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Jan M. Bennetts
Ada County Prosecuting Attorney
200 W Front Street
Boise, ID 83702

RE: CITF Investigation: Payton Wasson ASCO DR 23-5948

Dear Ms. Bennetts,

Pursuant to the agreement between Ada and Twin Falls Counties, Twin Falls County was to review the CITF investigation into the June 24, 2023, shooting death of Payton Wasson. After Twin Falls learned of a potential conflict Gooding County was requested to assume that role.

Summary Conclusion:

I have concluded after reading the reports, conferring with the detectives from the Ada County Sheriff's Office who headed up the CITF investigation, reviewing all the evidence from the incident, and consulting Idaho Code §§ 18-4009, 18-4011, and 19-202A, that there is insufficient evidence to support a criminal charge against any law enforcement officer for the shooting death of Payton Wasson.

Pertinent Facts:

On June 24, 2023, at approximately 2:12 a.m., several Boise Police Officers were working in downtown Boise assigned to the Boise Police Department gang team. Members of the BPD Gang Team were investigating a suspect, Mario Adan Garza, who was a known parolee, and was suspected of trafficking narcotics.

Police observed Garza with a handgun in his possession. Because he was on parole, Garza was prohibited from possessing firearms. Garza was observed with a white male adult whose identity was unknown at the time, but who was later identified as Payton Wasson. Both Garza and Wasson were dressed in gang attire recognizable to the team.

Boise Police began to surveil Garza and Wasson at approximately 1:06 a.m. when they arrived

downtown in a Black Kia Forte registered to Mario Garza. Garza and Wasson walked to the area of 6th and Main St. where they went into a bar called Dirty Little Roddy's. At around 1:58 a.m., Garza and Wasson left the bar and walked back to Garza's Kia. They were accompanied by a white female adult later identified as Jordan R. Smith. During the time Garza was away from his Kia, a BPD Officer observed a Glock pistol in plain view inside Garza's car and communicated with an on-duty Probation and Parole Officer, who requested that BPD detain and search Garza. BPD officers also planned to detain the subjects with Garza based on their affiliation with Garza and his suspected drug trafficking activity.

Garza, Wasson, and Smith returned to Garza's Kia and Wasson retrieved items from the passenger side where the Glock pistol had been observed. Wasson appeared to put something in his waistband then took a backpack from the Kia and walked away. BPD Officers contacted the three subjects: Garza and Smith cooperated, but Wasson ignored commands from multiple officers to stop. Wasson began moving away and looked over his shoulder toward one of the Police Officers as he reached for his waistband. One BPD Officer yelled at Wasson "don't do it," "don't go for the gun," and to stop. Wasson then fled. Two BPD Officers pursued Wasson on foot. As he ran, Wasson took a gun from his waistband. One Officer radioed: "We've got one running with a gun." The Officers repeatedly ordered Wasson to drop his gun. Wasson refused to comply and continued to run. Wasson ran by a citizen standing on the sidewalk, who had to quickly recoil to avoid Wasson. Wasson was running toward Main Street where several bars had just closed and patrons were exiting. Officers were concerned that the armed suspect would either shoot a civilian or the police who were pursuing him. As Wasson continued to flee and refuse commands to stop and disarm, one Officer fired at him. Wasson immediately fell to the ground. A black semi-automatic pistol fell to the ground near Wasson's right side. He was given first aid immediately and transported to St. Alphonsus Hospital, where he later died from his injuries.

Analysis:

I have analyzed this incident solely to determine whether the facts justify charging any BDP officer criminally for the use of deadly force against Payton Wasson.

After reading the reports, conferring with the detectives who headed up the CITF investigation, reviewing the evidence of the incident, and considering all relevant information, including the facts related above, I have concluded that there is insufficient evidence to support a criminal charge against any of the law enforcement officers involved in this incident for the shooting death of Payton Wasson. The facts in this case reveal that Wasson was fleeing from a suspected drug deal, grabbed toward a gun in his waistband as officers confronted him, fled from police and drew a gun as he ran, refused lawful orders to stop and drop his gun, and was running toward a crowded area when the BDP Officer fired at him.

Idaho Code § 18-4009 makes homicide justifiable "by any person" when "resisting any attempt to . . . commit a felony," or "when necessarily committed in attempting, by lawful ways and

means, to apprehend any person for any felony committed," or in "lawfully keeping and preserving the peace."

Idaho Code § 18-4011 states that "homicide is justifiable when committed by public officers . . . when reasonably necessary in order to prevent the escape of any person charged with or suspected of having committed a felony, provided the officer has probable cause to believe that the . . . person suspected of or charged with the commission of a felony poses a threat of death or serious physical injury to the officer or other persons."

Idaho Code § 19-202A repeats the long-standing Idaho law that, "In any prosecution for the unlawful use of force, including deadly force, or the attempted or threatened use of force . . . the burden is on the prosecution to prove beyond a reasonable doubt that the use of force, attempted use of force or threat to use force was not justifiable."

The following information was known to the BPD Officer before he discharged his weapon: — Wasson was attempting to flee from a suspected drug deal:

- Wasson was armed with a firearm in his waistband;
- Wasson sized-up another BPD Officer while reaching for the gun in his waistband; — Wasson was ordered to stop and drop the gun;
- Wasson fled and drew the gun from his waistband as he ran;
- Wasson continued to run down a public street with a gun drawn;
- There were citizens on the street and one directly in the path of Wasson's flight;
- Wasson was running toward an area where patrons were exiting bars at closing time;
- The way Wasson was running and the way he held his gun posed an immediate threat.

Based on the forgoing, the Officer had cause to believe that Wasson, through his unlawful and potentially violent acts, was a continuing and immediate danger to law enforcement officers who were engaged in the lawful performance of their duties, and a danger to the public at large as he fled, armed, down a public street.

Given Idaho Code §§ 18-4009, 18-40111, and 19-202A, all the facts in this case, and what the officer knew when he fired on Wasson, there does not exist sufficient evidence to prove beyond reasonable doubt that the officer who fired on Wasson committed a crime under Idaho Code.

Sincerely,



Trevor Misseldine
Gooding County Prosecutor