell in the parking lot and I heard what I believed to be

the gun that fell on the cement. My thought process at that time was, 'if he is, in any way, away from that gun, and he starts to leave, and we can get a Taser on him'-that was what my thought process was." Sgt. Schneider further explained that if the gun was not near Mr. Palacios- Carbajal, he thought a Taser might prevent Mr. Palacios-Carbajal from getting the gun again.

Sgt. Schneider was asked about yelling "all right, all right" during the second volley of shots. Sgt. Schneider replied: "My thought process was: he was on the ground and, in that lighting, I couldn't tell if rounds were hitting him or not. My thought process was: I know there was quite a few rounds that the officers were shooting and my thought process was, 'I know we get into this tunnel vision and maybe by me saying something could maybe clear their head a little bit and realize, like, do you still need to be firing rounds or not.' But what I couldn't see was my vision, on my side-all I saw was the left side of the individual as he was on the ground." Sgt. Schneider was asked, once the shooting stopped, what he saw. Sgt. Schneider replied: "As I moved up, I could see, in his right hand, that he was trying to bring a gun back up. As we started moving a little bit closer, and then it just kind of dropped. So the gun was there definitely on the right hand side." Sgt. Schneider was asked: "So was it a possibility that the shooting officers may have seen something that you didn't?" Sgt. Schneider replied: "Oh, a hundred percent."

### **Officer Southworth**

On May 23, 2020, protocol investigators interviewed SLCPD Officer M. Southworth. Officer Southworth said he was on duty when he heard a report of a man pointing a gun at someone. Officer Southworth said he decided to take his police dog (K-9) to respond to the call. Officer Southworth said he heard the initial officers call out a foot pursuit and drove his police vehicle in that direction.

Officer Southworth said he pulled onto 900 South. When he arrived near the parking lot at the corner of 300 West, he saw many police cars and officers in the area. Officer Southworth said he heard gunshots as he got out of his police vehicle. Officer Southworth said he saw the suspect on the ground, moving a little, and heard officers yelling commands. Officer Southworth said he saw a gun lying on the man's waist. Officer Southworth said he saw the man's hands were empty so he and other officers moved up towards the man. Officer Southworth said he kicked the gun off of the man's body and started first aid on the man. Officer Southworth said he moved the man onto his side to clear his airway and started chest compressions on the man.

There are other written reports from additional officers, but they do not provide any insight to the underlying review of this matter but were included in the DA's report.

### **Evidence:**

From the DA's letter:

## ***Physical Evidence***

Protocol investigators inspected and photographed the OICI scene, and reviewed body-worn camera recordings. Investigators also located and obtained surveillance camera recordings from a nearby building. Investigators sought, but could not obtain, surveillance camera recordings from inside Trails club. Although early in the investigation, investigators asked the club to preserve and provide recordings from the date of the incident, the club eventually informed investigators that the recordings made on the date of the incident were not accessible and not retrievable.

## ***OICI Scene***

Protocol investigators documented and collected a Rock Island brand, 1911 style, single action, .45ACP caliber semi-automatic handgun lying about five feet from Mr. Palacios- Carbajal's body. The weapon has a distinctive muzzle with an ostensible flash suppressor affixed thereto. The weapon also had a notable extended magazine that protruded significantly beyond the weapon's frame. UPD evidence technicians and protocol investigators inspected the handgun and noted that a hollow-point .45ACP cartridge was loaded in the weapon's chamber. The handgun had a fully loaded magazine inserted into the weapon.

Investigators compared the handgun recovered at the scene to the weapon observed on body-worn camera recordings as it lay in Mr. Palacios-Carbajal's lap when officers approached him after the shooting. Investigators noted the handgun shown in the body-worn camera recordings is the same weapon investigators inspected and documented.

Nearby, SLCPD Officer Matteau located a black air-gun pistol near the intersection of 900 South and Washington St. An SLCPD K-9 police dog attempted to acquire a scent to track but was unsuccessful. Officer Matteau waited by the air-gun pistol for crime lab technicians to arrive and collect the weapon.

E: Photos of the scene were taken.

E1: Evidence was gathered from the scene and preserved, including a handgun attributed to Mr. Carbajal and found on his lap area after the incident concluded.

E2: The firearms records of both officers were gathered and reviewed. Those records did not find any delinquency.

E3: Both officers activated their body cameras which captured events from their point of view.

From the DA's letter:

## **Officer Iversen's Body-Worn Camera Recording**

Officer Iversen and Officer Kilgore arrived at the Utah Village Motel and walked towards the motel rooms. As they walked across the motel parking lot, a man was standing by the rooms. Both officers ordered the man: "Show me your hands." The man ran. Officer Iversen ran after him.

Officer Iversen keyed his police radio microphone, identified himself and said: "We have a male on foot, running southbound." Officer Iversen yelled at the man again: "Show me your hands! Show me your hands!" Officer Iversen drew his handgun and held it in his right hand. The man continued to run. As he turned north into the alleyway, Officer Iversen broadcast a physical description of the man and their direction of travel; Officer Iversen said they were headed towards 900 South.

Officer Iversen reached 900 South, still following the man. Officer Iversen yelled: "Drop it! Drop it! Drop it! Drop it!" and "Show me your hands! Show me your hands!" Officer Iversen's body-worn camera captured the man falling, rolling over, and getting up on his feet. The man took a couple of steps, fell, dropped something and picked it up. Someone, out of the frame of Officer Iversen's body-worn camera, is heard yelling: "Drop the gun!" Officer Fortuna entered the body-worn camera's frame and is heard yelling: "Drop it! Drop it! Drop it!" Officer Iversen yelled: "Show me your hands!" Both officers fired at the man.

#### **Officer Fortuna's Body-Worn Camera Recording**

Officer Fortuna's body-worn camera recording began with him in his patrol car responding to Officer Iversen's foot pursuit. Officer Fortuna arrived at the Granary Storage parking lot at 300 West 900 South. Officer Fortuna stopped his car, opened the door, and got out.

Officer Fortuna's body-worn camera captured a man running perpendicular to Officer Fortuna's police car. Officer Iversen can be heard, off camera, yelling: "Show me your hands! Show me your hands!" The man fell to the pavement and stood up. Officer Fortuna yelled: "Drop the gun! Drop the gun! Drop it! Drop it!" The man started to run and both officers fired their weapons at him.

#### **Sgt. Schneider's Body-Worn Camera Recording**

Sgt. Schneider's recording starts in his police car and depicts his travel to the motel. After about three minutes of video, Sgt. Schneider stopped his police vehicle and said to a man outside his car: "Hey, you work here, boss? Do you work here? Hey, uh, Police. Do you uh... Have you noticed anything going on up north of you? Any, anybody come running by? Looks like we have uh maybe somebody with a gun to the apartments just north of you? Have you seen anybody come running by or anything? Within the last like five minutes? Nothing? That perfect, man, just figured I'd ask, appreciate it, thank you, appreciate it."

Sgt. Schneider continued to drive his patrol car and as he pulled up near the motel, he quickly put his car in park, opened the door, got out and yelled: "Hey! Drop it, drop it, drop

it! He's southbound, southbound! He's got something in his pocket! Some, something in his pocket!" Sgt. Schneider keyed his police radio microphone and broadcast: "Four twenty, he's running eastbound down the alley, heading back up north, towards, uh, nine hundred." His camera recording captured Sgt. Schneider running after Officer Iversen. Sgt. Schneider keyed his microphone again and broadcast: "He's got a gun in his pocket, he's reaching in his [waistband]."

At four minutes, forty-five seconds into our copy of the recording, Officer Fortuna's patrol car came into view across 900 South as Sgt. Schneider ran north across the road. As he approached Officer Fortuna and the man getting up from off the ground, Sgt. Schneider yelled: "Tase him! Tase him! Tase him!" Mr. Palacios-Carbajal was seen running away as Officers Iversen and Fortuna fired their weapons. The recording showed Mr. Palacios-Carbajal falling down in the parking lot.

Sgt. Schneider's video recorded someone yelling: "Show us your hands!" Sgt. Schneider yelled: "Drop it!" Other officers are recorded yelling: "Show us your hands!" Sgt. Schneider keyed his microphone and broadcast: "Charlie four twenty, we got shots fired, start medical rolling our way, suspect down."

E4: Other videos were gathered from cameras on nearby buildings.

E5: IA records were reviewed and showed that neither officer has ever been involved in a previous OIS.

E6: The Dispatch logs and the actual police radio traffic log were obtained and, in some cases, transcribed. They will not be included herein as they do not present any additional investigative facts.

E7: The Medical Examiner performed an autopsy on Mr. Carbajal. The results, as stated in the DA's letter notes:

### **Office of the Medical Examiner's Report, Autopsy**

The final report from the Utah Office of the Medical Examiner has not been completed. However, protocol investigators attended the autopsy of Mr. Palacios-Carbajal's body conducted on May 25, 2020. Investigators noted that several of the officers' bullets hit Mr. Palacios-Carbajal in his back and right side. During the autopsy, the medical examiner told the protocol investigators it appeared Mr. Palacios-Carbajal had been shot between thirteen and fifteen times. The medical examiner informed the investigators that Mr. Palacios-Carbajal's aorta had been severed by a bullet, which resulted in his death.

During Mr. Palacios-Carbajal's autopsy, the medical examiner removed personal items from Mr. Palacios-Carbajal's clothing pockets. Among the items removed from Mr. Palacios-Carbajal's front left jacket pocket were A. Z-G.'s wallet, including A. Z-G.'s Utah driver license and forty-five one-dollar bills. A. Z-G.'s wallet, driver license, and cash are consistent with the items A. Z-G. said he was robbed of when he described two Hispanic men, one with long hair in a ponytail wearing a red hoodie, and the other with short hair wearing a dark colored shirt robbing A. Z-G. at gunpoint.

NOTE: Although a toxicology report was performed by the ME's office, the results were not known at the time this report was prepared.

### **Allegations:**

As per CRB operating procedures and SLCPD Internal Affairs operating procedures, all OISs are treated as Excessive Force matters and investigated as such.

### **Definitions**

Unfounded: The reported incident did not occur.

Exonerated: The employee's actions were reasonable under the circumstances.

No determination is possible: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee's action(s) are in violation of the policy or procedure of the Police department.

### **Analysis and Recommendation:**

CRB is incredibly saddened by these events and mourns the loss of a citizen in an encounter with the police.

The legal standards for the SLCPD's "Deadly Force Policy" are within the State of Utah's Deadly Force Policy, which in turn are within the scope of the Federal guidelines on the use of deadly force. The guidelines, as written, stand upon decades of Federal case law that have been incorporated into the Deadly Force policy of all law enforcement agencies across the nation. States and municipalities can make their own deadly force policies more restrictive on their personnel, they cannot make them less restrictive. In any case, the officers involved in this incident will be judged against the policy that was in effect on the day in question. The issues of *reasonableness* and *use of force against a fleeing person* are currently settled legal standards.

As the events unfolded, Off. Iversen and another officer were dispatched to a call involving an armed robbery at a local motel. As they arrived, the officers received an updated call from dispatch on a second armed robbery involving two suspects, the call said "guns" indicating both males were armed, minimal descriptions were provided, but critically, the later caller stated that one suspect was standing outside of a room. (*Note: Mr. Carbajal was found deceased at the end of the incident with a fully loaded semi-automatic handgun on his lap with the barrel pointing "down range", the direction Officers Iversen and Fortuna had been standing. A second gun, an airsoft type, non-lethal replica was found nearby, and it is presumed to be the weapon of the second, still unidentified suspect.*) Upon arrival, Off. Iversen saw a male matching the very vague description, standing outside of a hotel room looking through a bag. Off. Iversen illuminated and commanded this unknown person, later identified as Mr. Carbajal, to drop the bag, which he did and began to flee.

Off. Iversen chased the suspect and radioed in updates, which prompted Off. Fortuna and other officers to come to the scene and assist. As the foot chase ensued, Off. Iversen gave multiple commands to Mr. Carbajal and later, as Off. Fortuna became involved he too gave multiple commands, all of which were ignored or unheard.

The conditions were nighttime with rain causing for slick conditions and little ambient light except for the light coming from artificial sources along the route.

As the chase unfolded between Off. Iversen and Mr. Carbajal, Off. Iversen's mindset included the facts known at the time via the dispatch calls and his own observations. Although he believed from the onset that Mr. Carbajal

was armed, he did not use deadly force until he was able to visually confirm it after the third fall. Off. Iversen did note that after each of the first two falls that he found it alarming that the object being carried in Mr. Carbajal's hand sounded metallic when time it struck the ground but it was not until after the third fall that he positively identified the metallic object as a gun.

As the foot chase unfolded, Off. Fortuna arrived at the scene. He suspected that Mr. Carbajal was armed and had committed two robberies.

After the third fall and the third time that Mr. Carbajal retrieved the now identified object as a handgun, and at roughly 21 feet, both officers opened firing citing their individual fear of being shot themselves, the fear that Mr. Carbajal would shoot the other officer and the risk he posed to others in the immediate area.

It was unusual that a person who was fleeing to get away from law enforcement officers, and who had slipped/tripped to the ground repeatedly, would take time to retrieve an object rather than just continue to attempt his escape. Off. Iversen echoed these actions as indicators that the still unidentified object was a weapon rather than something else. After all, Mr. Carbajal dropped the bag outside of the hotel room where the confrontation between himself and the officers started. In other words, it seems more than logical that Off. Iversen would be very concerned that the object was not related to the stolen property and instead was a weapon. If not a weapon, why would someone fleeing arrest take the time, and give up his distance advantage, to retrieve anything when he likely dropped "the loot" in the initial contact? *(Note: during the ME examination, postmortem, found on Mr. Carbajal's body was the ID of one of the robbery victims along with forty-five (45) one-dollar bills, as one victim reported.)*

As Mr. Carbajal rose to his feet with a now identified handgun in his hand, both officers independently used their service weapons to take him under fire citing their concerns for their own lives and the lives of others. Both officers emptied their weapons with each firing 17 rounds, for a total of 34 expended rounds, in two bursts of gunfire. The ME's report states that Mr. Carbajal was struck between 13-15 times including rounds in his back and side. *(Note: the indeterminate number of gunshot wounds is attributable to not being able to determine if a round went through a limb/fingers and continued into the body accounting for two separate gunshot wounds vs. a single round striking Mr. Carbajal once and not penetrating another body part. This is not an unusual finding.)* The officers shot on two separate occasions: 1) as Mr. Carbajal rose after falling the third time and the weapon was positively identified by both officers and 2) after Mr. Carbajal fell to the ground the final time, a fourth time, after likely being hit by police bullets. *(Note: this is what the totality of the evidence would indicate but it is not positively known. However, based upon the impact of some rounds into his back, those most likely would have occurred during the first group of shots but it is possible some or even all occurred when he went face down the final time.)* The second round of fire occurred after Mr. Carbajal, while lying face down after likely being shot, rolled onto his back, and raised both of his arms in what can be interpreted as an aiming position. The officers again took him under fire and on the video from one of the businesses, as shown at the DA briefing, missing police rounds can be seen striking the ground near Mr. Carbajal.

Officers are trained to fire their weapons, in accordance with the Deadly Force Policy, see above, until such time that the "threat" has ceased. Additionally, in their firearms training, officers are generally trained to shoot twice and assess. There can be situations that the threat is so immediate, and the subject's actions are a continuing threat, that officers will fire more than twice. This action of firing more than twice is not a violation of the Deadly Force Policy in any jurisdiction but is generally more an indication of an incredible perception of an ongoing threat or they, in a time of extreme stress, forgot their training.

**RECOMMENDATION:** CRB strongly urges the SLCPD to review their firearms training policies and modify, update or emphasize the widely held training guideline of fire twice and assess. Obviously, this training standard is not always feasible in every given situation and in looking at past OISs, does not seem to be a Department wide issue. But it is always a good policy to train to the highest level possible.



As for what Mr. Carbajal experienced, sensed and was intending to do, we do not have the ability to know what was going through his mind. So, lacking perspective, all speculation on what his plan was are moot as we do not know. Therefore, the focus must be on his observed and recorded actions and how those actions affected the officer's perception. CRB's task is to solely focus on the facts gathered in our investigation, and to consider whether and how, the officer's actions, comply with SLCPD policies. In reviewing any OIS, the legal/policy tests that apply all center on what the officer knew at the time and the reasonableness of their action(s).

The SLCPD's use of force policy section says in part (see below):

### **Considerations in Use of Deadly Force**

"Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical..."

In this case, the above sentence from SLCPD's policy book is also central to CRB's review. The DA spoke to this topic, in detail, in his briefing. This issue is crucial for SLCPD officers: was there another *reasonable alternative*? As stated earlier, the definition of *reasonableness* is murky to most but is defined by court rulings. It basically says that reasonableness must be based upon the facts known by the officer at the time. As the DA publicly opined, related to the shooting itself, that standard was met or at a minimum, proving to the contrary was not possible. CRB now needs to determine, in addition to their decision to fire, if the officers exhausted all reasonable alternatives.

The officers were questioned about the use of their Tasers and both felt they would not be effective. When fired, Taser probes spread at roughly 8 degrees of separation. At a distance of 21 feet, it is likely that at least one probe would miss/not have contacted Mr. Carbajal and without both probes into a target with solid contact points, the Taser is not effective. Tasers can also be defeated by bulky clothing. The Taser's effectiveness is derived by current passing from one probe to another and the affect it has on the affected muscles. If the Taser was used in the "drive stun" mode, the officer would have to physically push the front of the Taser onto Mr. Carbajal's body. With both officers knowing he was armed with a handgun, this option is clearly risky.

Sgt. Schneider yelled to the officers present, "Taze him." Neither officer reported hearing that suggestion, but both had considered, and discounted, the use of the Taser as described above.

The same reasoning goes with using a baton for the same reasons.

The use of OC spray again presents distance issues and with the rainy conditions, was not a viable option.

That leaves the use of hands or tackling of an armed suspect. Again, a dangerous option.

Officers are trained to meet or exceed the force level facing them. This is not only taught to ensure they effect an arrest but also to keep the officers as safe as possible. In this case, both officers positively identified the object in Mr. Carbajal's hand as a gun, and they had seen him stumble repeatedly and take time to retrieve it prior to continuing his escape. As the officers stated, they had witnessed Mr. Carbajal take the time to retrieve the object twice, time wasted in escaping, and then after the third fall, they knew it was a gun. One must ask themselves what the officers believed Mr. Carbajal was intending to do, based on his actions. Officers are also trained in the Action vs. Reaction phenomenon. In multiple scenarios, it is demonstrated that even if an officer has his weapon out, the action of another is generally faster than they can react.

The issue to be decided by the Panel is: Did the officers fire their weapons within policy, including every round fired, after exhausting all other reasonable options?

**Panel Findings:**

As to the allegation that Officer Iversen and/or Officer Fortuna used Excessive Force, to wit the firing of their Department sidearms, the Panel makes a finding of “Exonerated”

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

Turner Bitton  
Panel Chair  
By Richard A Rasmussen

7/14/20  
Date