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***RE: Prosecutorial Review of
Officer Involved Critical Incident, November 27, 2022
635 Hemmert Avenue, Idaho Falls, Idaho***

On November 27, 2022, at 635 Hemmert Avenue, in Idaho Falls, Idaho, an officer of the Idaho Falls Police Department, while on duty and in the lawful exercise of his duties, discharged his firearm striking an individual three times. The individual survived and is currently recovering from his injuries.

It is my duty as Prosecuting Attorney for Bonneville County, Idaho, in which jurisdiction the incident took place, to determine if this action was justified as an act of self-defense and whether the officer should be criminally prosecuted. I am not responsible for providing civil advice or defense to the City of Idaho Falls, and I do not administratively supervise their police department. It would therefore not be appropriate for a prosecutor to comment as to matters of policy or civil liability. Additionally, I am responsible solely to review the officer's actual decisions and actions in this specific case, and it is not within my purview to comment on any possible alternative actions the officer may have chosen to take.

For the reasons explained more thoroughly below, I conclude that given the facts and circumstances determined through the independent investigation of an Eastern Idaho Critical Incident Task Force, and pursuant to the applicable Idaho law, the actions of the officer were legally justified as an act of self-defense and as a result that criminal prosecution must be declined.

STATEMENT OF FACTS

The following facts are taken from the report of investigation compiled by the Eastern Idaho Critical Incident Task Force. The Idaho State Police was designated as the lead agency. Investigators from several regional law enforcement agencies contributed to the investigation. I received their report on February 14, 2023, and have reviewed the contents of the report and all supporting evidence. I find that the investigation was sufficiently thorough and objective. I also find that the facts set forth in their report have sufficient support based on the evidence collected.

1. On November 27, 2022, at approximately 7:04 p.m., Idaho Falls Police Dispatch Center received a phone call from a relative of Kevin Boyd Mr. Chambers, 63.

2. The relative told dispatch Mr. Chambers was visiting for the holidays. Mr. Chambers had a stroke in 2020. Mr. Chambers took off walking from their home in Idaho Fall. Mr. Chambers had walked to the Eagles Lodge located at 635 Hemmert Ave in Idaho Falls, in Bonneville County. The relative said they tried to go get Mr. Chambers, but he would not go home with them. Dispatch logs showed that the reporting party told them Mr. Chambers told her "Don't worry I'll be dead by morning."

3. Idaho Falls Police dispatch labeled the call status as suicidal. Idaho Falls Police Officer Dustin Cook was dispatched to the call at approximately 7:13 p.m. Officer Cook called the reporting party on his way to the call. She said Mr. Chambers had sent some text messages or made some phone calls indicating something along the lines of he wasn't going to make it through the night.

4. At approximately 7:34 P.M., Officer Cook arrived at the Eagles Lodge. All other IFPD officers were busy with other calls for service. Officer Cook walked in the front door and was directed to Mr. Chambers who was sitting at the bar. Mr. Chambers was on his cell phone. Officer Cook asked Mr. Chambers if he could talk to him when he was done. Mr. Chambers told the person he was on the phone with he had "a cop here who wanted to talk to him." Mr. Chambers ended his call and placed the phone on the tabletop of the bar where he was sitting.

5. Officer Cook was a uniformed police officer wearing a police uniform sweater displaying shoulder patches on his sleeves identifying the Idaho Falls Police Department. Officer Cook wore an external vest carrier with his name on the right breast, POLICE on the left breast, an embroidered badge above POLICE and POLICE on the back. Officer Cook wore police uniform pants and a duty belt with handgun, holster, and police gear.

6. Officer Cook introduced himself to Mr. Chambers with a handshake. Officer Cook told Mr. Chambers he didn't do anything. Officer Cook asked Mr. Chambers if he was okay. Officer Cook told Mr. Chambers his family members were concerned. Mr. Chambers stated he tried to call them, but no one answered the phone.

7. Mr. Chambers asked Officer Cook what his name was. Officer Cook told him his name was Dustin Cook. Mr. Chambers asked Officer Cook "what the deal was." Officer Cook told Mr. Chambers he told his family he was not coming home, and he was not going to last the night.

8. Officer Cook asked Mr. Chambers if he was wanting to hurt himself. Mr. Chambers stated with a smile and a small chuckle, "My God, really."

9. Mr. Chambers started to talk about not having any transportation and walking to places. Mr. Chambers asked Officer Cook why he is looking for him. Officer Cook told him he is checking on his welfare because his family thinks he might be suicidal. Mr. Chambers states "No I am not suicidal, for Christ's sake." Chambers stood

from the chair he was sitting in. Mr. Chambers moved closer to where Officer Cook was standing.

10. Officer Cook told Mr. Chambers he was just checking on him. Mr. Chambers asked Officer Cook again what his name was. Officer Cook told him Officer Cook, Dustin. Mr. Chambers told Officer Cook his name was Kevin Chambers. Mr. Chambers shook Officer Cook's hand again and said, "Nice to meet you."

11. Officer Cook told Mr. Chambers he was just here because they were concerned for him. He told Mr. Chambers he was not in trouble with him. Officer Cook told Mr. Chambers his family is concerned and now he was there to check on him.

12. Mr. Chambers again told Officer Cook his name is Kevin Chambers. Mr. Chambers stated his mental state is fine. Officer Cook asked him if he had a stroke a while back. Mr. Chambers said he did. Mr. Chambers stated he was doing okay. Officer Cook asked him if the hospital asked him to follow up with mental health. Mr. Chambers said he walked out of the hospital because he was not going to be held prisoner. Officer Cook said, okay and fair enough.

13. Mr. Chambers chuckled with a smile again and said this is crazy as he paced a few steps away from Officer Cook. Officer Cook asked Mr. Chambers how much he had to drink today. Mr. Chambers asked Officer Cook if he wanted to take his Blood Alcohol. Officer Cook said no.

14. Officer Cook asked Mr. Chambers how he was going to get home. Mr. Chambers said he was going to walk. Officer Cook told him it was cold. Mr. Chambers stated he knew. Officer Cook asked him if he had money for a taxi. Mr. Chambers stated he was not taking a taxi, he walks.

15. Mr. Chambers asked Officer Cook why he was there. Officer Cook told him to check on him. He told him he was not in trouble criminally. He said his family was concerned for him.

16. Officer Cook asked Mr. Chambers to move back where they first started the conversation near the table and chair. Officer Cook explained to Mr. Chambers he did not like to feel trapped in the corner. They moved a few feet. Officer Cook told him they were good now.

17. Mr. Chambers put his hands in his front pocket and looked towards the ceiling. Officer Cook asked Mr. Chambers if he had made some silly statements to make his family believe he was going to hurt himself or anything like that.

18. At approximately 7:49 p.m., Mr. Chambers tilted his head back down and said, "You know what." Mr. Chambers reached around his left side to the small of his back and grabbed a fixed blade knife from a knife sheath on his belt with his left hand. Mr. Chambers

moved the knife to his right hand. Officer Cook grabbed the wrist with the knife with his left hand and grabbed Mr. Chambers upper left arm with his right hand.

19. Officer Cook said, "Whoa, whoa, whoa, whoa, whoa, whoa, put that, whoa, whoa, put that away, put it down." You can hear Mr. Chambers saying "no" in the middle of Officer Cook talking.

20. Officer Cook pushed Mr. Chambers forward into a chair to create distance between them. Mr. Chambers did not fall to the ground. Mr. Chambers regained his balance and looked towards Officer Cook.

21. Mr. Chambers said something to the effect of, "don't be pushing me around." Officer Cook told Mr. Chambers to "put it down." Mr. Chambers moved towards Officer Cook with his right arm down on his side. The knife was in Mr. Chambers' right hand with the blade pointed towards Officer Cook. Mr. Chambers raised his left arm and pointed towards his own chest as he walked towards Officer Cook.

22. Officer Cook said, "Stop, stop, stop" before firing three shots. Mr. Chambers took approximately 4-5 steps towards Officer Cook before the first shot is fired. Officer Cook was simultaneously side stepping away from Mr. Chambers as Mr. Chambers walked toward him with the knife.

23. Officer Cook used his radio and called for additional help, an ambulance, and advised that shots were fired. Officer Cook rendered first aid to Mr. Chambers. Officer Cook kicked the knife away toward the wall, away from Mr. Chambers.

24. Witnesses and Officer Cook stated there were approximately five feet or less between Mr. Chambers and Officer Cook before the first shot was fired.

25. Officer Cook stated, "that he felt like he was in imminent danger of getting stabbed or hurt or sliced up, and that he made the decision that because the male had the ability and opportunity to hurt him to that extent, that he needed to defend himself."

26. Mr. Chambers was transported to Eastern Idaho Regional Medical Center. Mr. Chambers was then flown to the University of Utah Hospital.

27. The Eastern Idaho Critical Incident Task Force was asked to investigate the Officer involved shooting. There were 13 witnesses. The task force interviewed each witness.

28. One of the witnesses heard Mr. Chambers say to someone on the phone, "I will be dead before the night is over."

29. Officer Cook's body camera and the Eagles Lodge Bar video were collected as evidence. Both recorded the entire encounter between Officer Cook and Mr. Chambers.

30. Investigators found a text on Mr. Chamber's phone between Mr. Chambers and a member of his family which took place at approximately 7:10 p.m. on November 27, which said, "tell everyone I died."

31. On January 3, 2023, a report from the Idaho State Police Forensic Services stated Mr. Chambers ethyl alcohol was 0.177 g/100 cc blood. On February 13, 2023, a final tox screen indicated the presence of an anesthetic drug in Mr. Chambers' blood.

STATEMENT OF THE LAW

An otherwise violent act is justifiable if a person was acting in self-defense and/or the defense of another.¹ In this case it does not appear that at the time of the shooting there was an *imminent* threat toward a third person, and the officer's actions are being reviewed solely as a matter of self-defense.

If an act involving asserted self-defense results in death, the analysis proceeds under Idaho Code § 18-4009, which states in pertinent part, "Homicide is justifiable when committed by any person when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person."² Essentially this permits self-defense with a deadly weapon only where the accused has reasonable cause to believe, and does believe, he is in danger of great bodily injury or death.³

When the act involving asserted self-defense does not result in death, the analysis proceeds under Idaho Code §19-202, which states in pertinent part, "Resistance sufficient to prevent [a public] offense may be made by the person about to be injured to prevent an offense against his person."⁴ I.C. § 19-202 gives one the right to use resistance sufficient to prevent the offense.⁵

Homicide is justifiable when committed by public officers when reasonably necessary in overcoming actual resistance in the discharge of any legal duty including preserving the peace. Use of deadly force is justified in overcoming actual resistance when the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer.⁶

In order to find that a person acted in self-defense, all of the following conditions must be found to have been in existence at the time of the use of deadly force:

1. A person must have believed that they were in imminent danger of death or great bodily harm.

2. In addition to that belief, a person must have believed that the action they took was necessary to save themselves from the danger presented.

3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that they were in imminent danger of death or great bodily injury and believed that the action taken was necessary.

4. A person must have acted only in response to that danger and not for some other motivation.

5. When there is no longer any reasonable appearance of danger, the right of self-defense ends.⁷

In deciding upon the reasonableness of a person's beliefs, it should be determined what an ordinary and reasonable person might have concluded from all the facts and circumstances which existed at that time, and not with the benefit of hindsight.⁸

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify a homicide or use of deadly force. The person must have acted under the influence of fears that only a reasonable person would have had in a similar position.⁹

Under the law of self-defense, a person has the right to defend himself from "the infliction of great bodily injury," but "the exercise of that right must be grounded upon a reasonable apprehension of imminent harm, and a reasonable belief that the killing is necessary to protect against such injury."¹⁰

The kind and degree of force which a person may lawfully use in self-defense is limited by what a reasonable person in the same situation, seeing what that person sees and knowing what that person knows, would believe to be necessary at that time. Any use of force beyond what is necessary is regarded by the law as excessive. Although a person may believe that they are acting, and may act, in self-defense, a person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.¹¹

Bare fear alone is not a legally sufficient reason to act in self-defense. In addition to one's perception of the situation, there must be circumstances sufficient to excite the fears of "a reasonable man."¹² The Idaho rule of self-defense is not premised upon a subjective test. It is grounded in the objective concept of the actions of a "reasonable person."¹³

The defense of self or of another does not require a person to wait until he or she ascertains whether the danger is apparent or real. A person confronted with such danger has a clear right to act upon appearances such as would influence the action of a reasonable person.¹⁴

In Idaho, no person shall be placed in legal jeopardy of any kind whatsoever for protecting himself by reasonable means necessary, from becoming the victim of aggravated assault, robbery, rape, murder or other heinous crime.¹⁵

In the exercise of the right of self-defense or defense of another, a person need not retreat from any place that person has a right to be. A person may stand his ground and defend himself or another person by the use of all force and means which would appear to

be necessary to a reasonable person in a similar situation and with similar knowledge without the benefit of hindsight.¹⁶ This law applies even though the person being attacked might more easily have gained safety by flight or by withdrawing from the scene.¹⁷

The idea of a requirement of “retreating to the wall” or “retreating as far as he can, or disabling his adversary without killing him, if it be in his power” has never been the law of the land. A person placed under an apparently threatening and menacing danger is only expected to act as a reasonably prudent person would act under similar circumstances and surroundings. “Under such circumstances they ordinarily have but a moment for deliberation and decision. It might so happen that as a matter of fact they could have done any one of a number of other things, and thereby have avoided the danger and refrained from committing the homicide. After they have acted, they cannot be judged from the theoretical standpoint of the man who is resting in both apparent and real safety, confronted by no danger, and menaced by no threats or demonstrations of sudden violence and felonious import. He must act quickly. He must act as a reasonable and prudent man would be likely to act under similar conditions and circumstances, and this is all the law, reason, or justice demands.”¹⁸

For centuries now, it has been the law of the United States that if a person is where he has the right to be, when someone advances upon him in a threatening manner, and with a deadly weapon; and if that person did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm, he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury.¹⁹

The burden is on the prosecution to prove beyond a reasonable doubt that the asserted act of self-defense was not justifiable. If there is a reasonable doubt whether the asserted act of self-defense was justifiable, a person cannot be found guilty under the law.²⁰

LEGAL ANALYSIS

This case is analyzed to determine whether Officer Cook's actions arise to the level of an aggravated battery. A primary element of aggravated battery is that the use of force was unlawful. In this case, as an element of the criminal prosecution, the State is required to prove beyond a reasonable doubt that Officer Cook was not justified under principles of self-defense in shooting Mr. Chambers.

Justifiable Homicide v. Justifiable Battery. This case is being reviewed as a use of force that did not result in death, and thus a battery and not a homicide. However, given the officer's use of deadly force (force likely to produce death or serious bodily injury), the analysis has very little distinction. The standard in either case, is whether Officer Cook was confronted with the present and imminent threat of death or serious bodily injury.

The officer's action was within the discharge of his legal duty as a community caretaker. Officer Cook was on duty and had been dispatched to contact Mr. Chambers because a family member had requested a welfare check. The community caretaking function arises from the duty of police officers to help citizens in need of assistance.²¹ In this case it was reasonable and within the scope of his duties to check on Mr. Chambers' welfare to determine if he was a threat to himself or others.

The officer was in a place where he had a right to be. Officer Cook was dispatched to look for Mr. Chambers at the Fraternal Order of Eagles lodge located at 635 Hemmert Ave, Idaho Falls, Idaho. This establishment is open to the public. There is no basis to believe that Mr. Chambers had an expectation of privacy in this public establishment, and no reason to believe he had the right to exclude the officer from the premises.

The officer was resisting a public offense. During the contact, Mr. Chambers became agitated and produced a hunting style knife from under his coat and raised it in a threatening manner in an extremely close proximity to Officer Cook. Under Idaho law, one form of assault is defined as an "intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent."²² An assault becomes defined as aggravated when it is committed with a deadly weapon or instrument without intent to kill; or by any means or force likely to produce great bodily harm.²³ Assault with Intent to Commit a Serious Felony is defined as an assault upon another with intent to commit murder, rape, mayhem, robbery, or lewd and lascivious conduct with a minor child.²⁴ Therefore, in this case, whether or not Mr. Chambers actually intended to kill Officer Cook with his actions does not change the legal analysis of whether Officer Cook's reaction was justified.

The officer did not provoke the threatening behavior. Officer Cook maintained a calm, non-threatening demeanor throughout his contact with Mr. Chambers. His questions were intended to illicit whether or not Mr. Chambers was a threat to himself or others based on the concern expressed by his family members. These concerns were justified and reasonable based on texts sent by Mr. Chambers to a family member stating, "When you hang up on me

it makes me want to kill myself.” The family member later texted Mr. Chambers, “Please call me so I don’t have to worry if you don’t call me I might call the police to look for you.” Mr. Chambers responded, “Never mind I will be dead tomorrow[sic].”; “Don’t worry I will be dead before the morning.”; and “Tell everyone I died.”

Prior to Mr. Chambers exhibiting the knife, Officer Cook made no threatening or provocative statements (“fighting words”) and made no threatening gestures. Upon review of the video from Officer Cook’s body worn camera (“BWC”), I conclude all statements and acts by Officer Cook were consistent with common law enforcement training for dealing with individuals with potential suicidal ideation. During the contact, Mr. Chambers appeared impaired, slurring his speech, showing difficulty with his balance and short-term memory, and exhibiting irrational mood swings and responses. The motivations for Mr. Chambers’ actions are difficult to discern. However, I found nothing that Officer Cook said or did that would have reasonably provoked a rational person to react in the threatening manner Mr. Chambers exhibited.

Objectively Reasonable Fear

The officer reacted to a reasonable appearance of danger. Mr. Chambers produced a hunting knife within close proximity to Officer Cook and refused instructions by Officer Cook to drop the knife. He then advanced to within a few feet of Officer Cook. The knife was large enough to be used to cause serious bodily injury or death. Officer Cook’s perception that Mr. Chamber’s exhibition of the knife constituted an immediate threat to Officer Cook was reasonable.

Mr. Chamber’s actions created a present and imminent danger of death or great bodily harm to the officer. Mr. Chambers was within arm’s reach when he drew the knife. Officer Cook initially tried to control Mr. Chamber’s hand which was holding the knife but was not able to disarm him. At that point Officer Cook pushed Mr. Chambers away to create distance and gave a number of commands to drop the knife. Common police training warns that suspects can close a gap and attack with an edged weapon even before the officer can react, and before the officer’s reactions can have effect in stopping the attacker. Although there may be a lack of consensus as to the exact distance where this takes place, I need not determine where this particular line is crossed, because my review of the circumstances evidenced in this case indicate that Officer Cook could reasonably conclude based on his training that Mr. Chambers was well within this striking distance.

Objectively Reasonable force

The officer was justified in using deadly force because the officer had probable cause to believe that Mr. Chambers’ actions posed a threat of death or serious physical injury to the officer. There can be no dispute that a knife of the size and design possessed by Mr. Chambers constituted a threat of serious bodily injury or death. Officer Cook initially struggled within a few inches of the knife, and its nature was easily recognizable. Once an assailant pulls a deadly weapon, an officer has reasonable cause to believe that forceful resistance, as exhibited by Mr. Chambers in this case, posed a threat of death or serious physical injury. As

a matter of law, Officer Cook had a right to fire his weapon at Mr. Chambers after Mr. Chambers drew his knife on him within the proximity involved in this case.²⁵

The officer's action was necessary to save himself from the danger presented. Officer Cook, being within this striking distance, then had to quickly determine how to stop the threat. Some may speculate that some other use of force may have sufficiently disabled Mr. Chambers. Such speculation is ill-informed and frankly malicious. If other officers had been present, they may have been in a position to attempt some other type of force, but modern police training always emphasizes that at least one officer must be prepared to meet deadly force with deadly force. Other forms of force are not always effective, and an officer may not have an opportunity to switch to a weapon capable of stopping the assailant.

In any event, a Prosecuting Attorney is not called upon under these circumstances to speculate as to what other actions may have been taken to produce a different result. As described above, the law does not allow speculation whether the officer could safely have retreated, but must respect that Officer Cook was entitled to “meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury.”²⁶

I recognize that under the circumstances described above, Officer Cook had only a few seconds for deliberation and decision. As the Idaho Supreme Court declared over a century ago, even if, just for the sake of argument, Officer Cook “could have done any one of a number of other things, and thereby have avoided the danger and refrained from [his use of force];” after an officer has acted, he “cannot be judged from the theoretical standpoint of the man who is resting in both apparent and real safety, confronted by no danger, and menaced by no threats or demonstrations of sudden violence and felonious import.” Officer Cook had to decide and act quickly. I find no evidence that Officer Cook failed to react as a reasonable and prudent man would be likely to act under similar conditions and circumstances, and “this is all the law, reason, or justice demands.”²⁷ I likewise find no reason based on the circumstances reviewed in this case to believe that any such reasonable alternatives to the use of deadly force even existed.

The officer's actions are judged on the facts and circumstances which existed at the time of the officer's actions. I find no evidence that Officer Cook misjudged the situation. The investigation has likewise not uncovered any evidence that the facts and circumstances are different than they were initially perceived. The facts and circumstances are difficult to dispute given the video recordings of the incident. I therefore find no reason to believe that anything learned later would have changed the analysis of Officer Cook's actions.

Final Considerations

There is no evidence that the officer was acting with any other motivation than self-defense.

Under Idaho law, Officer Cook cannot be placed in legal jeopardy of any kind whatsoever for protecting himself by reasonable means necessary, from becoming the victim

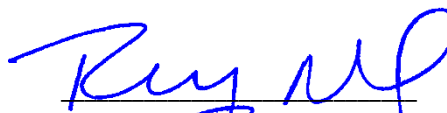
of aggravated assault.²⁸ As described above, I conclude that Officer Cook was protecting himself from an aggravated assault.

It is now the law in the United States, that the burden of proof is on the prosecution to prove beyond a reasonable doubt that an accused defendant did not act in self-defense. In this case, I conclude given the state of the evidence that to the contrary, it is beyond a reasonable doubt that Officer Cook in fact acted in self-defense.

CONCLUSION

For the reasons described above, it is my conclusion that Officer Cook's actions at the Eagles Lodge in Idaho Falls on November 27, 2022, were JUSTIFIED under Idaho law as an act of self-defense. Further, I conclude that Officer Cook was protecting himself by reasonable means necessary from an aggravated assault, and thus Idaho law prohibits placing him in "legal jeopardy of any kind whatsoever."²⁹ Therefore, any prosecution for his actions must be DECLINED.

February 15, 2023


Randolph B. Neal
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Bonneville County, Idaho

Endnotes

¹ Idaho Criminal Jury Instructions ("ICJI") 1517.

² Idaho Code ("I.C.") §18-4009.

³ *State v. Wilson*, 41 Idaho 616, 243 P. 359 (1925).

⁴ I.C. § 19-202.

⁵ *State v. Wilson*, 41 Idaho 616, 243 P. 359 (1925).

⁶ ICJI 1515.

⁷ ICJI 1517.

⁸ *Id.*

⁹ *Id.*

¹⁰ *State v. Carter*, 103 Idaho 917, 655 P.2d 434, 436 (Idaho 1981) (citing Idaho Code § 18-4009; *People v. Pierson*, 2 Idaho 71, 3 P. 688 (1884)).

¹¹ ICJI 1518.

¹² *State v. Scroggins*, 91 Idaho 847 at 849, 433 P.2d 117 (1967).

¹³ *State v. Baker*, 103 Idaho 43, 644 P.2d 365 (Ct.App.1982); *State v. Camarillo*, 106 Idaho 310, 313, 678 P.2d 102, 105 (Ct. App. 1984); *State v. Rodriguez*, 93 Idaho 286, 291, 460 P.2d 711, 716 (1969).

¹⁴ *Id.*

¹⁵ I.C. §19-202A.

¹⁶ *Id.*

¹⁷ *State v. McGreevey*, 17 Idaho 453, 466, 105 Pac. 1047 (1909); *State v. Dunlap*, 40 Idaho 630, 637, 235 Pac. 432 (1925).

¹⁸ *McGreevey*, at 1051.

¹⁹ *Beard v. United States*, 158 U.S. 550, 564, 15 S. Ct. 962, 967, 39 L. Ed. 1086 (1895)

²⁰ ICJI 1517

²¹ *State v. Wixom*, 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997); *State v. Maddox*, 137 Idaho 821, 824, 54 P.3d 464, 467 (Ct. App. 2002).

²² I.C. § 18-901(b).

²³ I.C. §§ 18-905(a) & (b).

²⁴ I.C. § 18-909.

²⁵ See i.e., *Kessler v. Barowsky*, 129 Idaho 640, 645, 931 P.2d 634, 639 (Ct. App. 1996), aff'd in part, vacated in part, 129 Idaho 647, 931 P.2d 641 (1997) ("As a matter of law, the officers had a right to fire their weapons at [the assailant] after [he] drew his gun on them.").

²⁶ *Beard* at 564, 967.

²⁷ See endnote 18, *supra*.

²⁸ I.C. §19-202A.

²⁹ *Id.*