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September 6, 2019

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Austin, Texas 78768-9001

LETTER DECLINING PROSECUTION AFTER INVESTIGATION

RE: Officer-Involved Shooting on January 26, 2018, involving Austin Police Department Officer Matthew Jackson #7548, and Christopher Eric Giles (DOB 9/17/1994)

Dear Chief Manley:

The Office of the Travis County District Attorney has reviewed the Austin Police Department Special Investigation Unit (“APD SIU”) investigation of the above-referenced matter and concluded our independent review of the officer-involved shooting in which Austin Police Department Officer Matthew Jackson fired shots from his pistol that struck Christopher Eric Giles. This letter is to inform you of my decision to decline prosecution of criminal charges against Officer Jackson. My decision does not limit or address administrative action by the Austin Police Department, or other civil actions, where non-criminal issues may be reviewed and where different rules and lower levels of proof apply.

The District Attorney’s Office (“DA”) has reviewed the investigation of the Austin Police Department (“APD”) into this incident, and a copy of this letter will be posted on the DA website.¹

Based upon the evidence available and the applicable Texas law,² I am convinced that a jury following the law would not convict Officer Matthew Jackson for two independent reasons: first, Mr. Giles was dead at the time Officer Jackson fired his weapon and, second, because even if Mr. Giles had not been, the evidence establishes that the use of force was justified under Texas law. The following sets forth the facts determined during our review, identifies the applicable legal rules, and presents the analysis underlying my opinion.

¹ <https://www.traviscountytexas.gov/district-attorney/office-divisions/civil-rights/cru>

² In arriving at this conclusion, I have relied upon the legal guidelines governing the use of force/deadly force in Texas as set forth in sections 9.32, 9.33 and 9.51 of the Texas Penal Code, the case authority construing those provisions, and the United States Supreme Court case authority governing law enforcement use of force. (See applicable Texas Statutes in Appendix.)

I. FACTS AND CIRCUMSTANCES LEADING TO AND SURROUNDING MR. GILES'S DEATH

Critical to our analysis is the determination of the facts and circumstances leading to and surrounding a shooting incident. In determining these facts and circumstances, we rely on the investigative file compiled by APD's Special Investigations Unit³ (SIU) whose primary responsibility is the independent investigation of all shooting incidents in which an APD officer is involved. In determining the credible facts and circumstances leading to and surrounding the shooting incident resulting in Mr. Giles's death, we reviewed the entirety of SIU's investigative file to arrive at what we believe is a credible and comprehensive understanding of those facts and circumstances.⁴

Our narration of the facts and circumstances of Mr. Giles's death is based on our review of the written and audio statements made by the officer directly involved in this incident—Officer Matthew Jackson—as well as other officers and civilians who were witnesses. Our narration of these facts and circumstances is also based on a review of the statements of those witnesses, audio and video recordings, audio- and text-recorded 911 calls, APD radio traffic recordings, evidence recovered and developed at the scene, and forensic analyses conducted on recovered evidentiary items. Below, we set forth the facts and circumstances surrounding Mr. Giles's death based on our review of the credible evidence and information developed in the SIU investigation, including the results of forensic examination, testing, and analyses.

A. The Initial Emergency 911 Call and Dispatch of Officers

On January 26, 2018, at 3:42:04, a 911 operator received an emergency call from a man who was attempting to whisper his address to the operator, who had trouble hearing him. Within moments a female took over the phone from the male and gave the address on Avenue G in north Austin. She told the operator that someone had “shot into our house and they're in here.” She said “they” were downstairs and she and the male were hiding in a closet.

Twenty seconds later, APD Officers Cori Turi #8247 and David Mozley #7350 were assigned the call, which was designated as a “Burglary Hot Shot,” which meant officers were to respond immediately using lights and sirens. They were operating as a two-man unit using call sign B801.

³ APD's Special Investigations Unit (SIU) has the primary responsibility for conducting all “criminal investigations involving all sworn peace officers alleged to have committed a criminal offense within the jurisdiction of the Austin Police Department.” See <http://www.austintexas.gov/department/special-investigations>.

⁴ This letter will refer to various items reports and information gathered in the SIU investigation, and these items will be released in redacted form in a press release available simultaneously with the public dissemination of this declination letter.

From the time-stamped, computer-generated records known as Computer Aided Dispatch (“CAD”):

Comments Date	Time	User	Type	Conf.	Comments
1/26/2018	03:40:55	Automatic by System	Response		[Geographic Area: 0 3000-3017 N IH 35 SVRD NB] [Medium] [GENERAL INFO] Notify the Watch Commander and UTPD if this incident qualifies as a Clery Act incident.
1/26/2018	03:41:55	AP8022	Response		comp adv. people broke into their apt
1/26/2018	03:42:15	AP8022	Response		comp hiding in master bedroom closet
1/26/2018	03:42:18	AP8022	Response		unkn where subjs are
1/26/2018	03:42:25	AP7966	Response		ccc
1/26/2018	03:42:43	AP8637	Response		Backed up B801 with I804
1/26/2018	03:42:54	AP8022	Response		comp adv. they have also heard a gunshot before they broke in
1/26/2018	03:43:00	AP8022	Response		poss shot at the back door
1/26/2018	03:43:02	AP8637	Response		B880 CLR
1/26/2018	03:43:11	AP8022	Response		comp saw a figure of a person - nod
1/26/2018	03:43:35	AP8637	Response		APT #7
1/26/2018	03:43:47	AP7966	Response		CCC
1/26/2018	03:43:54	AP8022	Response		no apt number - it's a house --- whi tesla in driveway
1/26/2018	03:44:17	AP8022	Response		comp has taser with them - no other wpns

Figure 1— Screenshot of CAD call showing initial call and response.

Officers from Ida Sector⁵, although dispatched *after* B801, were first on scene, specifically Officers Stephen Abbott #7834 and Matthew Jackson #7548, who were also operating as a two man team, with the call sign I804.⁶ Officer Abbott said that he and Officer Jackson were headed to a different call when this “burglary hotshot” came out over the radio, and because they were just a few blocks from Avenue G, they self-assigned to that call.⁷ He parked a few houses north of the residence and both officers exited the vehicle, moving on foot because “the street was very dark and I wanted to move closer to see what was going on and get eyes on the house.”⁸

The officers walked through several front yards toward the house, and as they got close Officer Abbott saw an older black Cadillac parked in the front driveway of the residence, and when he looked toward the porch he saw someone walk from there to the Cadillac.⁹ That person could not see the officers because it was too dark, but Officer Abbott could see the man was 20-25 years old, with “brown bushy hair and a bright colored shirt.” Officer Abbott was unable to see anything in the man’s hands.¹⁰

Officer Abbott believed the man to be walking to and getting in his car to leave so, as they approached, and were about fifty feet away, he and Officer Jackson yelled commands at the man to stop and show them his hands.¹¹ The man ignored those commands, however, Ofc. Abbott stated, “I instantly saw the driver side window shatter, I heard a gunshot, and I could feel something go past my head.”¹²

Video surveillance cameras from the neighboring house picked up images of Mr. Giles getting in his car, starting it, and backing out a few yards, stopping when the officers identified themselves and gave commands to show his hands (see Figure 2, below).

⁵ The Austin Police Department divides the city of Austin into nine distinct patrol regions, or “sectors”: Adam, Edward, Ida, Baker, and Charlie are all north of the river, Baker is the downtown area, and David, Henry, and Frank cover the city south of the river.

⁶ See Sworn Statement of Stephen Abbott (“Abbott Statement”), at p.1.

⁷ See Abbott Statement, at p.2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*, at pp.2-3.

¹² *Id.* at p.3.



Figure 2— Screenshot from home surveillance camera of neighbor, seconds before Mr. Giles fired his weapon (Cadillac, left, and silhouette of Officer Jackson, right, both circled in red).

Officer Abbott attempted to fire back but, due to a weapon malfunction he wasn't able to, so he moved to his right to get out of the line of sight. As he tried to take a knee he fell.¹³ By the time he'd regained his feet and corrected the weapon malfunction, he concluded there was no need to shoot because the subject in the car was no longer firing at them.¹⁴

Officer Jackson, however, did fire at the vehicle, as he told SIU detectives in his statement. He explained that they turned their lights onto the subject in front of them and gave commands to show his hands and, “the next thing I know is I hear a gunshot and I see [Steve] fall, so in my head I was a hundred percent he was shot so I started returning fire until... I realized he was able to get back up and get cover, and we were no longer taking fire back.”¹⁵

Officer Jackson affirmed that he was afraid for himself and his partner when he heard the shot:¹⁶

I mean at that point, like I said I knew we were taking fire. Um, I was in fear for my life, his life 'cause I thought he was shot. Um, also at that point we had no idea if there were other suspects, anyone else still in the house. Um, so basically just trying to eliminate the threat and get cover.

The neighbor's video recording supports Officer Jackson's statement, and records the sound of ten shots fired immediately after the initial shot fired by Mr. Giles.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Transcript of Interview with Matthew Jackson (“Jackson Interview”), at ll.466-471.

¹⁶ See Jackson Interview, at ll.527-531.

II. POST-INCIDENT INVESTIGATION

A. Witness Interviews

Although analysis as to the legality of Officer Jackson's shooting at Mr. Giles depends on the fact and circumstances as he knew them at the time of the shooting, it is instructive to show the scene into which he and his partner were arriving, through the eyes of the people who were there.

1. Megan Turney

Megan Turney was in the house on Avenue G when Mr. Giles entered it, and she was the one who directed police to the address on the 911 call. On January 26, 2018, she gave SIU detectives a sworn statement. She said that she and Gavin Free went to bed at around 1 A.M., but were awakened around 3:30 A.M. by a loud bang and the sound of shattering glass.¹⁷ At first they thought it was their cats but they checked in-home security cameras and saw someone entering the house through the back door, which the person had broken (see Figure 2, below).

They immediately called 911 and hid in a closet, and while there Ms. Turney saw what she believed to be a fresh bullet hole in the closet wall. She said that while he was on the phone with the 911 operator, Gavin Free armed the taser they kept on a closet shelf: "We could hear the intruder walking around our home."¹⁸ Eventually, the 911 operator said that the police were entering the home, and told Ms. Turney and Mr. Free to wait in the closet until police announced themselves in the room, which they did.¹⁹

2. Gavin Free

Gavin Free was also interviewed by SIU detectives on January 26, 2018, and signed a written statement that day. He said he was awakened by a loud crash that he first thought was one of their cats, but when he checked the security camera he saw that someone had broken into the house, and described that person as "a young white male with glasses wearing a t-shirt and hoodie."²⁰

He dialed 911 as they ran to the closet, on the way spotting bits of drywall on the floor, and once there he grabbed his taser but was no longer able to see the intruder on the security camera app. Between five and ten minutes later he was told by the 911 operator that the police had arrived, and a minute or two later he heard gunshots, five of them and all within a second or two of each other.²¹ Mr. Free said that as they were walking out of the house with police, "I could see the bullet had gone through the back door glass, straight through the wall and into our closet."²²

3. Sara Lauren Paul

Sara Lauren Paul was a next-door neighbor of Ms. Turney and Mr. Free, and she was also interviewed by SIU detectives on January 26, 2018, and signed a written statement that day. She said that she was awakened by a loud noise that she believed was a gunshot, at about 4:30 A.M.

¹⁷ See Sworn Statement of Megan Turney ("Turney Statement"), January 26, 2018.

¹⁸ See id.

¹⁹ See id.

²⁰ See Sworn Statement of Gavin Free ("Free Statement"), January 26, 2018.

²¹ See id.

²² See id.

She told herself it was nothing but “[a]pproximately five minutes later I heard approximately six additional gunshots.”²³

Ms. Paul did not see any shooting but after hearing the shots she and her boyfriend, Tyler Weston, went from their bedroom to the front room of their house to look out of the window, where they saw police officers position “behind a vehicle that faced our driveway.”²⁴ She said the officers were shouting “for someone to place their hands outside the vehicle, to identify themselves and inquiring if they were injured.”²⁵

B. Security Camera Footage

As previously noted, a neighbor’s outside security camera caught the shooting itself, but cameras inside Mr. Free and Ms. Turney’s home captured images of Mr. Giles before the shooting.

SIU detectives obtained permission from Ms. Turney and Mr. Free to download and review footage from those security cameras. This footage shows Mr. Giles entering the home after shooting the back door, and going from room to room with what appears to be a handgun in his right hand, and a flashlight in his left. Figures 3 through 9, below, are stills taken from the security camera footage.



Figure 3— Screenshot from indoor security camera showing Mr. Giles (circled) just seconds after he shot the back door and entered the house. He is holding what appears to be a gun in his right hand.

²³ See Sworn Statement of Sara Lauren Paul (“Paul Statement”), January 26, 2018.

²⁴ See *id.*

²⁵ See *id.*



Figure 4 & 5— Screenshots from indoor security camera showing Mr. Giles inside the kitchen of the house, with an apparent weapon in his right hand and a flashlight in his left hand.



Figure 6 & 7— Screenshots from indoor security camera showing Mr. Giles inside the house, as he goes upstairs (left) and then, three minutes later, after he descended the stairs (right).



Figure 8 & 9— Screenshots from indoor security camera showing Mr. Giles at the top of the stairs (left), and after he switched on a light in an upstairs room (right).

C. Crime Scene Unit

After the shooting, APD’s Crime Scene Unit responded to the scene. Tasks completed by Crime Scene Section Supervisor Kim Reed included:

- Taking video of the scene;
- Placing tent markers identifying items of evidentiary value;
- Searching Mr. Giles’s car for projectiles (finding none); and
- Sketching the scene, including the house.²⁶

Crime Scene Specialist Jessica Quezada also responded and was tasked with documenting and photographing the scene. In her report, she noted that ten fired cartridge cases had been collected from the street, and one from inside Mr. Giles’s vehicle.²⁷ The former were marked with numbered tents (see Figure 10, below).

²⁶ See APD Forensic Science Services Division, Laboratory Report # 2018-260217, LRN: 1 (“Reed CSU Report”).

²⁷ See APD Forensic Science Services Division, Laboratory Report # 2018-260217, LRN: 4 (“Quezada CSU Report”).



Figure 10— CSU photo of cartridge casings expended from Officer Jackson’s weapon.

She also noted that “a defect²⁸ was observed on the driver’s side front door window of Mr. Giles’s car, which was shattered and remained intact”²⁹ (see Figures 11 and 12, below).



Figure 11— CSU photo of Mr. Giles’s car in the driveway of Mr. Free and Ms. Turney’s house.

²⁸ Police and crime scene technicians use the word “defect” when referring to damage caused by a bullet.

²⁹ See Quezada CSU Report.



Figure 12— CSU photo of the defect in the driver's side front window of Mr. Giles's car.

One of the items collected by Specialist Quezada and placed into evidence was the handgun retrieved from the inside of Mr. Giles's car (see Figure 13, below). She identified it from its marking as a "Hi-point Model: JHP 45 ACP, serial number: X4124121."³⁰



Figure 13— CSU photo of the weapon found in the Cadillac.

Specialist Quezada photographed defects to the Cadillac caused by Officer Jackson firing his

³⁰ See id. at pp. 5-6.

weapon at Mr. Giles (see Figures 14 to 16, below).



Figure 14— CSU photo of the defect in the driver's side pillar of Mr. Giles's car.



Figure 15— CSU photo of the defect in the passenger's side windshield of Mr. Giles's car.



Figure 16— CSU photo of the defect in the driver’s side rear passenger window of Mr. Giles’s car.

Specialist Quezada also photographed and documented the shattered back window of a Honda Civic, which was parked on the street between Mr. Giles’s car and from where the officers were approaching (see Figures 17 and 18, below). (This physical evidence is consistent with the statements of both officers that the shot fired by Mr. Giles went in their direction.)



Figures 17 & 18— CSU photos of the defect in the rear window of the Honda Civic.

Specialist Quezada additionally documented and photographed physical evidence outside and inside the house, finding an expended shell casing on the back patio (see Figures 19 and 20, below).



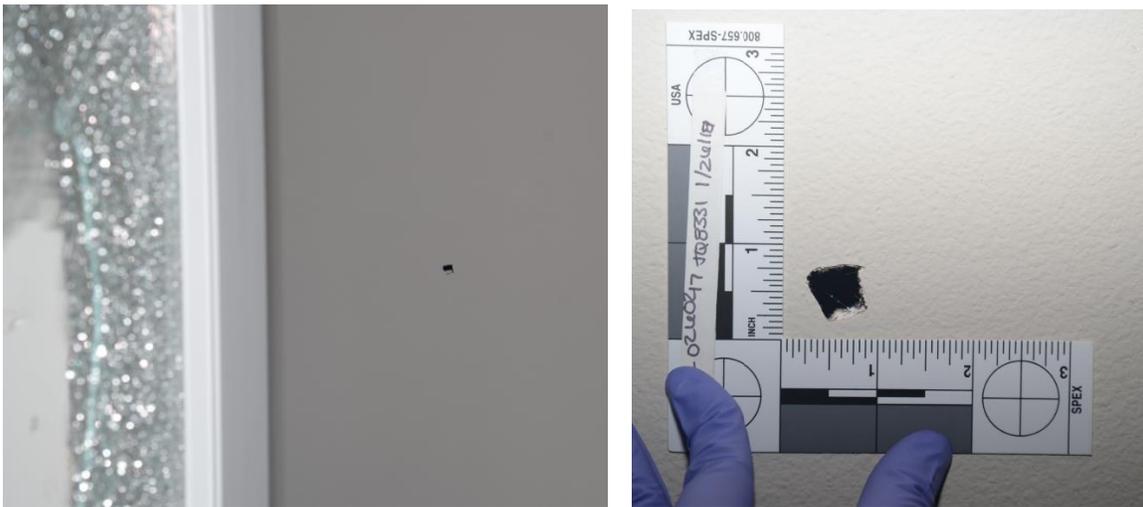
Figures 19 & 20— CSU photos of the shell casing found outside the back door.

As previously noted, Mr. Giles shot through the back door to enter the house, and CSU photographed the damaged door (see Figure 21, below).



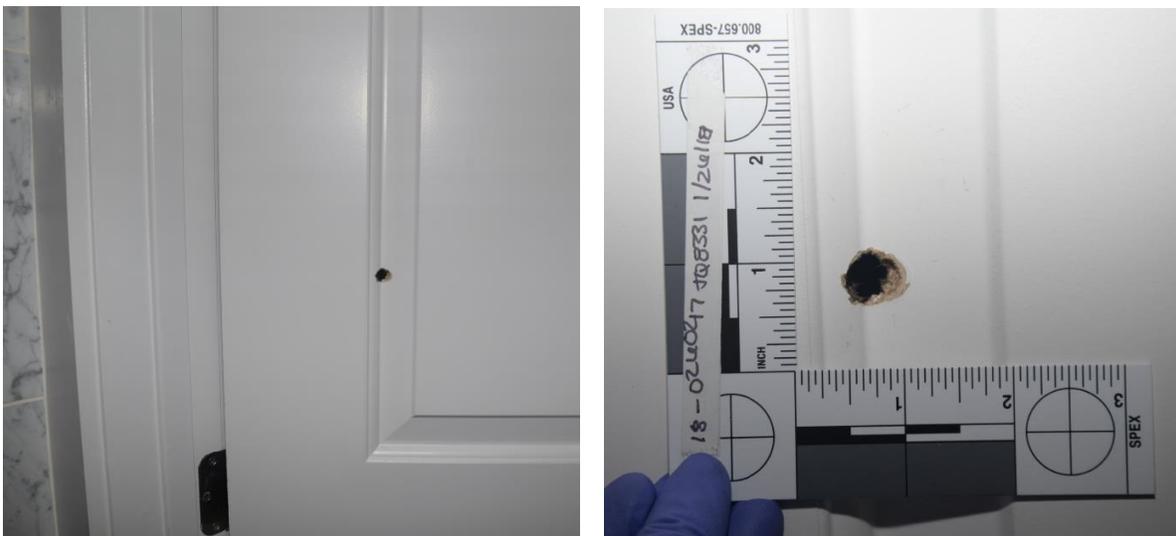
Figure 21— CSU photo of the shattered rear door.

She photographed the apparent path of the bullet fired by Mr. Giles, through a wall behind the door (see Figure 22 and 23, below).



Figures 22 & 23— CSU photos of a defect in the wall behind the shattered back door.

She also located and photographed another defect “on the exterior and interior sides of the [bathroom] door and on the south wall of the water room”³¹ (see Figures 24 through 26, below).



Figures 24 & 25— CSU photos of a defect in the bathroom door.

³¹ See id. at p. 4.



Figure 26— CSU photo of a defect in the bathroom door and in the wall behind it (circled in red).

Specialist Quezada located a projectile “under the bathroom door,” and photographed it beside an evidence tent numbered 19 (see Figures 27 and 28, below).



Figures 27 & 28— CSU photos of projectile recovered from under bathroom door.

Specialist Quezada noted that “Senior Crime Scene Specialist Garcia-Morquecho collected all items of evidentiary value from the scene.”³²

³² See id. at p.6.

D. Digital Evidence

As part of their investigation, SIU detectives retrieved information from Mr. Giles’s cell phone, including text messages, photographs, and internet searches. A review of that evidence confirms that Mr. Giles had a very strong interest in Ms. Turney and an equally strong dislike of Mr. Free. In fact, Mr. Giles put notes into his phone about both of them, and the day before his entering their home, one of those read: “Tried to find and kill Gavin today... couldn’t find him... deciding to end it tonight if I can... I just want it to stop. There aren’t any voices... just... ideas” (see Figure 29, below).

1/18 2:30:52 AM(UTC-6)	1/26/2018 2:33:07 AM(UT...	I went to his house.....	I went to his house... I don't want to hurt her
1/18 6:11:46 PM(UTC-6)	1/25/2018 6:12:35 PM(UT...	Christopher Eric Giles	Christopher Eric Giles Megan LeeAnn Giles Gabriella Megan Giles
1/18 2:41:57 PM(UTC-6)	1/25/2018 2:42:24 PM(UT...	I blame Lisa Breedin...	I blame Lisa Breeding... She's a whore.
1/18 2:35:33 PM(UTC-6)	1/25/2018 2:36:15 PM(UT...	Something is telling...	Something is telling me that I'll get away with murder and I know it's wrong
1/18 2:28:36 PM(UTC-6)	1/25/2018 2:28:43 PM(UT...	Twitter won't load	Twitter won't load
1/18 2:16:56 PM(UTC-6)	1/25/2018 2:24:37 PM(UT...	I can feel her helpin...	I can feel her helping me. I want her. I would kill for her. She's beautiful beyond words. S...
1/18 2:08:00 PM(UTC-6)	1/25/2018 2:08:32 PM(UT...	I can feel him fighti...	I can feel him fighting back. I know where he lives...
1/18 1:49:03 PM(UTC-6)	1/25/2018 1:54:13 PM(UT...	Meg should work b...	Meg should work back at Rooster Teeth and I know I want Gavin to be fired and never to...
1/18 1:35:04 PM(UTC-6)	1/25/2018 1:46:50 PM(UT...	Would it be too mu...	Would it be too much to ask Meg if she could take care of my Cats? I have two... Aura an...
1/18 1:32:46 PM(UTC-6)	1/25/2018 1:34:53 PM(UT...	I think it's more selfi...	I think it's more selfish of me and more self destructive if I stay alive... my "family" never s...
1/18 1:17:18 PM(UTC-6)	1/25/2018 1:26:13 PM(UT...	I'm not obsessed wi...	I'm not obsessed with Meg Turney, or anything really, I'm not depressed to the best of m...
1/18 1:08:59 PM(UTC-6)	1/25/2018 1:17:14 PM(UT...	Meg deserves bette...	Meg deserves better than him. For some reason I see her as my baby girl and I couldn't b...
1/18 1:07:00 PM(UTC-6)	1/25/2018 1:08:42 PM(UT...	Tried to find and kill...	Tried to find and kill Gavin today... couldn't find him... deciding to end it tonight if I can.....

Figure 29— Screenshot of messages downloaded from Mr. Giles’s cell phone.

Analysis of the phone data also shows that Mr. Giles researched an Austin gun store and considered how to get ammunition for a gun.

43		1/24/2018 11:31:11 AM(U...	McBride's Guns INC. Austin, TX
44		1/24/2018 11:31:11 AM(U...	gun shop austin tx
45		1/24/2018 11:31:07 AM(U...	gun shop austin tx
46		1/24/2018 11:30:59 AM(U...	gun shop near me
47		1/24/2018 11:30:58 AM(U...	gun shop near me
48		1/24/2018 11:30:30 AM(U...	45 ap ammo
49		1/24/2018 11:30:06 AM(U...	45 ap ammo
50		1/24/2018 11:30:05 AM(U...	45 ap ammo

Figure 30— Excerpt from digital download of Mr. Giles’s cell phone, showing search terms and the dates and times of the searches.

This digital evidence supports the video evidence, showing that Mr. Giles came to Austin specifically to seek out Ms. Turney and Mr. Free, and was logistically and mentally prepared to do harm to Mr. Freed, and possibly himself.

E. Ballistics, Firearm and Toolmark Evidence

1. The Recovered Firearm

As noted previously, the firearm seized by the crime scene technicians was a black Highpoint Firearms .45 model JHP, with serial number 4124121 (see Figure 31, below).



Figure 31—CSU photograph of the gun recovered from inside Mr. Giles's vehicle.

SIU Detectives were able to connect the purchase of that gun (and ammunition for the gun), made on January 12, 2018, to Mr. Giles (see Figure 32, below).

01/12/2018 Ref No. 13792
 05:39PM Station 1

AC Firearms / Bulldog Firearms
 2502 Southern Blvd
 Suite B
 Rio Rancho, NM 87124 USA
 (505)994-9243

 * Duplicate Receipt *

Transaction Invoice
 Clerk Clerk

Sold To Acct No. 2469

Christopher E. Giles



Item	Description	Amount
00100241	MISC	169.95
	Hi-point JHP 45 45acp SER# X4124121 NICS# 100hbf7m6	
00100241	MISC	17.95
	45 acp ball ammo	
Sub Total		187.90
Tax 7.438%		13.98
Total		201.88
Credit Card Tendered		201.88

RETURNS REQUIRE RECEIPT AND ORIGINAL
 PACKAGING! ALL FIREARM SALES ARE FINAL!

Figure 32—Copy of the receipt for the purchase by Mr. Giles of a handgun. (Mr. Giles’s home address and phone number have been redacted.)

Additionally, detectives obtained a copy of the Firearms Transaction Record for the purchase.

U.S. Department of Justice
 Bureau of Alcohol, Tobacco, Firearms and Explosives

12 JAN 2018
Firearms Transaction Record

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises ("licensed premises" includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink. "PLEASE PRINT."

Transferor's Seller's Transaction Serial Number (if any)
 2018-0112172807

Section A - Must Be Completed Personally By Transferee/Buyer

1. Transferee's/Buyer's Full Name (If legal name contains an initial only, record "IO" after the initial. If no middle initial or name, record "NMN")
 Last Name (Including suffix (e.g. Jr, Sr, II, III))
 GILES
 First Name
 CHRISTOPHER
 Middle Name
 ERIC

2. Current State of Residence and Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)
 Number and Street Address
 City
 ALBUQUERQUE
 County
 BERNALILLO
 State
 NM
 ZIP Code
 87114

3. Place of Birth
 U.S. City and State
 ALBUQUERQUE, NEW MEXICO
 -OR- Foreign Country
 N/A

4. Height
 Ft. 5
 In. 10

5. Weight
 (Lbs.) 170

6. Sex
 Male
 Female

7. Birth Date
 Month
 SEP
 Day
 17
 Year
 1994

Figures 33 (above), and 34 (below)—Excerpts from the official Firearms Transaction Record required by law for Mr. Giles to purchase the gun. (Mr. Giles’s home address has been redacted.)

Section D - Must Be Completed By Transferor/Seller Even If The Firearm(s) is Not Transferred				
24 Manufacturer and Importer (If any) (If the manufacturer and importer are different, the FFL must include both.)	25 Model (If Designated)	26 Serial Number	27 Type (See Instructions for Question 27.)	28 Caliber or Gauge
1. Hi-Point Firearms	JHP 45	[REDACTED]	Pistol	45 ACP
2.				
3.				
4.				
REMINDER - By the Close of Business Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days				
29. Total Number of Firearms Transferred (Please <i>handwrite</i> by printing e.g., zero, one, two, three, etc. Do not use numerals.) One		30. Check if any part of this transaction is a pawn redemption. <input type="checkbox"/> Line Number(s) From Question 24 Above:		

These documents establish that the gun found by police beside Mr. Giles in his car was, in fact, the same firearm that was purchased by Mr. Giles on January 12, 2017.

2. Ballistics and Toolmark Evidence

On May 2, 2018, APD's Firearm and Toolmark Examiner, Steven Aston, conducted an analysis of Mr. Giles's weapon (identified in evidence as lab item #23), the two cartridge cases found in Mr. Giles's car and on the back patio (identified in evidence as items #20 and #70), and the projectile found under the bathroom door at Mr. Free and Ms. Turney's home (identified in evidence as lab item #21).³³

Mr. Aston test-fired six rounds, taken from the magazine that was in the gun and using lab ammunition, and reported that the weapon "was found to be capable of discharging live rounds of ammunition and functioned normally during the test."³⁴

His forensic analysis of the two cartridge cases (Items #20 and #70) led him to report that they "were positively identified as having been fired in Item #23 (Hi-Point pistol)."³⁵ Similarly, he reported that Item #21, the projectile recovered from the bathroom floor, "was examined and microscopically compared on 05/01/2018. Based on agreement of all discernable class characteristics and sufficient agreement of individual characteristics, Item #21 (fired projectile) was positively identified as having been fired from Item #23 (Hi-Point pistol)."³⁶

F. Medical Examiner's Findings

On January 27, 2018, the Travis County Medical Examiner conducted a postmortem examination (autopsy) on Mr. Giles. The examiner ruled "suicide" as his manner of death and "gunshot wound of head" as his cause of death.³⁷ As required by law, the medical examiner issued a death investigation report.³⁸

³³ See APD Forensic Science Services Division, Laboratory Report # 2018-260217, LRN: 11 ("Aston Report").

³⁴ See Aston Report at p. 2.

³⁵ See *id.*

³⁶ See *id.*

³⁷ "Cause of death" refers to the condition that produced the victim's death while "manner of death" is an interpretive opinion that explains how the cause of death was caused. "Homicide" is one of several manners of death which include accident, suicide, or natural causes. "Homicide" is not a legal denotation as to whether the act leading to the death is or is not criminal.

³⁸ Travis County Office of the Medical Examiner, Medical Examiner Report No. 18-00527 ("ME Report").

The medical examiner noted that Mr. Giles sustained:

- One perforating gunshot wound³⁹ to the head with a corresponding exit wound; the wound pathway was right to left, back to front, and downward;
- One perforating gunshot wound to the left arm with a corresponding exit wound; the wound pathway was left to right, upwards, and back to front;
- One graze wound to the left arm; the wound pathway could not be determined.

During the postmortem examination, items of evidentiary value related to the shooting incident were recovered, specifically a projectile (bullet) and some small metallic fragments.

The medical examiner determined that the head injury was incurred at “contact” range, and she found soot to reinforce that observation. Her report notes that, “The gunshot wound of the head was a fatal wound and is consistent with a self-inflicted wound.”⁴⁰ The wound track of the left arm was from an indeterminate range and “had mild amounts of hemorrhage and did not enter the chest cavity.”⁴¹ The graze wound involved the skin surface only.⁴²

Finally, the medical examiner’s toxicology testing on Mr. Giles’s postmortem blood demonstrate the presence of amphetamine.

IV. LEGAL ANALYSIS

In most use of force cases, including officer involved shootings, the decision on whether the force was justified relies solely on determining whether or not, under all the circumstances, it was reasonable that the officer used force against an individual. For the sake of full transparency and completeness, that analysis will be done. However, unusually in this case, legal liability for the officer also requires analysis of *other* factors that make up the potential or theoretical charges of murder or aggravated assault with a deadly weapon. Because that analysis is determinative in this case, we will begin with it.

A: PROXIMATE CAUSE OF THE DEATH OF MR. GILES

To convict someone of murder the State is required to show that the suspect or defendant “intentionally or knowingly caused the death of an individual.”⁴³ Similarly, to convict someone of aggravated assault with a deadly weapon, the victim of that assault must be a “person,”⁴⁴ which is defined in the penal code as meaning “an individual, corporation, or association.”⁴⁵ An “individual” is defined as “a human being who has been born and is alive.”⁴⁶ Therefore, it would be incumbent on the State to prove that a victim was alive at the time a suspect commits the act that would form the basis for a murder (or aggravated assault) charge.⁴⁷

Put differently, neither a murder nor aggravated assault charge can stand under Texas law if the purported victim was dead at the time the alleged harm was inflicted. In this case, the evidence

³⁹ A “perforating” gunshot wound is one that enters and exits the body. A single perforating gunshot can have multiple entry and exit points depending upon the trajectory of the bullet and the subject’s body position when struck.

⁴⁰ See ME Report at p. 3.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See TEXAS PENAL CODE § 19.02(b)(1).

⁴⁴ See TEX. PEN. CODE § 22.02.

⁴⁵ See *id.* § 1.07(38).

⁴⁶ See *id.* § 1.07(26).

⁴⁷ See, e.g., *See Maley v. State*, 1996 Tex. App. LEXIS 3099 (Tex. App.—Houston) at *17 “(it was incumbent on the State to prove that [the victim] was alive at the time appellant and her accomplices placed the pillow over his face”).

from the medical examiner's office and from APD's firearm and toolmark examination show conclusively that Mr. Giles shot himself prior to Officer Jackson firing his weapon, meaning that any projectiles that struck Mr. Giles fired from Officer Jackson's gun necessarily struck Mr. Giles *after* he was already dead. Furthermore, the medical examiner's report indicates that neither of the two shots fired by Officer Jackson would have been fatal. This fact, too, removes any option for a homicide-related charge.

Therefore, this office would decline to press charges against Officer Jackson on these grounds alone. However, as noted, for completeness and transparency we have conducted a "reasonableness" legal analysis of the facts of this case.

B: REASONABLENESS OF OFFICER JACKSON'S USE OF DEADLY FORCE

The use of deadly force without legal justification would constitute a criminal offense for which prosecution is warranted. In the case of an officer's use of deadly force, to constitute a prosecutable offense would require us to conclude that there are no legal justifications applicable to the credible investigative facts. Here, whether or not the officer's use of deadly force was reasonable depends on whether the investigative facts support the conclusion that a reasonable juror would determine that his use of such force was justified in self-defense, defense of a third person, and/or to effectuate a legitimate law enforcement purpose. For the reasons outlined below, we conclude that a reasonable juror following the law would find the use of force to be justified.

A. Law Governing Use of Deadly Force

The Fourth Amendment and Texas statutory law govern our analysis of the reasonableness of Officer Jackson's use of deadly force in Mr. Giles's shooting death. Under the Fourth Amendment, a law enforcement officer's shooting of a person constitutes a "seizure" and, as a consequence, is subject to the amendment's requirement that it be reasonable⁴⁸ as that term has been construed by the United States Supreme Court.⁴⁹ The Supreme Court has directed that the inquiry is essentially one of objective reasonableness: 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."⁵⁰

In conducting our analysis, we are to evaluate the officer's use of force based on the facts and circumstances then existing on the scene and determine "judged from the perspective of a reasonable officer on the scene," whether a reasonable officer would have used deadly force based on the facts and circumstances viewed from the perspective of the acting officer at the time the force was used.⁵¹ This inquiry must make "allowance for the fact that police officers are often forced to make split-second judgments" and should not be based on the benefit of "the 20/20 vision

⁴⁸ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." U.S. CONST. AMEND. IV.

⁴⁹ U.S. CONST. AMEND. IV.; *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

⁵⁰ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁵¹ *Id.* at 396-97.

of hindsight.”⁵² In the context of the law enforcement use of deadly force, the basic requirement is that the use of deadly force be limited to situations in which it was immediately necessary.⁵³

Texas law incorporates the Fourth Amendment’s reasonableness standard in several statutes applicable to the facts and circumstances of Mr. Giles’s shooting. Those statutes allow the use of deadly force in self-defense, in defense of third persons, and in order to effectuate a legitimate law enforcement purpose.⁵⁴

B. Texas Law Governing the Use of Deadly Force: Chapter 9 and the Reasonableness Standard

Chapter 9 of the Texas Penal Code provides three basic circumstances under which a law enforcement officer’s use of deadly force is justified: in self-defense, in defense of a third person, or to effectuate a legitimate law enforcement purpose such as an arrest or search.

1. Use of Deadly Force in Self-Defense: Texas Penal Code § 9.32

Section 9.32 of the Texas Penal Code describes the circumstances under which deadly force may be used in self-defense by any person, law enforcement or not. It states:

- (a) A person is justified in using deadly force against another:
 - (1) if the actor would be justified in using force against the other...; and
 - (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
 - 1. to protect the actor against the other’s use or attempted use of unlawful deadly force; or
 - 2. to prevent the other’s imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Section 9.32 expressly predicates the authority to use deadly force on the condition that the actor first have been authorized to use non-deadly force under Section 9.31, which governs the use of non-deadly force. That section, which sets forth the basic reasonableness standard discussed earlier, provides that:

- (a) ... [A] person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other’s use or attempted use of unlawful force.

Only if the actor first satisfies Section 9.31’s requirements controlling the use of force can he or she be justified in the use of deadly force.

2. Use of Deadly Force in Defense of a Third Person: Texas Penal Code § 9.33

The use of deadly force to protect a third person calls for what might be best described as a surrogate analysis: the use of deadly force in defense of a third person is authorized only if the

⁵² Our inquiry must consider whether a reasonable officer in the circumstances that Officer Jackson encountered would have reasonably concluded he was in imminent danger from the gun that Mr. Giles had fired.

⁵³ *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

⁵⁴ TEX. PEN. CODE §§ 9.32, 9.33, and 9.51 (c).

actor is justified in the use of deadly force to defend him or herself. As with Section 9.32, this justification is applicable to all persons, whether law enforcement or not. That section provides:

- (a) A person is justified in using force or deadly force against another to protect a third person if:
 - (1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect.

3. Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose: Texas Penal Code § 9.51

The final justification applicable to the facts established here is found in Section 9.51, which governs all uses of force by a law enforcement officer while in the discharge of his or her duties. It is applicable only to law enforcement officers' use of force. Section 9.51 provides:

- (a) A peace officer...is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest..., if:
 - (1) the actor reasonably believes the arrest or search is lawful...; and
 - (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known or cannot be reasonably made known to the person to be arrested.

C. Analysis: The Facts and Circumstances of Officer Jackson's Use of Deadly Force

Officer Jackson's conduct in discharging his weapon⁵⁵ must be evaluated in terms of its reasonableness under the above-cited statutes. We have concluded that on the credible facts established here that Officer Jackson's use of deadly force in Mr. Giles's shooting was not unreasonable under the applicable statutes.

1. Officer Jackson's Use of Deadly Force

The facts and circumstances known to Officer Jackson at the time he initially discharged his duty weapon must be considered.

The investigation established that Officer Jackson was one of two officers who approached, at night, a house in order to assist two citizens who were the victims of a home invasion by an armed suspect. At the time of his encounter with Mr. Giles, Officer Jackson was aware that:

⁵⁵ Even if the officer's shots had not struck Mr. Giles, the discharge of his weapon in his direction alone constitutes a use of deadly force and is otherwise a criminal offense if not statutorily justified. "The threat of force is justified when the use of force is justified. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force. TEX. PEN. CODE § 9.04. Here, it is evident that Officer Jackson discharged his weapon and as such there was an actual use of force. *See e.g.*, TEX. PEN. CODE § 22.02 Aggravated Assault (use of a deadly weapon during the course of an assault). An "assault" occurs whenever a person "intentionally or knowingly threatens another with imminent bodily injury..." TEX. PEN. CODE § 22.01. As a use of deadly force, the discharge of a weapon is a threat to use deadly force which is justified only if reasonableness requirements as contemplated by the various justifications for use of deadly force contained chapter 9 of the Penal Code.

- The initial 911 call involved someone who had forced his way into the house;
- The suspect had gained entry by shooting through the back door;
- The suspect was therefore in possession of a firearm;
- The suspect had ignored commands when police first saw him;
- Most importantly: the suspect had fired his weapon while it was pointed in the direction of the officers;⁵⁶ and
- Officer Abbott, right beside Officer Jackson, had fallen immediately after Mr. Giles shot.

The evidence shows that from Officer Jackson’s perspective, he was under fire from a man who’d shot his way into a house, terrorized its inhabitants, then ignored commands from police, *and* that the shot fired by Mr. Giles had hit his partner, Officer Abbott.

We conclude that under these circumstances, Officer Jackson was justified in using deadly force in discharging his duty weapon at Mr. Giles. We believe Officer Jackson was justified in doing so on the grounds of: (1) defense of self under § 9.32; (2) defense of third persons under § 9.33; and (3) in order to effect an arrest for an offense under § 9.51.⁵⁷

2. Officer Jackson’s Use of Deadly Force in Self-Defense—Tex. Pen. Code § 9.32

We conclude that the investigative facts establish that the facts and circumstances of which Officer Jackson was aware of when he discharged his weapon are sufficient to satisfy the provisions of Section 9.31, thus allowing him to use non-deadly force to defend himself as a prerequisite to his use of deadly force.⁵⁸ Officer Jackson was faced with circumstances in which the danger to him was evident and imminent: he was in the dark approaching an individual he knew was armed, a man who’d ignored police commands and gotten into a vehicle, *and* who had actually fired his gun in his direction.

Under these circumstances, we conclude that Officer Jackson “reasonably believe[d] [that] the [use of] force [was] immediately necessary to protect [himself] against the other’s use or attempted use of unlawful force.”⁵⁹ Likewise, under these circumstances, the provisions of Section 9.32 authorizing Officer Jackson’s use of deadly force in discharging his weapon at Mr. Giles are unquestionably established.⁶⁰

In fact, the investigation supported Officer Jackson’s statement because the gun was recovered, as was a shell casing inside the vehicle indicating the gun had been fired, further demonstrating that Officer Jackson reasonably concluded that a danger existed. Under these circumstances, we conclude that Officer Jackson reasonably believed that his use of deadly force was immediately necessary to protect himself against Mr. Giles’s apparent use or attempted use of unlawful deadly

⁵⁶ Officer Jackson’s statement makes it clear he heard and even felt the bullet go past him, but did *not* know that Mr. Giles had shot himself.

⁵⁷ In this case, felony charges of burglary of a habitation, deadly conduct, and aggravated assault with a deadly weapon.

⁵⁸ Under the circumstances then existing and with which the officer was confronted, Officer Jackson’s belief that the use of deadly force was immediately necessary is *presumptively* reasonable under Texas Penal Code § 9.32. Specifically, subsection (b) of section 9.32 provides that “[t]he actor’s belief...that the deadly force was immediately necessary...is presumed to be reasonable if the actor...knew or had reason to believe that the person against whom the force was used...was committing or attempting to commit” murder.

⁵⁹ TEX. PEN. CODE § 9.31 (a).

⁶⁰ Here, all of the non-exhaustive list of factors the Supreme Court noted in *Tennessee v. Garner*, the leading case on governing the reasonableness inquiry into a law enforcement officer’s use of deadly force, are present: the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Tennessee v. Garner*, 471 U.S. at 10-12. Mr. Giles’s conduct involved the reasonably apparent danger of his commission of a violent felony, and attempt to flee the scene, while armed, and after evincing an intent to engage officers violently rather than submitting to an arrest.

force, or to prevent what he reasonably concluded was the imminent commission of murder if he did not discharge his weapon at him, and that a reasonable jury following the law would agree.

3. Officer Jackson’s Use of Deadly Force in Defense of a Third Person—Tex. Pen. Code § 9.33

For the reasons that justified Officer Jackson in his use of deadly force in self-defense, we conclude that he was also justified in using deadly force to protect others. Mr. Giles had already reportedly put the lives of other residents of the house in danger, and was armed with a gun. Crucially for this analysis, Officer Jackson believed his partner Officer Abbott *had* been shot by Mr. Giles. It would have been reasonable for Officer Jackson to assume that the life of Officer Abbott was in jeopardy given Mr. Giles’s firing of the gun in their direction.

As noted earlier, Texas Penal Code § 9.33 regulates the use of force in defense of a third person. That section provides that “[a] person is justified in using force or deadly force against another to protect a third person if...under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect...and...the actor reasonably believes that his intervention is immediately necessary to protect the third person.”

Having concluded that Officer Jackson was justified in his use of deadly force in self-defense (in order to prevent Mr. Giles’s apparent use or threatened use of deadly force against him), we further conclude that Officer Jackson’s use of deadly force was also justified in order to defend Officer Abbott from the same apparent danger that he reasonably believed threatened Officer Jackson himself, and that a reasonable jury following the law would also so conclude.

4. Officer Jackson’s Use of Deadly Force to Effectuate a Legitimate Law Enforcement Purpose—Tex. Pen. Code § 9.51

Finally, for the reasons that justified Officer Jackson’s use of deadly force to defend himself and others, it is also reasonable for him to have concluded that Mr. Giles was then engaged in the commission, imminent commission, and attempted commission of violent criminal offenses. Under Texas law, a peace officer is authorized to arrest any person for any offense committed within his or her presence or view without a warrant.⁶¹

Based on his knowledge and observations, Officer Jackson had observed or had probable cause to believe that Mr. Giles had, committed felony offenses, including Burglary,⁶² Aggravated Assault with a Deadly Weapon,⁶³ and Assault on a Public Servant.⁶⁴ The facts and circumstances of which Officer Jackson was aware at the time he discharged his weapon would have also satisfied the probable cause standard that would have allowed him to have taken Mr. Giles into custody and placed him under warrantless arrest: Mr. Giles was armed with a gun, had fired into an occupied home, then broken into that same home, and (in his mind) fired at himself and Officer Abbott. Specifically, we conclude that Officer Jackson formed the reasonable belief that his use of deadly force was “immediately necessary to make or assist in making” Mr. Giles’s arrest. Under these

⁶¹ TEX. CODE CRIM. PROC. art. 14.01.

⁶² TEX. PEN. CODE § 30.02.

⁶³ TEX. PEN. CODE § 22.02.

⁶⁴ TEX. PEN. CODE § 22.01 (b) (1).

circumstances, it was reasonable for Officer Jackson to believe that his warrantless arrest of Mr. Giles was lawful.⁶⁵

For the reasons that justified the warrantless arrest of Mr. Giles, the facts and circumstances then existing also supported Officer Jackson's belief that the use of deadly force to make an arrest was immediately necessary because he also reasonably concluded that Mr. Giles posed a "substantial risk" that he "would cause death or serious bodily injury" to Officer Jackson (and Officer Abbott) if he or they attempted to arrest or detain him. Under these circumstances, we conclude that Officer Jackson's use of deadly force to effect Mr. Giles's arrest was justified under Texas Penal Code § 9.51 (a).

Based upon all the foregoing, Officer Jackson's use of deadly force in this shooting was an objectively reasonable use of deadly force under Texas law, and a reasonable jury following the law would so conclude.

CONCLUSION

For these reasons, I have concluded that the filing of criminal charges against Officer Jackson is not supportable under Texas criminal law standards because Officer Jackson's use of deadly force in this incident was justified under the circumstances. Consequently, charges will not be filed. We are closing our review and will take no further action in this matter.

We have released a public/press packet that includes videos, witness statements, officer statements, forensic reports, photos and an autopsy report. We have also attached the items and legal citations mentioned in the analysis. This decision will be posted on my Office's website and will be accessible under 'Christopher Giles' and the date of the incident, January 26, 2017.⁶⁶

Very truly yours,



Margaret Moore

⁶⁵ There is no need to consider section 9.51 (a)'s third requirement because Officer Jackson's identity was reasonably known to Mr. Giles under the circumstances; he was in full uniform and he and Officer Abbott had announced their presence, and their identities as police officers.

⁶⁶<https://www.traviscountytexas.gov/district-attorney/office-divisions/civil-rights/cru>