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**FOR IMMEDIATE RELEASE: Dec. 5, 2014**

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## **Salt Lake County District Attorney's Office Finds Officer Involved Shooting Legally Justified**

*Salt Lake City, UT* -- After conducting a routine Officer Involved Critical Incident (OICI) review, the Salt Lake County District Attorney's Office has determined that the Oct. 25<sup>th</sup>, 2014 Use of Deadly Force by Unified Police Department Officer Berdaguer was legally justified.

The Salt Lake County District Attorney'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 including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

See the attached letter to Salt Lake County Sheriff Winder for more information.  
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Sheriff James M. Winder  
Unified Police Department  
3365 South 900 West  
Salt Lake City, Utah 84119

November 26, 2014

RE: *Unified Police Officer Martin Berdaguer's Use of  
Deadly Force*

Incident Location: 3688 South Deer Valley Drive, Magna, Utah  
Incident Date: October 25, 2014  
UPD Case No.: CO14-168218  
Our Case No.: 2014-2394

Dear Sheriff Winder:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law and pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether, and if so why, the use of deadly force in the above referenced OICI was "justified." As outlined more fully below, the D.A.'s Office determined Officers Berdaguer's use of deadly force was "justified" under Utah State law.

On October 25, 2014, Unified Police Department ("UPD") Officer Martin Berdaguer responded on domestic violence/suicidal person call. As outlined in more detail below, shortly after Officer Berdaguer arrived on the call, he saw Luis Quintana covered in blood, cutting himself with a knife. Officer Berdaguer ordered Quintana to drop the knife several times. Instead of complying, Quintana charged Officer Berdaguer. Officer Berdaguer fired his weapon and killed Quintana.

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## UTAH STATE LAW

As part of the review and “justification” determination, the D.A.’s Office relied in part upon the following statutory provisions for the legal analysis:

### **76-2-401. Justification as defense -- When allowed.**

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

...

### **76-2-404. Peace officer's use of deadly force.**

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);

(b) 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

(i) 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

(ii) 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

(c) 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.

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*Use of Deadly Force and “Justification as Defense” in Utah*

Reviewing a use of deadly force that results in a person’s death falls within the statutory obligation imposed on the District Attorney to determine whether a decedent died by unlawful means.<sup>1</sup> The District Attorney also determines whether acts causing a person’s death warrant prosecution. A District Attorney determination considers whether a person who caused the death of another nevertheless has a legal defense to prosecution. If a person who caused the death of another has a legal defense to ostensible criminal charges related thereto, no charges can be brought against that person.

One legal defense to potential criminal charges available to police officers who used deadly force and caused the death of a person is the legal defense of “justification.” This legal defense is found in Utah State Code set forth above and operates in conjunction with other legal authority.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 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 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>2</sup>.” *Id.*

In addition to the use of deadly force in defense of self or others, a peace officer’s use of deadly force is “justified” 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

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<sup>1</sup> **U.C.A. 26-4-21. Authority of county attorney or district attorney to subpoena witnesses and compel testimony--Determination if decedent died by unlawful means.**

...

(2) Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.

<sup>2</sup> **U.C.A. 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.”

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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 by individuals or peace officers) turns on similar elements. Use of deadly force by *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). Use of deadly force by *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. A peace officer’s use of deadly force is “justified” when that the officer “reasonably believes” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.”

This OICI investigation and our review that followed was conducted in accordance with an OICI investigation protocol previously established. The OICI investigation protocol strives to establish an investigation methodology and process that provides the District Attorney with the evidence needed to determine whether a police officer’s use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is “justified,” and the legal defense of “justification” is available to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

If the use of deadly force does not conform to the statutes above, the use of deadly force may not be “justified,” and the legal defense of “justification” may not be available to the officer. In other words, if the use of deadly force failed to conform to the statutes, the law does not afford the officer the legal defense of “justification.” Further investigation may be needed to determine whether, and if so which criminal charges can and should be filed against the officer if any. Just because the legal defense of “justification” may not be available (because the use of deadly force did not conform to the statutes) does not therefore necessarily mean that criminal charges should be filed against the officer. For instance, the evidence available to the District Attorney may not support criminal charges, the case may not have a reasonable likelihood of success at trial, or other reasons may preclude a prosecution. Again, further investigation and consideration may be required to determine whether the use of deadly force warrants criminal charges.

As laid out in more detail below, because we conclude that Officer Berdagner’s use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of “justification” applies to the facts set forth herein.

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## FACTS

On October 25, 2014, at about 6:49 p.m., Amy Mendoza called 911 to report that Luis Quintana was becoming violent with Jodi Phillips. Mendoza said Quintana and Phillips had been arguing all day and that he was almost hitting Phillips. Mendoza said that she, her husband and their three children were in the home, together with Quintana and Phillips. During Mendoza's 911 call, Quintana left the home.

At about 6:51 p.m., UPD Officers Olzack and Berdaguer were sent to investigate the call and arrived at the home at 3688 South Deer Valley Drive, Magna, Utah. Quintana was not there. The officers talked to the residents in the home. Mendoza and Phillips told officers they just wanted Quintana out of the house; they said no one was assaulted and they were satisfied that Quintana was gone. At about 7:11 p.m., Officers Olzack and Berdaguer left to respond to another unrelated call a short distance away.

While Officers Olzack and Berdaguer were on the other call, Quintana returned to the home. This time, Quintana began acting violently, cutting himself with a knife. At about 7:21 p.m., Mendoza called 911 again and said that Quintana was back in the home, cutting himself with a knife and there was blood all over the home. While on the phone with 911, Mendoza said that Quintana had gone outside with a knife and was in the street.

Officer Berdaguer had finished with the other unrelated call he was working on and told dispatch that he would respond to the call about Quintana. When Officer Berdaguer arrived at the home, he saw Mendoza and Phillips on the porch, and Mendoza's husband, Marco Mendoza in the driveway. Officer Berdaguer also saw Quintana standing near Marco Mendoza. Officer Berdaguer said Quintana "locked eyes with him." Officer Berdaguer was told that Quintana was cutting himself and had a knife. Marco Mendoza later told OICI investigators that he said to Officer Berdaguer, referring to Quintana: "He has a knife, get your taser<sup>3</sup>!"

In a subsequent interview, Officer Berdaguer said he could see that Quintana was not wearing a shirt and had a large amount of blood on him. Officer Berdaguer said he drew his firearm but held it at his side so as to not provoke Quintana or escalate the situation. Officer Berdaguer watched Quintana walk out into the street, stop and square off with Officer Berdaguer.

Officer Berdaguer shined his flashlight on Quintana and saw a knife in Quintana's left hand and blood on Quintana's chest. Officer Berdaguer said he ordered Quintana to: "Just drop the knife;" Quintana did not drop the knife. Instead, Quintana began to walk away from Officer Berdaguer into the street a short distance.

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<sup>3</sup> In a subsequent interview, Officer Berdaguer said that, although he was armed with a taser, he elected not to use his taser because he recognized Quintana's knife was a deadly weapon and Officer Berdaguer did not have a backup officer present. Officer Berdaguer said he believed it was unwise to rely on the taser without a backup officer in case the taser failed or proved to be ineffective.

Officer Berdaguer said Quintana stopped again and adopted a “fighting stance” with the knife still in his left hand. Officer Berdaguer said he pointed his firearm at Quintana and ordered him to “stop, drop the knife” several times.

Officer Berdaguer said he was in fear for his life and believed Quintana was “crazy.” Quintana turned and ran a short distance again away from Officer Berdaguer who pursued but maintained some distance from Quintana: Officer Berdaguer estimated they were about thirty feet apart. Quintana stopped suddenly, turned around to face Officer Berdaguer, held the knife with both hands and began cutting his own throat. Quintana made three cuts to his own throat while Officer Berdaguer yelled: “No, no, no!”

Quintana then ran full speed directly at Officer Berdaguer with the knife still in his hands. Officer Berdaguer said he believed deadly force was necessary to stop Quintana. Officer Berdaguer said he fired his weapon at Quintana and saw the first round hit Quintana in the chest. That shot did not stop Quintana who continued to run at Officer Berdaguer. Officer Berdaguer said he believed he fired four to five rounds at Quintana who now, much closer to Officer Berdaguer, began to fall down and landed in a fetal position in the road. Officer Berdaguer called “shots fired” over the radio and requested medical assistance. Medical personnel arrived and transported Quintana who later died from his injuries.

Jodi Phillips, Amy and Marco Mendoza and their son Victor were interviewed during the OICI investigation. Amy Mendoza said she saw Quintana cut his own throat with the knife in the kitchen prior to Officer Berdaguer’s arrival. Marco and Victor said they saw Quintana cut his own throat with the knife while confronting Officer Berdaguer. They all heard Officer Berdaguer order Quintana to drop the knife several times and saw Quintana run at Officer Berdaguer.

Neighbor Patty Christensen said she heard Officer Berdaguer trying to calm Quintana down and heard Officer Berdaguer say “Drop the knife, you don’t want to do this.” Christensen said she saw Quintana run at Officer Berdaguer as Officer Berdaguer yelled for Quintana to drop the knife. Christensen estimated that Quintana was about six to ten feet away when Officer Berdaguer fired four shots.

Several other nearby residents were interviewed during the OICI investigation. Some either saw or heard some parts of the incident; none of the witnesses interviewed relayed any information inconsistent with the facts set forth above.

Officer Berdaguer was not wearing a body camera at the time; his patrol car was not equipped with a dash camera. No video or audio recordings of the incident were discovered during the investigation. A few seconds of sound during the incident was broadcast by Officer Berdaguer’s portable police radio; this recording as well as relevant radio traffic and 911 calls were reviewed by the OICI investigation team.

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## DISCUSSION

### *Officer Berdagner Reasonably Believed Deadly Force was Necessary.*

Officer Berdagner responded to a call requesting assistance on a suicidal person cutting himself. Dispatch told Officer Berdagner that Quintana was armed with a knife; when Officer Berdagner arrived, Marco told Officer Berdagner that Quintana had a knife. And Officer Berdagner observed Quintana with a knife. It was reasonable for Officer Berdagner to respond to that call entertaining the probability that the person he would encounter would be armed and a danger to himself, others and to Officer Berdagner. Indeed, from Officer Berdagner's first encounter with Quintana, Officer Berdagner discovered that Quintana was in fact armed with a knife and that Quintana was using the knife to inflict bodily injury to himself. Officer Berdagner had to deal with and react to circumstances created by Quintana and Quintana's imminent, unlawful threat of death or serious bodily injury.

Officer Berdagner reasonably believed that Quintana's knife could be used as a deadly weapon, and it reasonably appeared to Officer Berdagner that Quintana was in fact using the knife as a deadly weapon. Officer Berdagner saw Quintana cut his own throat three times. So when Quintana charged full speed at Officer Berdagner, it was reasonable for Officer Berdagner to believe that Quintana was going to use unlawful force against Officer Berdagner. It was also reasonable for Officer Berdagner to believe that deadly force was necessary to prevent Officer Berdagner's death or serious bodily injury as a result of Quintana's imminent use of unlawful force against Officer Berdagner. As such, Officer Berdagner's use of deadly force was "justified" under Utah State law.

## CONCLUSIONS

Given the totality of the circumstances they faced, Officer Berdagner reasonably believed his life was in danger when Quintana charged him with a knife. Quintana's imminent, unlawful threat of death or serious bodily injury to Officer Berdagner made Officer Berdagner's belief that deadly force was necessary to prevent their death or serious bodily injury reasonable. Accordingly, his 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