



## **FORCE INVESTIGATION TEAM**

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## Force Investigation Team Report Officer-Involved Shooting

Incident: Officer-Involved Shooting-Fatal

Agency(s) Involved: Roy Police Department, Ogden Police Department

Relevant case numbers: NOPD 23RO11571, CSI 23CS794, ME 202302006

Date of Incident: July 7<sup>th</sup>, 2023

Time of Incident: 19:17 hrs.

Location of Incident: 1813 W 4650 S Unit L, Roy Utah

FIT Lead Investigator: Investigator Steve Zaccardi

Involved Officer(s): Josh Davis OPD, Ken Huckaby RPD

Involved subject(s): Steven Kirkman, 03/26/1984

## **Introduction**

On July 7, 2023, Roy Police Department reported that there had been an officer-involved shooting, which involved two of their officers. The Weber County OIS protocol was initiated.

Officer-involved shooting investigations are the responsibility of the Weber County Attorney Force Investigation Team. (FIT) The information contained in this document is a summary of the complete investigation conducted by the WCAO FIT with assistance from investigators with the Weber County Homicide Task Force (HTF). The following investigators worked on the case with a summary of their assignments.

Lead Investigator: Steve Zaccardi, WCAO FIT

Crime Scene: Steve Haney, WCAO FIT

Medical Examination: Cameron Hartman, WCAO FIT

Witness interviews: Dustin Stewart, WCSO FIT

Witness interviews: Jeremy Rock, MCSO HTF

Canvas/Crime scene assistance: Alonzo Wade, WCSO HTF

Canvas/Crime scene assistance: Caleb Rivera, WCSO HTF

## **Summary**

On April 7, 2023, at approximately 1917 hrs. the Roy Police Department received a call from Jessica Hinnant reporting that her brother Steven Kirkman had a gun and was making suicidal threats. Additionally, Jessica reported that her mother, Connie Morgan was present in the house with Kirkman. Steven Kirkman lived in a large apartment bldg. in Roy, Utah.

Roy Police Officers Ken Huckaby, T. Flowers, and S. Johnson all responded to the call for service. When Officers arrived at the apartment, the door was open and Connie Morgan was standing just inside the doorway speaking with Kirkman who was farther into the apartment. Officers did not go into the apartment but were finally able to convince Connie to leave.

Once they had Connie in a safe location, they set up a perimeter around the apartment. This particular apartment was on the third floor of the building. The patrol officers contacted their supervisor Sgt. Perez. Typically in threatened suicides, if a crime has not been committed and there is no imminent threat to someone's life, the police will encourage the individual to seek help from professional crisis workers or hotline numbers and leave the area. However in this situation Sgt. Perez later said that due to the high concentration of people in the apartment complex, he felt that there was more of a danger to the public if the police did not remain and attempt to de-escalate the situation.

For three hours police negotiated with Kirkman trying to convince him to come out peacefully. At one point he told the police that all he wanted was for them to leave him alone. Police stated that they would leave the area if they were able to evacuate the surrounding apartments. At first, Kirkman agreed to this but then started making veiled threats if the police did leave the scene. Police and several family members attempted to negotiate with Kirkman but this was unsuccessful. Eventually, he stepped out onto his balcony with a pump shotgun. He racked the weapon seemingly for effect, then pointed it at officers. Officer Josh Davis, and Officer Ken Huckaby both fired their weapons striking him. Kirkman was pronounced dead at the scene.

Once the OIS protocol was initiated, investigators from the FIT unit responded to the scene. CSI was already there and starting their scene processing. I was informed that the Officers involved in the shooting had been taken to the Roy Police Station and the Ogden Police Station.

I had Investigator Steve Haney be responsible for the crime scene along with CSI. Det. Jeremy Rock was assigned to interview Steven's family. Detectives Wade and Rivera were assigned to conduct a canvas of the surrounding apartments and locate witnesses. Det. Stewart accompanied me to process the officers. See individual investigators' reports for details, the following is a summary of the entire investigation.

### **Steven Kirkman**

Steven Kirkman was 39 years old. He was married to Rebecca Kirkman for ten years but had been in a romantic relationship for fourteen years. They had no children.



### **Criminal history**

- Kirkman had been arrested once in 2008 for DV Assault. The case was dismissed in 2009.

## **Rebecca Kirkman statement**

On July 8<sup>th</sup>, 2023 Investigator Haney and I met with Rebecca Kirkman at her mother's house in Morgan County. Her mother and brother were present for emotional support. The interview was audio recorded, which can be reviewed in its entirety. The following is a summary of that conversation.

Rebecca stated that Steven was an alcoholic and had been diagnosed with liver failure due to the drinking. In April of 2023, Steven was having issues so she took him to the emergency room, and eventually, he was admitted to the ICU. According to Rebecca, the physician told Steven that his liver was shutting down and if he continued to drink he only had three months to live.

Steven stopped drinking for some time but started up again recently. The day before this incident the two got into an argument over his drinking alcohol and ongoing marital problems. On the day of this incident, Steven and Rebecca continued to argue over their marital problems. Steven was drinking and had gotten drunk. The argument escalated to the point that Rebecca packed her suitcase and told him that she was leaving. Steven asked Rebecca before she left to go to the bank and get \$150 out of the account and bring it back, which Rebecca did. Steven told her that he would be gone in the morning.

Rebecca said she tried to call and text Steven's mother and sister to tell them that Steven needed help. Rebecca said there was no physical violence in her relationship but they did get into very heated arguments together.

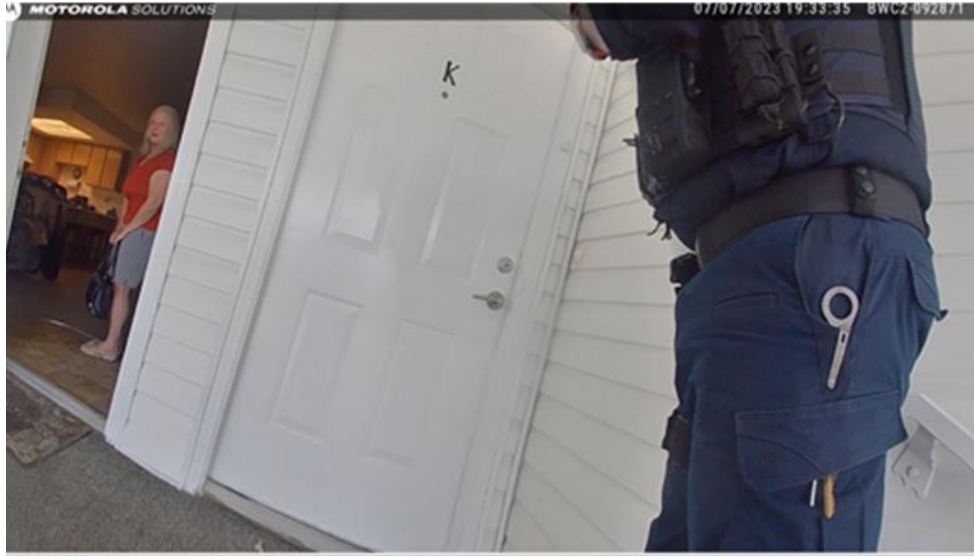
## **Interview with Steven's family**

Steven's mother Connie Morgan was at the apartment when police arrived. Connie was upset and did not want to speak with FIT investigators at the scene. She did however provide some information to the initial patrol officer at the scene. The following information came from body camera footage, which can be reviewed for full details, this is a summary of what she told the officer. Connie told the officer that Steven was in alcohol rehab, and had several guns in the house, including AR-15, handguns, a rifle, and a shotgun. The officer asked what happened today that caused this. Connie told him that Steven's wife left him, he had liver failure, and if he continued to drink he would die. He didn't go to rehab and he relapsed this past weekend in Wendover. Steven sent some texts to his mom that made some suicidal comments. Connie also said she thinks Steven wanted someone to shoot him.

FIT Investigator Jeremy Rock interviewed the rest of the family at the scene. The interview was audio recorded which can be reviewed in its entirety. The following is a summary of that interview.

Kirkman had spoken to his sister telling her that Rebecca had left him and said that she wanted a divorce. Kirkman had told his sister that he had his guns and was making some comments that led her to believe that he was going to take his own life.

### **Police response**



Officer Huckaby was one of the first Officers on the scene. He made contact with Kirkman and his mother Connie Morgan at Kirkman's apartment. The above photo was a screenshot taken from Huckaby's body camera the woman in the red is Ms. Morgan, and Kirkman is not visible in the photo.

The officers eventually convinced Connie to exit the apartment with them. After that the officers went back down the stairwell to a safe distance.

Police attempted to negotiate with Kirkman with Detective Ben Person, and Kirkman's family.

The OIC (Officer in Charge) Sgt. Armondo Perez contacted the Weber/Morgan County SWAT team requesting a response. SWAT Commander Lt. Matt Ward told Sgt. Perez that because no crime had been committed there would not be a full SWAT call out. However, due to the fact that there was a mentally unstable person who was armed the police did not believe it was reasonable to leave the area, there is also a standing policy and understanding with the police agencies within Weber County that individual officers who are on duty that also are on the SWAT team may respond to an incident and assist patrol.

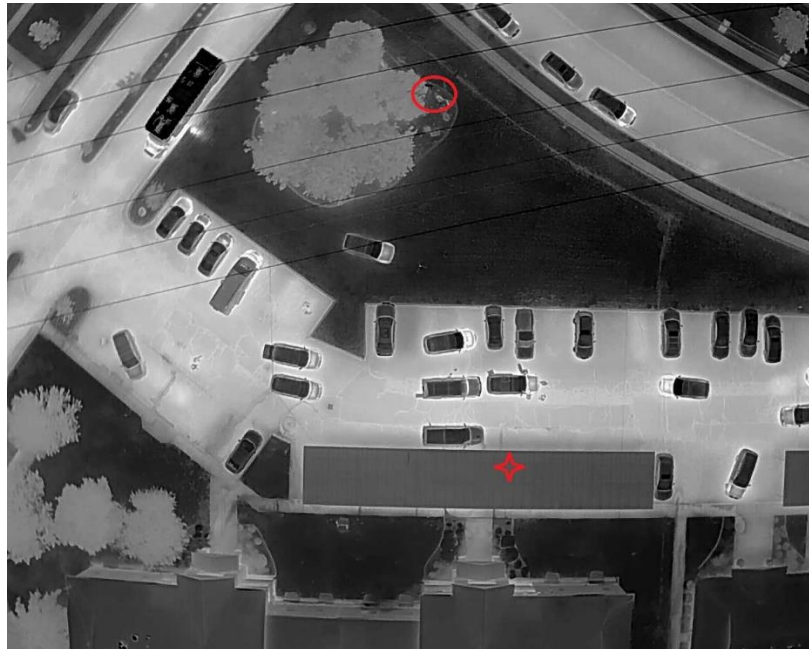
On this particular day Weber/Morgan narcotics detective Josh Davis, whose parent agency is Ogden Police, and who is also a member of the SWAT team, heard the call of a barricaded subject in Roy. Another person who responded was Sgt. Tim Fulton is a Roy Police Sgt. and a team leader on the SWAT team.

## Marksman deployment

A marksman on a SWAT team provides the ability to make highly precise shots at a target. They do this by utilizing a long-range rifle, and copious amounts of training under high-stress situations.

Additionally, a marksman can provide what is called over watch, which is a term for being able to see an expanded overview of the situation based on where the marksman is positioned and the advanced optics that usually come with the long-range rifle.

In this particular situation, Det. Davis heard the call and that the situation could evolve quickly and potentially deadly, he responded to the scene. Davis took up a position that was farther away than the other police officers on the scene. In the below photo, the circle is the location of Officer Davis, the star is the location of Kirkman's apartment.







## Negotiations

Police were able to make contact with Kirkman via cell phone. There were ongoing negotiations with Steven Kirkman and Det. Ben Person, Kirkman's father, mother, and sister. These negotiations went on for several hours and were recorded on Det. Person's body camera. These recordings can be reviewed in full, the following is a summary of what was said.

Sgt. Perez wanted to evacuate the apartments near Kirkman's apartment. To do this safely would require some level of cooperation from Kirkman. Sgt. Perez told Kirkman that he would see the officers moving to the other apartments to get people out, Kirkman told Sgt. Perez not to do that, saying "That is a bad idea." Making it seem that it would result in him doing something dangerous. Kirkman did say that the other apartments were safe and he wasn't going to do anything. Eventually, Kirkman said the officers could get the apartment evacuated. Kirkman said that he didn't want anyone to get hurt, and it was in the officer's best interest to go home.

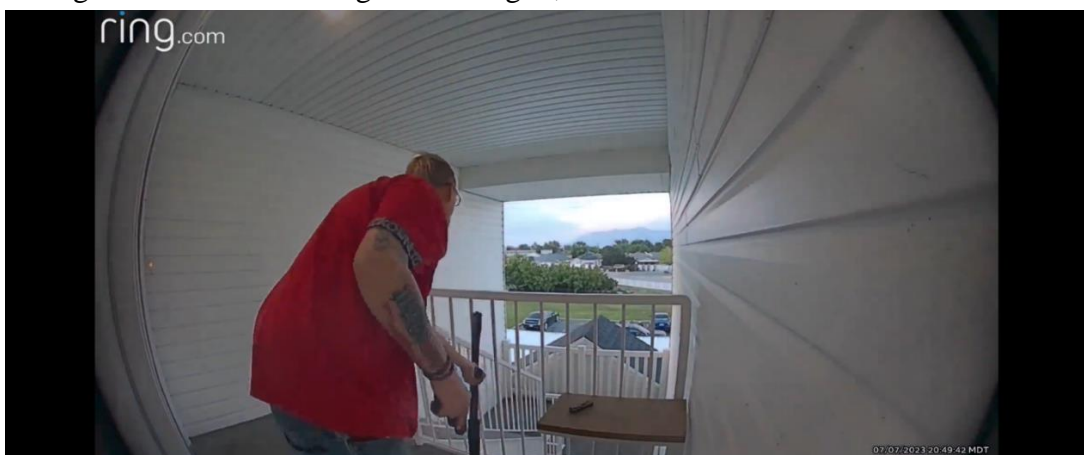
Kirkman said that he was going to fire a round through the door or the officers needed to leave. Sgt. Perez told Kirkman that as soon as the other apartments were evacuated the police would leave the area.

Det. Person told Kirkman that as soon as the apartments were cleared below him the police would leave. Kirkman kept saying don't come through the door that would be a bad idea. The police assured him that they would not come enter his apartment. Kirkman seemed to be slurring his words when he spoke.

His apartment was equipped with a doorbell camera. Below are two still photos of Kirkman on the porch. The first is the shotgun leaning up against the railing.



At one point Kirkman went back inside his apartment leaving the shotgun outside. Later, armed with a handgun he went back out got the shotgun, and went back inside.



Police were utilizing the fire department to assist in evacuating the apartments. While they were doing this, Det. Person was on the phone with Kirkman. Kirkman told Person "I have eyes on you." It was believed that he was speaking about the officers below his apartment. Then he said, "Tell them to lower it or that is going to be the last thing." It was assumed that Kirkman was



speaking about an officer who was pointing his firearm at the apartment. Kirkman then said, "Tell the guy with the blue shirt to lower his gun." Person did, and the officer complied.

The apartments were evacuated and Det. Person told Kirkman that the police were leaving. Kirkman said, "No, we are going to finish this." Person told Kirkman that the police were going to leave the area because that is what he wanted. Kirkman responded, "Just know I don't want to hurt any of you but we are going to finish this." Kirkman asked what would happen if he fired a round through the door. Person relayed this information to the Sgt. Perez who made the determination that Kirkman's threats and behavior were endanger the lives of the others in the complex and the police could not leave the area at that point.

Kirkman's sister was speaking to him on the phone, telling him that everyone there was trying to help and nobody was going to hurt him. Kirkman told her "Ok, I am going to kill anyone who is out there." He also told Person "I have two 12 gauges and a 9mm in my hand." "How many bodies do you want buried today?" Then he said, "The next thing out of your mouth better be, goodbye have a nice night, or I am going to step out on the balcony and take care of this." Kirkman told Person that the police leaving better happen quickly or there was going to be more bodies to bury.

Det. Person notified Sgt. Perez that his opinion was the situation was deteriorating with Kirkman. During the final moments of the conversation, Kirkman was on the phone with his mother, who had the phone on speaker. Kirkman tells his mother to let the officers know that he was going to step out onto the balcony, "because it will be over."

### **Kirkman points shotgun**

Shortly after Kirkman makes these comments to his mother, he did step out onto his balcony with the shotgun in his hands. Because the police officers were standing behind the cover, their individual body cameras were covered also, so there is no video of Kirkman on the balcony or the shooting. There is however audio from several officers during the incident, made comments like. "He is raising the shotgun." "He is aiming it over here, he just racked it."

### **Order to fire**

Sgt. Tim Fulton was interviewed by Investigator Steve Haney. The interview was audio recorded the following is a summary of that interview.

Sgt. Fulton is a squad leader on the Ogden/Weber Metro SWAT team. He was called at home by OIC Sgt. Perez to get some tactical advice on the situation. Sgt. Fulton asked Sgt. Perez if Perez would like him to respond to the scene. Sgt. Fulton came to the scene and took over as the tactical commander of the scene, while Perez was still the OIC. Sgt. Fulton heard that the male (Kirkman) had been threatening to take random shots out the apartment door. While they were

waiting Sgt. Fulton heard over the radio that the male had come out onto the balcony. He was getting updates over the radio that the male had racked a shotgun, and was pointing it at officers. An officer with advanced optics said that Kirkman had his finger on the trigger while he was pointing the weapon at officers. Sgt. Fulton said that he believed that Kirkman was an immediate threat to law enforcement of death or serious bodily injury if action wasn't taken. He told Officer Davis that if he had the shot to take it.

It is unknown if the first part of the transmission did not get broadcast because the only thing that came across was "If you have a shot, take it." It was not specifically addressed to Marksman Davis, so another officer fired along with Davis, and a third officer attempted to fire but had a malfunction. Below is a photo of the point of view of Officer Josh Davis





### **Josh Davis interview**

On July 11, 2023, Officer Josh Davis provided a statement to investigators at the Weber County Attorney's Office. He was accompanied by this FOP Attorney. This interview was audio and video recorded. The following is a summary of that conversation.

Officer Davis is assigned to the Weber-Morgan Narcotics Task Force. When this incident was going on in Roy, he overheard the incident over the police radio. He stated based on what he was hearing on the radio that the situation was deteriorating. At one point the information over the radio was Kirkman was not going to allow the officers on the scene to evacuate the surrounding apartments. Since Davis had specialized training in similar situations he decided to respond to the scene.

Davis described his initial arrival on the scene and where he had positioned himself. He described Kirkman's behavior and the information that was being relayed over the radio about the ongoing negotiations.

Davis said from his position he could see Kirkman walking around inside the apartment. Davis said at one point he could see Kirkman standing eight to ten feet inside the apartment. Davis turned the magnification up on his rifle scope and described Kirkman holding his arms together out in front of him like he was in a shooting stance, attempting to get a shot at the officers. Davis said it was dark and he could not see a firearm in his hands at that point. He did relay his observations to others on the scene via the police radio.

A short time later, Kirkman came to the balcony and opened the sliding glass door which let out. He stood in the doorway for a moment, and Davis could see he had a shotgun in his hands. Kirkman had shouldered the shotgun with the weapon barrel pointed down, finger on the trigger. Davis said that he observed Kirkman raise the gun slowly and rack the shotgun, and a round

ejected. Kirkman then approached the banister and pointed the gun over and down at the officers below. Davis said that he was concerned for the life of his fellow officers when Kirkman pointed the weapon, and he made the decision to fire.

Davis said that Sgt. Fulton did tell him if he had a shot to take it, but Davis had already made an independent decision to fire to save the lives of his fellow officers.

### **Officer Ken Huckaby's statement**

On July 11, 2023, Officer Ken Huckaby provided a statement to investigators at the Weber County Attorney's Office. He was accompanied by this FOP Attorney. This interview was audio and video recorded. The following is a summary of that conversation.

Officer Huckaby said that he was the original handling officer on the initial call. He was dispatched to a suicidal male with a gun. They also received information that there was a woman in the apartment as well. When Huckaby and two other officers arrived they went to the apartment. The door was open, and a woman later identified as Connie Morgan was standing in the doorway crying. She told Huckaby that her son was inside the house with a gun and was threatening to kill himself. Officer Huckaby did not enter the apartment, but he could see inside, and lying on the couch he noticed several guns, including a rifle. Officer Huckaby pleaded with Connie to leave the apartment, which she eventually did. Once that happened the officers backed down the stairs to a safe location.

Officer Huckaby said that usually in those types of calls they provide the guy with mental health resources and then leave the area because of the belief that the police presence sometimes makes the situation tenser. However, in this case, Huckaby stated that Kirkman had an apartment next to him and below, also on the east side of the apartment was the swimming pool which at the time was full of children. He did not believe he could just leave Kirkman alone. Additionally, Connie Morgan told officers that Kirkman had several guns in the apartment.

Once Huckaby got other officers there to assist, they attempted to negotiate with Kirkman. This went on for several hours. As it was getting darker, Huckaby was asked to bring his police car over closer to the apartment to utilize the spotlight. Huckaby ran to his car and moved it. He was checking on other officers when Kirkman came out onto the balcony and he had a black shotgun in his arms, in what Huckaby described as the low ready. Huckaby took cover behind a citizen's truck which was parked in the parking lot. Huckaby said that Kirkman raised the shotgun and raised it up and pumped the action. Huckaby heard someone ask over the radio where the gun was pointed and the officer replied "Right at me." Huckaby said that is when he made the decision to fire because Kirkman "was one trigger pull away from shooting one of the guys behind the suburban with a shotgun." Huckaby said that as soon as he made the decision, he heard the Sgt. Fulton says "If you have the shot, take it." Huckaby fired twice with his .223

patrol rifle. Officer Ken Huckaby said that he feared for the safety of his fellow officers believing that Kirkman was about to fire his weapon.



The additional officers who responded were mostly located behind a vehicle in the parking lot. Below the photo is the white Suburban that the officers were gathered around. Kirkman's apartment is in the background, illuminated by the spotlight.





### **Witness Officers**

*S. Johnson -wrote in a report that Connie told him that Steven had a pistol-like firearm as well as a black long rifle, and a safe full of other firearms. Steven's wife left him and he also was having liver failure from being an alcoholic. He wanted to die and wanted someone to shoot him.*

*Sgt. Perez -it should be noted that building 1813 West faces North, Steven's apartment is on the top floor (3rd) on the Northeast side of the building. From Steven's front door and balcony, he has a visual of the gated community that is just north of 4650 south and all other residences in that area and vehicles driving in the area. From his windows, Steven has a visual of the complex pool and common park area in the middle of several other apartment buildings each containing 24 apartments with hundreds of people having access to those areas. The Apartment building consists of two sets of six apartments on the front totaling 12 apartments in the front and another 12 apartments in the backside.*

### **In reference to evacuating the apartments**

*Steven then made a threat that he was not content with us backing out and said he will be finishing this. Steven also said he is about to do it if we hear a shot. Detective Pearson had been negotiating with Steven and using his sister to assist with those negotiations. Steven wanted Detective Pearson to come up to his apartment unarmed so he could give him a model car. Steven was informed that we could not do this. Steven was asked to come outside unarmed, keeping his hands in the air, pockets emptied, lifting his shirt, and turning so we could*



*make sure he was unarmed, and then we could meet him on the second floor to receive the model car he wanted to donate to the police department. At this point, I contacted Sgt. T. Fulton with Roy City Police Department. Sgt. Fulton is our most senior officer on the Ogden Metro SWAT Team. I asked him to come out and assist me.*

*Steven would only speak to his sister and Detective Pearson. Steven had made a request to Detective Pearson to have him, his sister and I come up to his apartment to speak with him. Steven was told we could meet with him on the second floor if came out and showed that he was unarmed. I asked to see if the sister could talk Steven into meeting on the second floor so I could set up a plan to take him down before he could get back to his apartment where he could access his weapons. I had planned to take a shield with Pearson and me and then have two officers climb up the ladder into apartment #J because the sliding glass door was still open. These officers would wait by the front door quietly until Steven was in position on the second floor unarmed and then all four of us would try to go hands-on to take Steven into custody. Steven would not comply with this request so this takedown was not used.*

### **The negotiator was losing rapport with Kirkman.**

*At this point I contacted LT. M. Ward with the Ogden City Police Department as he is the Commander of the Ogden Metro SWAT Team. I informed him of our case, and it was decided that I could use what SWAT members were on the scene to assist me, but it would not be a full SWAT callout at this time as there were no crimes committed at this time. I was informed that I had one SWAT Marksman positioned in front of the building.*

*I did speak with Steven's sister and asked her what she believed Steven would do. She said that Steven would just keep going around in circles until he did something or forced us to do something.*

### **C. Hackworth**

*At one point the glass door is seen sliding open but Steven cannot be seen. Shortly after I heard what sounded to be the chambering of a round into a firearm. A brief time after this Steven was seen exiting the sliding glass door armed with what appeared to be the same black long barreled firearm with a pistol grip. Steven was given commands to drop the firearm but he did not. Steven reached out over the railing of the patio and racked the shotgun ejecting what appeared to be a red shotgun shell. He began to point the firearm at me and several other officers next to me. It was verbalized by myself and other officers next to me that he was pointing the gun at us. Steven was standing behind a wall and only his arms and firearm could be seen. When we advised he was pointing the firearm at us, a command from another officers was given over the radio for anyone who had a shot to shoot Steven.*

## Crime Scene



View from Kirkman's balcony



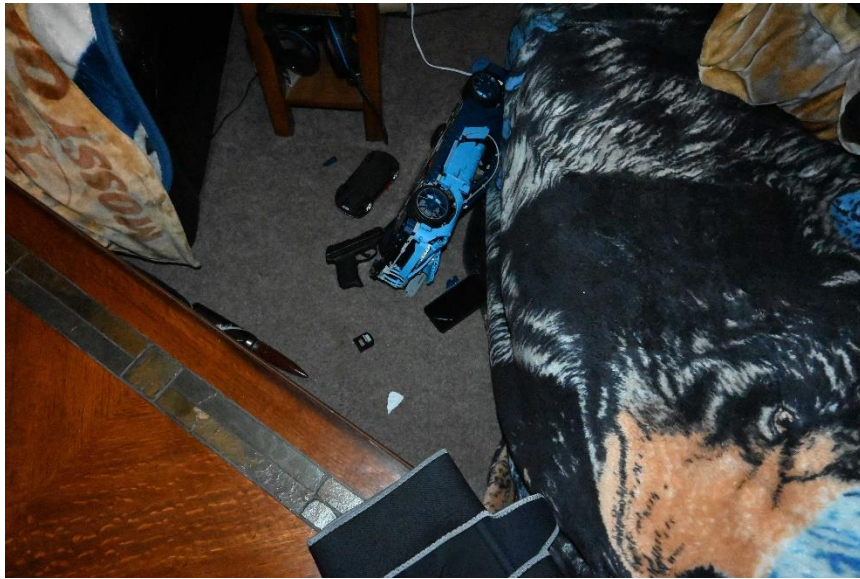
Witnesses reported Kirkman moving the action on the shotgun and ejecting a round. Investigators located this shotgun shell in an empty planting cup on the balcony, supporting their observation.



Kirkman fell inside the doorway and was pulled farther into the room by individuals attempting life-saving measures.



Weapons located on the couch



Handgun on the floor



It appears that one of the two shots fired by Officer Huckaby missed and struck the ceiling.





The shotgun that Kirkman had in his possession and reportedly pointed at officers.

### **Medical Examiner**

On July 8, 2023, Dr. Andrew Guajardo conducted an autopsy on Steven Kirkman. There were two gunshots of the left upper extremity into the torso, indeterminate range of fire. The entrances for both shots were in the left upper extremity, with no exit wounds. Lethal injuries to the heart, lungs diaphragm, spleen aorta, inferior vena cava, and liver.

The trajectory was left to right, slightly upward, and front to back. Kirkman's blood alcohol concentration (BAC) was .294.

## **Conclusion**

This conclusion will address the actions of Officers Josh Davis, and Ken Huckaby to determine if their use of deadly force was reasonable and justified under the law.

On July 7, 2023, officers from the Roy Police Department were called to Steven Kirkman's apartment on an armed suicidal man. Roy Police reported that they were concerned with the safety of other apartment dwellers in the complex and believed that they could not leave an armed unstable man alone in that situation. Based on this investigation that appears to have been the correct decision based on Steven Kirkman's behavior and statements during the standoff. Roy Police negotiated with Kirkman for over three hours. They worked with Kirkman's family attempting to get Kirkman to come out of his apartment unarmed and seek help from mental health professionals.

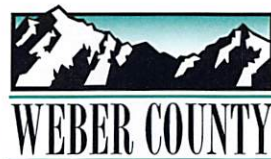
It is apparent by listening to the negotiations that Steven Kirkman was going to force a confrontation one way or another. It appears now in hindsight that Kirkman's ultimate goal was to commit suicide by police. However, the officers at the time of the incident do not have the luxury of hindsight, and no one knows how far Kirkman would have taken his actions to force a deadly response from police. It is reasonable to ask, would he have killed or injured a police officer or citizen to force this response?

Both Officer Davis and Officer Huckaby stated that they believed Kirkman posed a serious threat to the lives of their fellow officers when they decided to fire their weapons. Additionally Sgt. Fulton, as the SWAT tactical commander believed that Kirkman's behavior and actions were enough of a threat to life that he issued a verbal order to the marksman (Davis) to take the shot if possible.

All of the information in this report and supporting documents should be considered when determining if Officer Josh Davis and Officer Ken Huckaby were justified in using deadly force against Steven Kirkman.

*Steve Zaccardi*  
*Chief Criminal Investigator*  
*Force Investigations/Homicide Task Force*





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December 18, 2023

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RE: OFFICER-INVOLVED SHOOTING  
OFFICERS JOSH DAVIS (OPD) AND KEN HUCKABY (Roy PD).

Dear Chief Gwynn and Chief Young:

As you are aware, Roy Officer Josh Davis and Ogden Officer Ken Huckaby were involved in an officer-involved shooting on July 7, 2023. The shooting occurred in Roy, and Steven Kirkman was shot in the incident. Chief Investigator Steve Zaccardi, with assistance from investigators with the Weber County Force Investigation Team and the Weber County Homicide Task Force, has completed the investigation.

I have thoroughly reviewed the investigation and discussed it at length with investigators and senior prosecutors in my office. The circumstances and evidence set forth in this letter are just a summary of the much-more detailed information provided in the full investigation report included with this letter. My conclusions are as follows:

**Background**

On April 7, 2023, at approximately 1917 hrs. the Roy Police Department received a call from Jessica Hinnant reporting that her brother Steven Kirkman had a gun and was making suicidal threats. Additionally, Jessica reported that her mother, Connie Morgan was present in the house with Kirkman. Steven Kirkman lived in a large apartment bldg. in Roy, Utah.

Roy Police Officers Ken Huckaby, T. Flowers, and S. Johnson all responded to the call for service. Ogden City police officer Josh Davis also came out to the scene. When Officers arrived at the apartment, the door was open and Connie Morgan was standing just inside the doorway speaking with Kirkman who was farther into the apartment. Officers did not go into the apartment but were finally able to convince Connie to leave. Connie stated that Kirkman had several guns in the house, including an AR-15, handguns, a rifle, and a shotgun. Doorbell video

footage also shows Kirkman coming out onto his balcony carrying different firearms while officers and family were trying to deescalate the situation.

Once they had Connie in a safe location, they set up a perimeter around the apartment. This particular apartment was on the third floor of the building. The patrol officers contacted their supervisor Sgt. Perez. Typically in threatened suicides, if a crime has not been committed and there is no imminent threat to someone's life, the police will encourage the individual to seek help from professional crisis workers or hotline numbers and leave the area. However in this situation Sgt. Perez later said that due to the high concentration of people in the apartment complex, he felt that there was more of a danger to the public if the police did not remain and attempt to de-escalate the situation.

For three hours police negotiated with Kirkman trying to convince him to come out peacefully. At one point he told the police that all he wanted was for them to leave him alone. Police stated that they would leave the area if they were able to evacuate the surrounding apartments. At first, Kirkman agreed to this but then started making veiled threats if the police did leave the scene. Eventually Kirkman's threats became more explicit. For example, at one point while Kirkman's sister was on the phone trying to calm him down, Kirkman responded "ok, I am going to kill anyone who is out there." He also told Officer Person "I have two 12 gauges and a 9mm in my hand. . . How many bodies do you want buried today?" Police and several family members attempts to negotiate with Kirkman were ultimately unsuccessful.

Eventually, Kirkman stepped out onto his balcony with a pump shotgun. He racked the weapon seemingly for effect, then pointed it at officers. Officer Davis, and Officer Huckaby both fired their weapons striking him. Although officers attempted life-saving measures, Kirkman was pronounced dead at the scene.

### **Analysis**

Pursuant to Utah Code Section 76-2-404(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 or an individual other than the suspect." In *Graham v. Conner*, 490 U.S. 386 (1989), the United States Supreme Court instructed that "reasonableness" for law enforcement officers must be assessed objectively, in light of a "reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* At 396 (internal citations omitted). The *Graham* court also explained that "The calculus of reasonableness must embody allowance for the fact that police officers are 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." *Id.* At 397.

Officer Davis described seeing Kirkman come out onto the balcony and point the shotgun at officers. Davis said he could see Kirkman had a shotgun in his hands. Kirkman had shouldered the shotgun with the weapon barrel pointed down, finger on the trigger. Davis said that he observed Kirkman raise the gun slowly and rack the shotgun, and a round ejected. Kirkman then approached the banister and pointed the gun over and down at the officers below. Davis said that he was concerned for the life

of his fellow officers when Kirkman pointed the weapon. That is when he made the decision to fire.


Officer Huckaby likewise described his view of Kirkman wielding the shotgun. He was checking on other officers when Kirkman came out onto the balcony and he had a black shotgun in his arms, in what Huckaby described as the "low ready". Huckaby took cover behind a citizen's truck which was parked in the parking lot. Huckaby said that Kirkman raised the shotgun and pumped the action. Huckaby heard someone ask over the radio where the gun was pointed and the officer replied "Right at me." Huckaby said that is when he made the decision to fire because Kirkman "was one trigger pull away from shooting one of the guys behind the suburban with a shotgun." Huckaby specifically stated that he feared for the safety of his fellow officers believing that Kirkman was about to fire his weapon.

Sergeant Fulton had arrived on scene at the request of Sergeant Perez. Fulton took over tactical command due to his SWAT experience, while Perez remained the OIC (Officer In Charge). Evaluating the totality of the circumstances, and knowing Kirkman had his finger on the trigger of the shotgun while pointing it at officers, Fulton said that he also believed Kirkman posed an immediate threat of death or serious bodily injury to law enforcement officers at that moment.

Officers Davis and Huckaby were forced to make split-second judgments – in circumstances that were tense, uncertain, and rapidly evolving. They knew they were dealing with an unstable man who had made several threats to injure or kill people throughout the evening. They saw this man rack a shotgun round, place his finger on the trigger, and point it at fellow officers. As Huckaby observed, Kirkman needed only to pull the trigger at that point in order to kill or seriously injure one of the officers on scene. That action would literally take only a fraction of a second. An objective evaluation of all of the circumstances and evidence in this case supports the conclusion that it was reasonable for Officers Davis and Huckaby to believe that deadly force was necessary to prevent death or serious bodily injury to fellow officers or others, including local residents. Therefore, I conclude that both officers were justified in their use of deadly force.

Please feel free to call me if you would like to discuss this further.

Sincerely,



Christopher F. Allred  
Weber County Attorney