

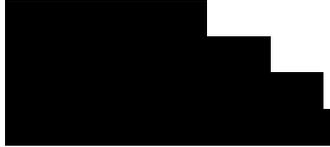


## Duchesne County Attorney

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June 6, 2025

Division of Natural Resources



State Bureau of Investigation



RE: Officer involved critical incident occurring on April 15, 2025

Pursuant to Utah Code Ann. § 17-18a-401, as authorized County Attorneys, we are charged to “conduct, on behalf of the state, all prosecutions for a public offense committed within [Duchesne] county.” This authorization includes the responsibility to investigate the gunshots fired, which caused injury to the person and property of Joshua Boggess on April 15, 2025. We are further required to determine if criminal prosecution shall be instituted. Utah Code Ann. Title 17, Chapter 18a, and § 26B-8-221 as applicable.

The State Bureau of Investigation has completed an investigation pursuant to Utah Code Ann. § 76-2-408. Based upon our review of the investigators’ reports, which include the officers’ body cameras, interviews with witnesses, the medical reports, the crime lab report, and photos of the scene, we have compiled a brief factual summary of what we believe occurred, a summary of applicable law and a short analysis of how we arrived at our findings and decision.

### FACTS

On April 15, 2025, Mrs. Boggess, Joshua Boggess’s wife, informed the West Valley Police Department that while she was away from home, Joshua Boggess told her over the phone that he was going to commit suicide and would not be there when she returned home. (West Valley PD Report (WVPD)) Upon returning home, Mrs. and Mr. Boggess’s seven-year-old son informed Mrs. Boggess that Mr. Boggess had been drinking and had a gun. (WVPD) Mrs. Boggess later reported that Mr. Boggess had pointed the gun at their son. (WVPD) Mrs. Boggess attempted to contact Mr. Boggess again, but Mr. Boggess would not answer any calls. (WVPD)

Later, Mr. Boggess called Mrs. Boggess and told her not to send anyone after him and that he had a gun and all his ammunition. (WVPD)

Mr. Boggess then drove east to Heber City, Utah, and stopped at a gas station. (Heber Gas Station Security Footage (HGSSF)) Mr. Boggess can be seen handling his handgun before entering the gas station to purchase alcohol. (HGSSF) At around 9:50 p.m., an eastbound driver on Highway 40 called dispatch after a black truck pulled out in front of her, causing her to brake quickly. (Voluntary Witness Statement (VWS)) The truck proceeded to drift over the median and then drift back onto the right shoulder. (VWS) At one point, the truck drove far enough onto the shoulder that it was driving through brush. (VWS) In response to the call, an "Attempt to Locate" (ATL) was dispatched for the truck. (Probable Cause Statement)

Conservation Officer Morgan Larsen heard the ATL and located the black truck. (Officer Larsen's Voluntary Statement (OLVS)) Officer Larsen observed the truck crossing both the center line and the solid white line. (OLVS) Officer Larsen initiated a traffic stop, and Mr. Boggess pulled over at a gas station in Duchesne, Utah. (OLVS, Officer Larsen's Body Camera (OLBC)) Officer Larsen approached the truck and introduced himself as a state conservation officer. (OLBC) Upon speaking with Mr. Boggess, Officer Larsen noted that Mr. Boggess had slurred speech and also observed an open beer can in the console. (OLVS, OLBC) These observations, together with the previously observed driving pattern, led Officer Larsen to conclude that the driver "appeared to be under the influence of something." (OLVS) Officer Larsen told Mr. Boggess to turn off his truck due to the noise and fear that Mr. Boggess might drive off. (OLVS, OLBC) Mr. Boggess did not immediately comply, so Officer Larsen told Mr. Boggess that if he did not turn off the truck, he would remove him from the truck. (OLBC) Mr. Boggess still did not comply with Officer Larsen's orders, so Officer Larsen called for backup. (OLBC) Mr. Boggess then informed Officer Larsen that he was suicidal, to which Officer Larsen replied, "I don't want you to hurt yourself." (OLBC) At this point, Mr. Boggess turned off his truck and gave his keys to Officer Larsen. (OLBC, OLVS)

Mr. Boggess again informed Officer Larsen that he wanted to kill himself and that he had a gun in the truck on the passenger side. (OLBC, OLVS) Upon learning about the gun, Officer Larsen told Mr. Boggess, "I want to get you away from the gun, because I don't want you to kill yourself. Don't reach for it." (OLBC) Officer Larsen continued to ask Mr. Boggess to get out of the car, but Mr. Boggess refused. (OLBC) Mr. Boggess eventually said, "I'm either going to do it with that, or you're going to do it with that," seemingly referring to his gun and Officer Larsen's gun. (OLBC) Officer Larsen then told Mr. Boggess to put his hands on the wheel, to which Mr. Boggess responded, "No, I'm not going to." (OLBC) When Officer Larsen asked him why not, Mr. Boggess replied, "Because there's two choices." (OLBC) Officer Larsen told Mr. Boggess, "Joshua, do not do it. Joshua, don't do it." (OLBC) Mr. Boggess then reached for and grabbed the gun that was in the truck as Officer Larsen opened the driver's door to the truck. (OLBC, OLVS) Officer Larsen twice ordered Mr. Boggess to "Drop it." (OLBC) Mr. Boggess then pointed the gun at Officer Larsen. (OLVS) Officer Larsen reported he saw the slide and believed it to be a semi-automatic style handgun, and saw the bore point in his direction. (OLVS) Upon further investigation, law enforcement determined that Mr. Boggess's firearm was incorrectly loaded. (State Bureau of Investigation Oral Report to the Duchesne County Attorney's Office) In response, Officer Larsen fired four shots in quick succession, followed by

another three shots as he backed away from the driver's door. (OLBC) Mr. Boggess was hit multiple times in the left elbow and multiple times in the abdomen. (Medical Report)

Shortly after the shots were fired, Deputy Green of the Duchesne County Sheriff's Office arrived on the scene. (OLBC) Officer Larsen and Deputy Green then removed Mr. Boggess from the vehicle and placed him in handcuffs. (OLBC) Officer Larsen and Deputy Green promptly administered first aid until an ambulance arrived. (OLBC) Mr. Boggess was then taken by ambulance to the hospital, where he was treated. (EMS Report)

## LAW

The applicable statutes include Utah Code Ann. §§ 76-2-404, "*Law enforcement officer use of deadly force*," and 76-2-402, "*Force in defense of person -- Forcible felony defined*." Section 76-2-404 provides: "(2) The defense of justification applies to the use of deadly force by an officer . . . when . . . (c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer." Section 76-2-404(3) also states: "If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (2)(b) or (2)(c)." Section 76-2-402(5) offers additional factors, which may be considered by a trier of fact when determining reasonableness. These factors include: "(a) the nature of the danger; (b) the immediacy of the danger; (c) the probability that the unlawful force would result in death or serious bodily injury; (d) the other individual's prior violent acts or violent propensities; (e) any patterns of abuse or violence in the parties' relationship; and (f) any other relevant factors."

In a somewhat different context (civil rights claims), the U.S. Supreme Court and other federal courts have provided guidance on when an officer is constitutionally permitted to shoot another person. The question of excessive force by an officer is reviewed under a reasonableness standard under the Fourth Amendment, taking into consideration the totality of the circumstances. *Graham v. Conner*, 490 U.S. 386, 395 (1989).

The courts have "long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* at 396. "As in other Fourth Amendment contexts, however, the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See *Scott v. United States*, 436 U.S. 128, 137-139 (1978), see also *Terry v. Ohio*, *supra*, at 21 (in analyzing the reasonableness of a particular search or seizure, 'it is imperative that the facts be judged against an objective standard'). An officer's evil intentions will not make a *Fourth Amendment* violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." *Id.* See also *Scott v. United States*, *supra*, at 138, citing *United States v. Robinson*, 414 U.S. 218 (1973).

"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. With respect to a claim of excessive force, the standard that applies is reasonableness under [the] totality of the

circumstances existing at the moment. Under the circumstances refers only to those circumstances known and information available to the officer at the time of his action. The calculus of reasonableness must embody allowance for the fact that a police officer is often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Deering v. Reich*, 183 F.3d 645, 653 (7th Cir. 1999).

In the matter of *Montoute v. Carr*, 114 F.3d 181 (11th Cir. 1997), officers responded to a call where a large crowd was involved in fighting and also reports of gunfire. Upon arriving at the scene, an officer heard a shotgun fire and observed Montoute walking away from the officer carrying a pistol-grip, sawed-off shotgun, which was a felony in Florida. *Id.* at 182. As the officer approached Montoute, who was carrying the weapon, Montoute stated, “Don’t shoot me, Officer. I on your side, man. I just take the gun from the guy.” *Id.* The officer reportedly told Montoute to drop the shotgun, but he refused and began to run away. *Id.* at 183. The officer pursued Montoute and fired a shot, which struck Montoute with a non-life-threatening wound. *Id.* Montoute sued the officer, claiming the officer had used excessive force. *Id.* The officer raised the defense of qualified immunity. *Id.* at 183–84.

The U.S. Court of Appeals for the Eleventh Circuit began its analysis by stating “in order to be entitled to qualified immunity from the Fourth Amendment claim, an officer need not have actual probable cause but only ‘arguable probable cause,’ i.e., the facts and circumstances must be such that the officer reasonably could have believed that probable cause existed. See *Williamson v. Mills*, 65 F.3d 155, 158 (11th Cir. 1995) (‘to enjoy qualified immunity [the officer] need only have had arguable probable cause’).” *Id.* at 184. The court continues its analysis stating, “We have repeatedly held that because only arguable probable cause is required, the inquiry is not whether probable cause actually existed, but instead whether an officer reasonably could have believed that probable cause existed, in light of the information the officer possessed. *Id.*

Montoute argued that no officer could have reasonably believed that the risk existed once Montoute had passed the officer’s position. *Id.* at 185. The court dismissed Montoute’s argument, saying, “We are not convinced that the danger Montoute posed vanished in a matter of a few steps. More to the point, an officer in those circumstances reasonably could have believed that the danger Montoute presented did not end after he passed Carr. We accept for the present purposes that once past Sergeant Carr, Montoute never turned to face him again, and Montoute never actually pointed the sawed-off shotgun at anyone. But there was nothing to prevent him from doing either, or both, in a split second. At least where orders to drop the weapon have gone unheeded, an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force.” *Id.*

The court concluded its analysis stating; “In view of all the facts, we cannot say that an officer in those volatile circumstances could not reasonably have believed that Montoute might wheel around and fire his shotgun again, or might take cover behind a parked automobile or the side of a building and shoot at the officers or others. Indeed, if the officers had allowed Montoute to take cover, or perhaps circle back around to the crowd, he could have posed even more danger than when he had presented a clear target as he approached them.” *Id.*

In *Garczynski v. Bradshaw*, 573 F.3d 1158, 1170 (11th Cir. 2009), the 11th Circuit Court of Appeals held that police officers' use of deadly force was reasonable when responding to a suicide call. The case arose after multiple officers were attempting to locate Mr. Garczynski after his wife had called the police, saying that Mr. Garczynski was suicidal. *Id.* at 1161. Upon locating what the officers believed was Mr. Garczynski's vehicle, the officers approached the vehicle and ordered Mr. Garczynski to show them his hands. *Id.* at 1163. Mr. Garczynski then raised his gun to his head, and the officers ordered him to put the gun down. *Id.* Instead of complying with the orders, Mr. Garczynski took the weapon from his head and pointed it at the officers. *Id.* at 1164. In response, the officers fired at Mr. Garczynski, killing him. *Id.*

The court in *Garczynski* then states, "In contrast to *Montoute*, Garczynski had not yet fired his gun and was not attempting to escape. As in *Montoute*, however, the officers did not have control over Garczynski and there was nothing to prevent him from shooting at the officers in an instant. The officers could reasonably believe that the weapon was loaded, as it actually was, given Garczynski's expressed intent to commit suicide. As in *Montoute*, Garczynski repeatedly disobeyed the officers' orders, first to show his hands and then to drop his gun. These factors, even assuming that Garczynski never pointed the gun at the officers, provided a sufficient basis for the officers reasonably to believe that Garczynski posed an immediate risk of serious harm to them." *Id.* at 1169.

## LEGAL ANALYSIS

The legal issue is whether, under the totality of the circumstances, Officer Larsen was justified in using deadly force against Mr. Boggess—specifically, whether a reasonable officer could believe that he or others were at risk of death or serious bodily injury at the time deadly force was used. An analysis of some critical facts that informed Officer Larsen's actions follows.

From the outset, Officer Larsen observed behavior indicating that Mr. Boggess was likely under the influence of some substance. Before initiating the traffic stop, Officer Larsen confirmed what was reported in the ATL that Mr. Boggess was driving erratically. Once the stop was made, Officer Larsen noticed that Mr. Boggess had slurred speech and that there was an open beer can on the center console. These indicators suggest that Mr. Boggess was intoxicated, a condition known to impair judgment.

Throughout the incident, Mr. Boggess refused to comply with repeated, clear commands given by Officer Larsen. Officer Larsen repeatedly told Mr. Boggess to exit his truck and to keep his hands on the steering wheel where they could be seen. Mr. Boggess failed to do either. These refusals are significant as Officer Larsen was aware that Mr. Boggess had a firearm inside the vehicle. The presence of a weapon near an intoxicated and noncompliant individual escalated the threat level substantially.

Compounding this threat, Mr. Boggess made multiple statements to Officer Larsen that he was suicidal. Not only did Mr. Boggess say that he was suicidal, but he told Officer Larsen, "I'm either going to do it with that, or you're going to do it with that," seemingly referring to his

and Officer Larsen's guns. These statements indicated not only a willingness to die, but also a possible intent to provoke the officer into using deadly force.

The situation reached its critical point when Mr. Boggess reached for his gun as Officer Larsen opened the truck door in an attempt to prevent Mr. Boggess from grabbing the gun. Officer Larsen told Mr. Boggess, "Joshua, do not do it. Joshua, don't do it," but instead, Mr. Boggess grabbed the gun and pointed it at Officer Larsen. Although Mr. Boggess's actions occurred in a matter of seconds, Officer Larsen was able to recognize the gun as a semi-automatic style handgun and could see the bore of the gun pointing in his direction. No evidence made available to the Duchesne County Attorney's Office suggests that Officer Larsen was aware that Mr. Boggess's gun was incorrectly loaded. This immediate threat—Mr. Boggess pointing a gun at Officer Larsen—constituted an immediate clear and present danger of death or serious bodily harm.

Before firing, Officer Larsen gave verbal warnings to Mr. Boggess. Officer Larsen twice told Mr. Boggess to "Drop it" before shooting. These warnings, in addition to Officer Larsen's previous commands, instructing Mr. Boggess to keep his hands where Officer Larsen could see them and not to reach for his gun, complied with § 76-2-404(3). However, Mr. Boggess acted contrary to and in defiance of Officer Larsen's commands first by declaring "No, I'm not going to" and then later by reaching for and grabbing his handgun and turning it in Officer Larsen's direction.

## CONCLUSION

Under § 76-2-404(2)(c), Officer Larsen was justified in using deadly force because he either did or could have reasonably believed that firing his gun at Mr. Boggess was necessary to prevent Mr. Boggess from causing death or serious bodily injury to Officer Larsen. Such a belief is reasonable because of the imminent danger posed by the weapon Mr. Boggess pointed in Officer Larsen's direction, which he either did or could have reasonably believed was a fully functioning semi-automatic handgun.

Officer Larsen's actions were objectively reasonable when the factors listed in § 76-2-402(5) are considered. The nature of the danger was deadly as a firearm was involved. The danger was immediate as Mr. Boggess pointed the firearm at Officer Larsen, demonstrating to Officer Larsen he intended to escalate rather than de-escalate the situation. Mr. Boggess refused to comply with Officer Larsen's orders, such as getting out of the vehicle, keeping his hands in sight, and not grabbing his gun. Had Mr. Boggess fired upon Officer Larsen, death or serious bodily injury was a highly likely result. Additionally, Mr. Boggess was emotionally distraught as he had expressed his desire to commit suicide, and he appeared intoxicated. It is particularly important to note that, before reaching for his gun, Mr. Boggess had indicated his intent to force Officer Larsen to use his firearm by stating, "I'm either going to do it with that, or you're going to do it with that," seemingly referring to their respective firearms. The obvious implication of this statement is that he would either shoot himself or he was about to do something to threaten Officer Larsen in such a way that Officer Larsen would have no choice but to defend himself with his firearm, which is precisely what happened moments later. These factors support a finding that Officer Larsen acted reasonably under the circumstances.

For the reasons stated herein, we find that Officer Larsen was justified in using deadly force against Mr. Boggess under the Fourth Amendment analysis of federal courts, including but not limited to *Montoute* and *Garczynski*, as well as under Utah state code. Therefore, we formally decline to file any criminal charge against Officer Larsen in this matter.

Respectfully,

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[REDACTED]

Duchesne County Sheriff

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