

# Utah County Attorney

## Criminal Division



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November 30, 2012

Chief Scott Finlayson  
Springville City Police Department  
110 South Main  
Springville, UT 84663

Re: September 11, 2012 Death of Linkin Leatham

Dear Chief Finlayson:

As you know, pursuant to Utah Code Sections 26-4-6 and -7, I am charged and authorized to investigate Utah County deaths that occur, among other reasons, as a result of violence, gunshot or accident. Further, I am to "determine if the decedent died by unlawful means and . . . if criminal prosecution shall be instituted." Utah Code Section 26-4-21(2).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation into the September 11, 2012 death of Linkin Leatham which occurred at the home of his father, Springville City Police Officer Owen Leatham. After reviewing the results of that investigation and the pertinent statutes and guidelines, I determine that this office will not bring criminal charges against Officer Leatham.

### FACTS

On September 11, 2012, at around 6:00 a.m., Officer Leatham arrived at his Springville home at the end of his graveyard shift. Officer Leatham went into his master bedroom which he shares with his wife, Melinda Leatham, and went to sleep. Officer Leatham awoke between 10:30 and 11:00 a.m.

After getting up, Officer Leatham started to get ready for the day and decided to wear his Glock Model 36 off-duty handgun. He retrieved the handgun out of a safe located on the computer desk in the master bedroom. Officer Leatham intended to wear the handgun on his pants, however, his pant belt was located downstairs from the master bedroom (in the basement). Although Officer Leatham intended to retrieve his belt from downstairs, he was distracted or diverted by his children's needs and by general house cleaning chores, and he ended up not retrieving his belt and he left his handgun on the computer desk while he tended to his children and to cleaning.

Officer Leatham eventually returned to his bedroom and sat at the computer desk. Because he was working at the computer desk, he moved the handgun to the master bedroom night stand. After he had moved his handgun to the night stand and he returned to the computer, Officer Leatham's two year old son Linkin came into the bedroom and began jumping on the master bed where Melinda was trying to sleep. Melinda was resting on the bed with her back turned away from Linkin and Officer Leatham. Officer Leatham told Linkin to not bother Melinda while she was resting.

The master bedroom computer, bed and night stand are all in close proximity. From Officer Leatham's location at the computer desk, Linkin, Melinda and the handgun were to the left and behind him. At about 12:30 p.m., while Officer Leatham was still at the computer (with his back to the bed) and Melinda was still in bed (with her back to Linkin and her husband), Officer Leatham heard a loud "bang." He turned around to determine the source of the sound and saw Linkin lying on his back on the master bed. Officer Leatham immediately saw that Linkin had been shot in the head and he yelled at Melinda to grab a towel in order to stop the bleeding.

Melinda looked at Linkin and saw that he was shot. She used a towel to try and stop Linkin's bleeding. As she attended to Linkin she initially felt a pulse, but it gradually left and it became apparent he was deceased.

Officer Leatham got on his phone and tried to call 911, but was unable to complete the call. He ran out to his patrol car to radio for help. Springville Public Safety Dispatch called Officer Leatham back before he got to the radio and Dispatch immediately sent police officers and emergency medical service personnel to the Leatham home.

Officer Leatham returned to the master bedroom from calling for help and had Melinda leave the bedroom. She went into the living room where she then sat on the couch until police officers arrived. Officer Leatham went downstairs and met the first arriving police officer in the front yard of the home. Upon arrival, emergency medical service personnel confirmed that Linkin was deceased.

It is apparent that Linkin shot himself using Officer Leatham's off-duty handgun which was, previous to Linkin retrieving it, located on the master bedroom night stand.

## **LAW**

The pertinent section of law is Utah Code Section 76-5-208 (Child Abuse Homicide). The pertinent part of Section -208 states: "(1) Criminal homicide constitutes child abuse homicide if . . . the actor causes the death of a person under 18 years of age and the death results from child abuse, as defined in Subsection 76-5-109(1)." "Child abuse" occurs when "[a] person . . . inflicts upon a child . . . physical injury or, having the care or custody of such child, causes or permits another to inflict . . . physical injury upon a child." Utah Code Section 76-2-109(1)(c). Section -208 classifies child abuse homicide as a second degree felony if the abuse is perpetrated with criminal negligence. (I find that the most applicable "mens rea" in this incident is criminal negligence.) Criminal negligence is defined in Section 76-2-103 as follows:

A person engages in conduct: . . . (4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would

exercise in all the circumstances as viewed from the actor's standpoint.

### ANALYSIS

In this case the primary issue is whether Officer Leatham was criminally negligent when he left his loaded off-duty handgun on a nightstand when his two year old son was in close proximity and had access to the handgun--while Officer Leatham was not actively observing the handgun or his son. For reasons I explain below, I find that while it is probable Officer Leatham "ought to [have been] aware of a substantial and unjustifiable risk that the circumstances exist[ed] or the result [would] occur," and the risk was of a nature and degree that "the failure to perceive it constitute[d] a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances," I nonetheless do not intend to file charges in this case.

The National District Attorneys Association has promulgated standards which my office, in substantial part, has adopted as policy or refers to for guidance in its decisions. National District Attorneys Association, *National Prosecution Standards*, 3<sup>rd</sup> Edition (2009). There are a number of those standards which apply to my decision in this case.

Standard 4-1.3 states: "Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include: . . . j. The attitude and mental status of the accused; k. Undue hardship that would be caused to the accused by the prosecution; o. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life; p. Whether the accused has already suffered substantial loss in connection with the alleged crime." Similarly, Standard 4-2.4 states: "The prosecutor should only file those charges that are consistent with the interests of justice. Factors that may be relevant to this decision include: . . . c. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history; d. Potential deterrent value of a prosecution to the offender and to society at large; e. The value to society of incapacitating the accused in the event of a conviction; l. The impact of the crime on the community." Similarly, the commentary to Standard 4-2.4, in pertinent part, states: "The prosecutor is making a decision that will have a profound effect on the lives of the person being charged, the person's family, the victim, the victim's family, and the community as a whole. The magnitude of the charging decision does not dictate that it be made timidly, but it does dictate that it should be made wisely with the exercise of sound professional judgment."

I am very aware that these standards apply to all cases and to all persons subject to the jurisdiction of my office. I am also aware that because Officer Leatham is a police officer, it is arguable that he should be held to a higher standard of conduct than an "ordinary" citizen. Nonetheless, as I apply these standards to this incident and for the following reasons, I believe that, as an "independent administrator of justice" whose "primary responsibility . . . is to seek justice," it is not in the public interest or in the interest of justice to file charges (see Standard 1-1.1):

1. Officer Leatham is and has been a law abiding citizen.
2. Great hardship would be caused to the Leatham family by a prosecution.
3. This incident represents a substantial departure from Officer Leatham's history of living a law-abiding life.
4. Officer Leatham and his family have already suffered substantial loss in connection

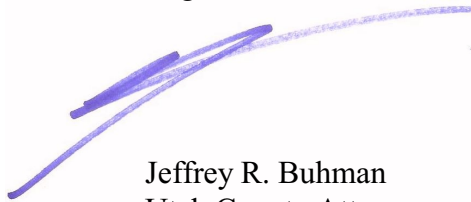
with this incident.

5. There is little to no potential deterrent value to Officer Leatham of a prosecution.
6. There is little or no value to society of incapacitating Officer Leatham in the event of a conviction.
7. This incident has had great impact on the Leatham family, but little to the community at large (other than the expression of sympathy for his son and family).

### **CONCLUSION**

In short, I find that it is not in the public interest or in the interest of justice to file criminal charges against Officer Leatham.

Regards,



Jeffrey R. Buhman  
Utah County Attorney