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**JUSTICE CENTER**  
SALT LAKE COUNTY



**Ralph Chamness**  
*Chief Deputy  
Civil Division*

**Lisa Ashman**  
*Administrative  
Operations*

**SIM GILL**  
**DISTRICT ATTORNEY**

**Jeffrey William Hall**  
*Chief Deputy  
Justice Division*

**Blake Nakamura**  
*Chief Deputy  
Justice Division*

**FOR IMMEDIATE RELEASE: January 30, 2014**

**Contact: Sim Gill: (801) 230-1209**

After conducting a routine Officer Involved Critical Incident (OICI) review, the Salt Lake County District Attorney's Office has determined that the Dec. 15 use of deadly force by a West Valley City Police Officer was legally justified.

See the attached letter to West Valley City Police Chief Russo for additional details.

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Lee W. Russo,  
Chief of Police  
West Valley Police Dept.  
3500 Constitution Blvd.  
West Valley City, UT

*via hand delivery*

January 29, 2014

RE: *Investigation of WVCPD Officer Vincent's Use of Deadly Force*  
Incident Date: December 15, 2013  
Incident Location: 3400 South, 3200 West, West Valley City, Utah  
Our Case No.: 2013-3284  
WVCPD Case No.: 13I053101

Dear Chief Russo:

As you know, the Office of the Salt Lake County District Attorney's Office, Sim Gill, Salt Lake County District Attorney, ("DA's Office") is required by Utah State law, and operates pursuant to an agreement with participating law enforcement agencies and consistent with established protocols and applicable law, to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

After working in conjunction with the West Valley City Police Department ("WVCPD") the DA's Office has completed its review of the investigation concerning West Valley Police Officer Jason Vincent's use of deadly force against Oston Shiloh Fairbourn. The purpose of the review was to determine whether the force employed was lawful and justified under Utah law. As set forth more fully herein, we have concluded that Officer Vincent's use of deadly force was justified under Utah law.

The opinions and conclusions set forth in this letter are based upon facts obtained from the investigation as set forth in investigation materials presented to the DA's Office. Should additional or different facts subsequently come to light, the opinions and conclusions contained herein may be materially different.

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## FACTS

A little before Noon on December 15, 2013, Oston Shiloh Fairbourn entered the Gold's Gym at 3491 West, 3500 South in West Valley City. After Fairbourn was in the gym for a while, several patrons complained to staff members that Fairbourn was talking to himself, acting strange and perhaps intoxicated and was threatening other patrons. A Gold's Gym employee contacted the police and requested a response. Fairbourn left the gym before officers arrived. Police interviews with gym patrons corroborated the information initially received regarding Fairbourn's strange, threatening behavior<sup>1</sup>.

Later that same day, at approximately 7:30 p.m., West Valley Police Officer Jason Vincent was in his marked patrol vehicle traveling northbound along 3200 West and stopped at the intersection with 3500 South. Officer Vincent was positioned to turn west onto 3500 South. As Officer Vincent's traffic light turned green, he pulled out into the intersection and waited for a pedestrian, later identified as Fairbourn, to cross the street. Fairbourn was walking northbound across the crosswalk against a red "Don't Walk" signal illuminated on the traffic control device.

Officer Vincent pulled into the Holiday Oil gas station at the northwest corner of the intersection to further observe Fairbourn. Fairbourn walked northbound until he reached the gas station driveway, walked into the gas station parking lot and focused his attention on Officer Vincent. Fairbourn began posturing, rolling his shoulders forward and speaking to Officer Vincent. Fairbourn walked closer to Officer Vincent's patrol vehicle. Another civilian witness was filling his car with fuel and had a concerned look on his face as Fairbourn gestured and spoke. Officer Vincent remained in his police vehicle. Fairbourn, still speaking towards Officer Vincent, continued to walk into the middle of the roadway on 3200 West. Officer Vincent later recounted that he was concerned about Fairbourn's odd behavior and feared for Fairbourn's personal safety when Fairbourn walked down the middle of the road. Officer Vincent also had observed Fairbourn's "j-walking," and noted the concern of the civilian witness.

Officer Vincent decided to make contact with Fairbourn. Officer Vincent pulled his marked patrol vehicle onto 3200 West, and turned on the rear lights of his overhead emergency light bar. Officer Vincent advised dispatch that he would be making a "ped[estrian] stop." Officer Vincent also requested a backing officer respond. As soon as Officer Vincent exited his patrol vehicle, Fairbourn produced a large, fixed-blade knife<sup>2</sup> that had been concealed somewhere in Fairbourn's clothing. Fairbourn pointed the knife at Officer Vincent leading Officer Vincent to believe Fairbourn was going to use the knife against him. Both Officer Vincent and Fairbourn were in the middle of the road.

Officer Vincent notified dispatch that Fairbourn was armed and asked for an expedited response from a backing officer. Officer Vincent ordered Fairbourn to drop the knife. Fairbourn

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<sup>1</sup>Fairbourn's behavior earlier in the day was not known to Officer Vincent during the OICI and thus is not considered for the purposes of evaluating Officer Vincent's basis for his use-of-force decisions. However, the accounts of Fairbourn's prior strange, threatening behavior are consistent with Officer Vincent's accounts and serve to corroborate Officer Vincent's representations.

<sup>2</sup> The knife was recovered at the scene. The blade measures about 7 inches; the handle is about 5 inches for a total knife length of almost 12 inches.

yelled at Officer Vincent: “you’re gonna fucking die,” and held onto the knife. Officer Vincent informed dispatch that Fairbourn was non-compliant and that he needed “everyone” (police officers) to respond.

Officer Vincent attempted to stay parallel with Fairbourn and keep Fairbourn directly in front of him while they walked in the roadway. Fairbourn took a step towards Officer Vincent. Officer Vincent ordered him to stop. Fairbourn took another step towards Officer Vincent. Again, Officer Vincent told Fairbourn to stop—more forcefully this time.

Fairbourn raised the knife to what Officer Vincent subsequently described an attack position and took another step towards Officer Vincent. In his interview following the OICI, Officer Vincent said he believed Fairbourn was about 14 to 15 feet away<sup>3</sup>. Officer Vincent feared for his life and fired 3 shots<sup>4</sup> striking Fairbourn in the abdomen and chest. Officer Vincent notified dispatch that shots had been fired and requested medical assistance for Fairbourn. Fairbourn was transported via ambulance to IMC Hospital for medical treatment and survived. Fairbourn was subsequently charged with aggravated assault criminal offenses and booked into jail.

Numerous witnesses were interviewed as part of the OICI investigation. Most witnesses saw Fairbourn within a few feet or several feet of Officer Vincent when Fairbourn approached Officer Vincent and raised his knife. No witness interviewed reported anything to the contrary.

A review of the dispatch logs revealed that 30 seconds elapsed between the time when Officer Vincent notified dispatch that Fairbourn was armed with a knife and Officer Vincent called out “shots fired.”

## DISCUSSION

### *1. Use of Deadly Force: Utah State Law*

Individuals (including but not limited to peace officers) are justified in using deadly force to defend themselves under circumstances outlined by law.

Anyone’s use of deadly force is governed by, among other law, Utah Code Ann. 76-2-402 which states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent

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<sup>3</sup> During his interview, Officer Vincent said that during the OICI, he remembered his training in which he learned that a person with an edged weapon can advance and close a distance of 21 feet and attack with the edged weapon in less time than it takes an average officer to perceive the attack and respond by firing a gun. Thus, Officer Vincent believed he was in immediate danger of death or serious bodily injury during the OICI.

<sup>4</sup> OICI protocol investigators recovered 3 spent shell casing from the scene; all were the same caliber and manufacturer as Officer Vincent’s duty ammunition carried in his weapon.

death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony<sup>5</sup>.” *Id.*

In addition to the justifications set forth above regarding the use of deadly force, peace officers are justified in using deadly force when:

“effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.” U.C.A. 76-2-404.

In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether to individuals or peace officers) turns on similar elements: *individuals*: “A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force” U.C.A. 76-2-402(1)(a),(b); *peace officers*: “the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person,” or to effect an arrest under circumstances set forth in law. See, U.C.A. 76-2-404. The justification for the use of deadly force by a peace officer requires that the officer “reasonably believe” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.”

2. *Officer Vincent Reasonably Believed Deadly Force was Necessary.*

Fairbourn confronted Officer Vincent with a large, fixed-blade knife. Fairbourn was close enough to Officer Vincent that Fairbourn could have very quickly closed the distance between himself and Officer Vincent. While in such close proximity to Officer Vincent, Fairbourn presented an imminent threat of death or serious bodily injury to Officer Vincent. Although not legally required to, Officer Vincent ordered Fairbourn to drop the knife more than once and gave Fairbourn opportunity to comply with Officer Vincent’s lawful commands. When Officer Vincent made the decision to use deadly force, he reasonably believed that the force was necessary to prevent death or serious bodily injury to himself.

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<sup>5</sup> Utah Code 76-2-402(4)(a): “For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.”

Also, when Fairbourn threatened to kill Officer Vincent with the knife, Fairbourn committed a felony criminal offense for which Officer Vincent may have effected an arrest. Given Fairbourn's failure to comply with Officer Vincent's lawful orders and his continued threatening behavior towards the officer, Officer Vincent had probable cause to believe that Fairbourn posed a threat of death or serious bodily injury to the officer or to others if Fairbourn's apprehension was delayed; specifically, Fairbourn could have attacked and very quickly closed the distance between himself and Officer Vincent if Fairbourn's apprehension was delayed.

### **CONCLUSION**

Officer Vincent reasonably believed that deadly force was necessary to defend himself because Fairbourn unlawfully threatened him with death or serious bodily injury. Also, Officer Vincent had probable cause to believe that deadly force was necessary to prevent Fairbourn's apprehension from being delayed because of Fairbourn's imminent threat of death or serious bodily injury. As such, we conclude that Officer Vincent's use of deadly force was justified under Utah State law.

If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Very Truly Yours,

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SIM GILL,  
Salt Lake County District Attorney

SG/JWH/jh