

Hayes Family Response

On September 25th, 2024, Patrick Hayes was shot and left to die on a roadway in Wasatch County, Utah. His family was deeply disappointed to read the recent statement released by the Wasatch County Attorney's Office. It is beyond frustrating that the County Attorney is declining to prosecute an obviously dangerous offender, and it is maddening that they are doing so based upon an incorrect reading of Utah law.

In their statement, the Wasatch County Attorney's Office ("WCAO") has misstated the facts and is disturbingly uninformed regarding Utah law.

The WCAO press release is factually misleading:

- Pat Hayes had been followed for miles by an angry driver when he stopped at the Jordanelle Gatehouse. We can never know exactly what Pat was thinking when he turned onto that road, which is just short of his home, perhaps not wanting to lead his pursuer to his own residence. What is logical to assume is that when he got out of his VW Taos to confront his pursuer, he would have grabbed the most powerful weapons he could find in his car. We know he emerged wearing shorts and flip-flops, holding a fiberglass baton and a small pocketknife in his hands. **The stark differences in the weaponry that these two men brought to this conflict say a great deal about their intentions.** At all times depicted on the Gatehouse video, Mr. DeBoer sat inside his lifted Jeep Gladiator with one hand on his fully loaded gun. Those who know DeBoer report that wherever he drove, he always kept the gun close and always kept it loaded with the discontinued but preferred Winchester Black Talon bullets. When law enforcement stopped Mr. DeBoer in November of 2024, they found a concealed AR-15 rifle with three loaded magazines hidden in a duffel bag in the rear of his vehicle.
- Shooter DeBoer had followed Victim Pat Hayes for miles with the intention of engaging in a confrontation. Wasatch County repeatedly cites to Mr. DeBoer's self-serving statements as justification for their refusal to charge him, including Mr. DeBoer's statement that **he pursued Pat Hayes because he wanted to confront Hayes about his driving.** In every road rage incident, there is a driver who wants to confront another driver about their driving. What Wasatch County seemingly fails to appreciate is that Mr. DeBoer is acknowledging that he was engaged in "combat by agreement".
- Wasatch County claims to have conducted an "excellent investigation." **But they fail to mention the report authored by Retired Third District Judge Richard McKelvie.** Wasatch County commissioned and paid for an outside and objective

evaluation of their operations, which included the events surrounding the investigation of Mr. Hayes' homicide. The McKelvie report includes the following:

The lead detective assigned to *this* case and his former lieutenant both told Judge McKelvie that a homicide charge needed to be filed based upon the facts uncovered during their investigation.

Summit County Sheriff Frank Smith told the judge: “[T]his is my 45th year in law enforcement [and] for the life of me, I don't know how you have a ‘stand your ground when the person leaves the scene, hides a gun and never comes forward”.

Judge McKelvie himself noted the compelling evidence supporting a homicide charge and further recognized the perception of the assigned investigators that interference by Wasatch County administration robbed them of their ability to gather critical evidence.

- Before Wasatch County sidelined their lead detective, he uncovered evidence that DeBoer was an unstable hothead who *always* carried a loaded firearm in his vehicle. An anonymous tipster who led investigators to Mr. DeBoer said his mental state had been declining rapidly. **DeBoer's own brother was not surprised that Greg resorted to the handgun and described him as unhinged and having no sense of shame, guilt, remorse, or empathy**
- **A person engaging in criminal conduct cannot claim to have been acting in self-defense**, and the video shows that upon arrival at the gatehouse, Mr. DeBoer aggressively aimed his Jeep Gladiator at Pat, forcing him to the ground and onto the passenger side of Mr. DeBoer's vehicle. In their press release, the WCAO attempts to recast these events. However, this video tells a story that simply cannot be manipulated. **The video shows DeBoer to be the initial aggressor, and his conduct is a textbook example of an aggravated assault.** *State v. Torres*, 2018 UT App 113; *State v. CDL*, 2011 UT App 55; *State v Taylor* 884 P.2d 1293 (Utah Ct. App. 1994) § 76-5-103(2)(a)(ii).
- As a part of their campaign to try and change public opinion, the WCAO press release includes their claim that the autopsy of Pat Hayes shows that he had been driving a car at a time when he was above the legal alcohol limit. They seem to be suggesting that this finding might somehow justify Mr. DeBoer's conduct and therefore explain the County's refusal to file. After he executed Pat Hayes, Mr. DeBoer drove away and left Pat to die on the roadway. Pat's body was not found for almost 12 hours, and the autopsy was not conducted for another 12 hours after that. On the night of the homicide, the overnight low in Park City was 70 degrees, and the medical examiner's report cautions that an

ethanol result “**can be a product of decomposition or degradation of biological samples.**” The WCAO has released information that is protected, irrelevant, and unreliable. They display a bias that should disqualify them.

UTAH SELF DEFENSE LAW

No lawyer is allowed to make up a legal standard. Legal standards come from the words of a statute or from what has been written in case law.

The WCAO attempts to explain their refusal to file a homicide based upon their claim that they have no legal response to the Utah Defense of Vehicle Statute. “The WCAO does not believe that there is admissible evidence that can prove beyond a reasonable doubt that defense of vehicle does not apply.”

The WCAO thereafter sets out what they claim to be the elements of the defense of vehicle statute:

[U]nder Utah law, an individual has no duty to retreat. Therefore, if they are lawfully present, did not deliberately provoke someone into attacking, and are not engaged in criminal activity . . . then the person is generally not legally required to leave the area or situation before using force.

The problem is that they just made this up!

Nowhere in the Utah defense of vehicle statute does the phrase “duty to retreat” appear. Wasatch County is quoting from the Florida “stand your ground” law, and their cut-and-paste, made-up statute does not come close to tracking the actual words found in the Utah statute or the Utah caselaw. *State v. Patrick*, 2009 UT App 226; *State v. Karr*, 2015 UT App 287; *State v. Moritzsky*, 771 P. 2d 688 (Utah Ct. App. 1989); *State in Interest of RJZ*, 736 P. 2d 235 (Utah 1987).

What does appear in the Utah statute, and what the cases reveal to be the critical determination, is the traditional self-defense requirement of **necessity**. **Under the defense of vehicle statute, this element is not modified by any form of “stand your ground” or duty-to-retreat provision.** In the context of the events depicted in the Gatehouse video, **the necessity requirement mandates that Mr. DeBoer be able to show that he faced an imminent threat of death or serious bodily injury and that he had no other options.**

The Gatehouse video plainly reveals he had many options:

- 1) He could have called law enforcement.
- 2) He could have displayed his weapon.
- 3) Most obviously, he could have turned his car around and driven away.

While the defense of vehicle statute can, in some circumstances, provide a path upon which facts may trigger rebuttable presumptions, that path is not available here, and in no instance does the vehicle statute alter the fundamental question at the core of all self-defense cases – ***Was it necessary for the defendant to kill someone else in order to save his own life?***¹

The Gatehouse video plainly shows that Greg Kyle DeBoer killed Pat Hayes under circumstances that cannot be justified by any provision of Utah law. Mr. DeBoer can claim self-defense, and he can assert a claim grounded in Utah's defense of vehicle statute, but justice demands that a jury be allowed to judge those claims.

The actual and written requirements of Utah law

§ 76-2-402 is the foundation upon which Utah Self-defense law is constructed. This statute sets out the parameters of self-defense and includes gatekeeping provisions through which certain types of claims are to be defeated based upon the presence of defined circumstances. It also outlines when there is a duty to retreat, as well as the circumstances when no such duty is required. The analytical framework is designed to operate separately and apart from the Utah defense of vehicle statute.

§ 76-2-402(3) provides that **a person is *not* justified in using deadly force** if the individual using the deadly force did so under any of the following circumstances:

- The individual **initially provoked the use of force.**
- The individual was committing a **felony.**
- The individual was **the aggressor**
- The individual was **engaged in combat by agreement**

The Gatehouse video and Mr. DeBoer's admissions establish the presence of all four of these circumstances. A jury would decide this issue, and it seems obvious that against an unconflicted and competent prosecutor, Mr. DeBoer would face extremely long odds.

In *Ray v Wal-Mart Stores Inc.*, the Utah Supreme Court recounted the history of Utah law and how circumstances determine whether a person has a duty to retreat. The Court observed:

[T]he terms of the "Stand Your Ground" statute are not unequivocal – a person who is lawfully located in a place may have a duty to retreat depending on the circumstances. **For instance, the statute recognizes a**

¹ “[O]nce the presumption is triggered, the State may rebut it by proving "that in fact defendant's beliefs and actions were not reasonable . . . You can't kill people because of what they did [earlier], no matter how bad it was." *State v Karr*, 2015 UT App 287 ¶11.

duty to retreat where the person exercising self-defense was engaged in combat by agreement or was the initial aggressor. And a person [who]– is not "in a place where" he or she has "lawfully entered or remained," . . . must accordingly retreat under the plain terms of the statute before exercising the right to self-defense.

2015 UT 83, ¶ 30 (emphasis added).

The Court continued:

This conclusion is also supported by Utah common law. Historically, Utah courts have also recognized a broad right of self-defense that, depending on the circumstances, may involve a duty to retreat before it is exercised. . . . But like the "Stand Your Ground" statute, our common law decisions also recognize circumstances in which a person must retreat before engaging in self-defense. For example, as early as 1893, we held that trespassers and **initial aggressors have a duty to retreat**. In *People v. Hite*, we approved the following jury instruction where a defendant was accused of threatening a homeowner with a gun and then killing the homeowner on his front porch during a shootout: **"If ... the defendant went to the house . . . wrongfully . . . for the purpose of a quarrel, and by his own acts put himself in that position, . . . it was his duty to retreat . . . and decline any controversy, if he could with safety."** Otherwise, the defendant "could not justify the homicide on the ground of self-defense." *Id.* ¶ 34 (emphasis added).

The guiding principles of self-defense law are the same today as they were in 1893. Mr. DeBoer went to the Gatehouse for the purpose of a quarrel, and by his own acts put himself in that position. His own words and the video reveal that he was both an aggressor and that he was engaged in combat by agreement. Because he could have declined this controversy, and because he could have driven away, Utah law requires that he answer for killing Pat Hayes.

For over a year, the Hayes family has sought to understand the thinking of the Wasatch County Attorney's Office. In their press release, the county has revealed that their refusal to file a homicide charge is based upon a misguided and fictional interpretation of Utah law. A qualified agency that does not have any conflict of interest should review these events and decisions. The family of Pat Hayes would urge any citizen who shares the family's concerns to express their feelings to Wasatch County, the Fourth District Court, and the Utah Attorney General's Office.

Additional information is available from Jim Bradshaw

jjim@brownbradshaw.com (801) 532-5297