



# Utah County Attorney

## Criminal Division

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August 14, 2018

Chief Deputy Mike Brower  
Utah County Sheriff  
3075 North Main Street  
Spanish Fork, UT 84660

Re: June 30, 2018 Officer Involved Incident

Dear Chief Deputy Brower:

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

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

Such is the case for the June 30<sup>th</sup> pursuit that resulted in the death of Ms. Rita Dolph. In that incident, Sheriff deputies and other officers attempted, at least two separate times, to gain physical control of the juvenile driver of a stolen car. During the second attempt by law enforcement officers to gain physical control of the juvenile driver, he intentionally avoided a road block and drove through a red light. The juvenile’s decision to ignore the red light and drive through an active intersection resulted in Ms. Dolph’s death. While the law enforcement officers’ decision to attempt to gain physical control of the juvenile driver was, of course, a piece of the causal “chain” leading to Ms. Dolph’s death, it was only indirectly related to her death. Again, her death was directly caused by the juvenile’s decisions and his decisions alone.

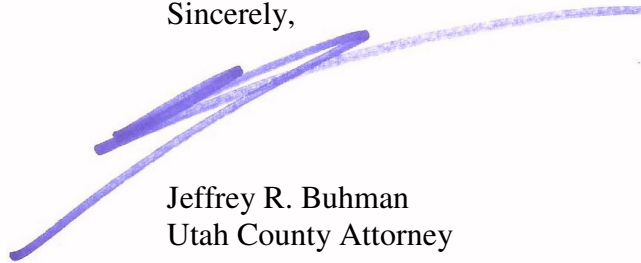
Utah Code Section 76-2-101(1)(a), Requirements of criminal conduct and criminal responsibility, states: “A person is not guilty of an offense unless the person's conduct is

prohibited by law.” In this incident, there is no reasonable question whether the officers were “prohibited by law” from attempting to gain the physical control of the driver of a stolen vehicle—they were not. In other words, because the officers were well within their statutory duty to conduct a traffic stop of the juvenile driver, and the officers did not use any means prohibited by the Utah Code, their conduct was not prohibited by law.

Accordingly, while the decedent, Ms. Dolph, “died by unlawful means,” her death was caused by the juvenile (and proceedings have been instituted against him in juvenile court) and cannot, under Utah criminal laws, reasonably be attributed to the actions of law enforcement. This office, therefore, will not institute any criminal proceedings against the law enforcement officers involved in pursuit of said juvenile.

Please call me if you have any concerns or questions.

Sincerely,

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

Jeffrey R. Buhman  
Utah County Attorney