

# POLICE CIVILIAN REVIEW BOARD

## Investigation Report

Internal Affairs Case Number S 2017-0016

Complainant: (Race/Gender)	C- Patrick Harmon (B/M) (Deceased)
Alleged Policy Violation:	Improper Use of Deadly Force
Subject Officer: (Race/Gender)	S- Off. Clinton Fox (W/M)
Subject Officer's Years of Service:	S- 1 year SLCPD, 9 years other L.E.A.
Date of Alleged Incident:	8/13/17
Date Investigation Requested:	8/14/17
Date Filed with Internal Affairs	8/14/17
Date Investigation Completed:	10/26/17
Panel Members:	Brandon Myers Rebekah Myers Catalina Pilar Cardona Sandy Walsh Gregg Bambo
Date of Panel Meeting:	11/3/17
Interviews Conducted:	Multiple

**It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.**

### Synopsis:

This matter has been extensively covered in the media with the body camera footage made by S's body camera, being publicly released. Additionally, still shots taken from that footage have also been released along with the names of S and the deceased, C. Based upon this heavy media coverage, this report will at times include the names of the involved individuals as they are already publicly known.

As is customary in Officer Involved Shooting cases, an outside investigation was conducted jointly by the District Attorney's Office (DA's office) and the Unified Police Department (UPD). These two agencies gathered, compiled and presented an investigative presentation to the DA's office, who in turn, publicly released their investigative summary. Since this report has already been made public and no new evidence has been discovered by this PCRB review, the DA's letter will establish the known facts of the matter. The following comes from that DA review:

On August 13, 2017, SLCPD Officer Smith saw a male, later identified as Patrick Harmon, ride his bicycle across all six road lanes and a median on State Street in Salt Lake City, Utah. Officer Smith said he saw that Mr. Harmon didn't have a required red rear tail light on his bicycle, although it was night. Officer Smith asked the male for identification and the male gave several different names and spellings. Officer Smith asked for backup.

Eventually, Officer Smith discovered Mr. Harmon had active felony warrants (one for aggravated assault) and arrested him as SLCPD Officers Fox and Robinson arrived to help. Mr. Harmon broke away from the officers and ran. The officers followed. As he ran, Mr. Harmon said "I'll cut you," and turned and faced the officers with a knife. Officer Fox fired his weapon at Mr. Harmon, killing him...

## **FACTS**

The following facts were developed from the OICI protocol investigation. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

Just after 10:00 p.m. on August 13, 2017, SLCPD Officer Smith was on patrol in Salt Lake City. He saw a man, later identified as Patrick Harmon, ride his bicycle across all six road lanes and a median on State Street. Officer Smith noticed that, although it was dark, Mr. Harmon didn't have a required red rear tail light on his bicycle. Officer Smith stopped the man and asked him for identification. The man gave a couple of different names while Officer Smith tried to make an identification. Officer Smith asked for backup.

SLCPD Officers Fox and Robinson arrived at the traffic stop. Officer Fox walked over to Mr. Harmon and talked to him. Officer Robinson went to Officer Smith in his patrol car and talked to Officer Smith who was running Mr. Harmon for warrants. As they talked, felony arrest warrants (one for aggravated assault) came up on the computer. Officer Smith told Officer Robinson he was going to arrest Mr. Harmon for the warrants.

Officers Smith and Robinson walked to where Officer Fox was talking to Mr. Harmon. Officer Smith told Mr. Harmon he was under arrest for the warrants, and Mr. Harmon pleaded with the officers not to go to jail. The officers took Mr. Harmon's hands and placed them behind his back. As Mr. Harmon's hands went behind his back, Mr. Harmon bolted from the officers and ran. The officers pursued.

As he ran, Mr. Harmon said he was going to cut or stab the officers. Mr. Harmon stopped running and turned to face the officers. Officer Fox later said he saw a knife

in Mr. Harmon's hand with a blade open. Officer Fox said he feared Mr. Harmon would cut or stab him and/or his fellow officers. Officer Fox said he believed his life and the lives of the other officers were in danger. Officer Fox fired his weapon three times at Mr. Harmon. After Mr. Harmon went down, officers handcuffed him and rendered first aid until medical personnel arrived. Mr. Harmon died from the gunshot wounds.

An OICI protocol investigation team arrived and documented the scene, conducted interviewed and performed other investigation tasks. Investigators located and documented a knife with an open blade among the items at the scene. Investigators inspected and documented the conditions of officers' weapons used in the incident. Investigators also reviewed body-worn camera video recordings of the incident.

**Patrick Harmon, herein referred to as C, died as a result of his injuries.**

**Off. Clinton Fox, herein referred to as S, is the subject of this matter and provided the following:**

***Officer Fox***

On August 22, 2017, OICI protocol investigators interviewed SLCPD Officer Clinton Fox with his attorney present. Officer Fox said that on August 13, 2017, he was on patrol when he heard Officer Smith on the police radio ask for assistance with a pedestrian stop. Officer Fox said he drove to the area and saw Officer Smith's patrol car. Officer Fox said he walked up to a man, later identified as Patrick Harmon and asked Mr. Harmon to step off his bicycle.

Officer Fox said Mr. Harmon seemed emotional and distraught. Officer Fox said Mr. Harmon was talking about getting right with God and doing work for God; Officer Fox said Mr. Harmon said he was trying to take care of his arrest warrant. Officer Fox said Mr. Harmon seemed nervous.

Officer Fox said Officers Smith and Robinson walked over to him and Mr. Harmon. Officer Fox said he saw Officer Smith wearing gloves and inferred that Mr. Harmon was going to jail for his warrants. Officer Fox said he positioned himself to assist Officer Smith with the arrest; Officer Fox said Officer Smith stood on Mr. Harmon's right side and Officer Robinson stood on Mr. Harmon's left side. Officer Fox said Officer Smith told Mr. Harmon he was under arrest for the outstanding warrants and asked Mr. Harmon to remove his backpack. Officer Fox said Mr. Harmon complied.

Officer Fox said the other officers took Mr. Harmon's hands to place him in handcuffs. Officer Fox said as soon as Mr. Harmon's hands went behind his back, Mr. Harmon bolted and ran. Officer Fox said he believed Officer Smith yelled at Mr. Harmon to stop. Officer Fox said he saw Mr. Harmon's hands move to his right pants pocket. Officer Fox said he heard Mr. Harmon say he was going to cut them, or that they (the officers) would get cut. Officer Fox said he quickly realized Officer Robinson was in a dangerous position if Mr. Harmon produced a knife. Officer Fox said he believed Mr. Harmon could have stabbed Officer Robinson.

Officer Fox said Mr. Harmon stopped running, turned and yelled: "I'll fucking stab you." Officer Fox said Mr. Harmon came at the officers with something in his hand. Officer Fox said he was terrified by how close Mr. Harmon was to the officers when Mr. Harmon stopped and turned towards them. Officer Fox said when Mr. Harmon turned towards the officers, Officer Fox saw that Mr. Harmon had an open knife in his hand. Officer Fox said he was afraid Mr. Harmon was going to stab him and/or the other officers. Officer Fox said he didn't know whether the other officers could see or perceive that Mr. Harmon was armed with an open knife. Officer Fox said he was worried about Officers Smith and Robinson if they tried to go "hands-on" with Mr. Harmon.

Officer Fox said he feared if he didn't immediately use deadly force, Mr. Harmon was going to stab him and/or the other officers. Officer Fox said he remembered he felt like Mr. Harmon was going to stab him. Officer Fox said he aimed his weapon at Mr. Harmon and fired three times.

Officer Fox said that in ten years of law enforcement and two military deployments, it was the scariest situation he had ever been in. Officer Fox said Mr. Harmon immediately gained the "upper hand" when Mr. Harmon produced the open knife as he stopped running and turned to face the officers. Officer Fox said he felt like Mr. Harmon presented a situation from which Officer Fox could not recover.

**Off. Scott Robinson, herein referred to as W, is a police officer, a witness and stated:**

On August 14, 2017, protocol investigators interviewed SLCPD Officer Scott Robinson. Officer Robinson said he was on duty at the police station on August 13, 2017 when he heard Officer Smith on the police radio ask for assistance. Officer Robinson said he and Officer Fox drove to Officer Smith's location and saw Officer Smith's patrol car and a man with a bicycle stopped by the side of the road.

Officer Robinson said he saw Officer Fox talking to the man, later identified as Patrick Harmon. Officer Robinson said Officer Fox asked Mr. Harmon to get off his bicycle. Officer Robinson said he talked to Officer Smith who was running Mr. Harmon for warrants. Officer Robinson said Officer Smith told him that Mr. Harmon had felony warrants and he was going to arrest Mr. Harmon. Officer Robinson said he activated his body worn camera.

Officer Robinson said Officer Smith told Mr. Harmon he was under arrest for the warrants. Officer Robinson said Mr. Harmon pleaded with the officers not to take him to jail. Officer Robinson said one of the officers asked Mr. Harmon to remove his backpack and set it on the ground. Officer Robinson said he held Mr. Harmon's left hand and placed Mr. Harmon's hand behind his back in order to handcuff him. Officer Robinson said Officer Smith took control of both of Mr. Harmon's hands and placed them behind Mr. Harmon's back. Officer Robinson said that when Mr. Harmon's hands went behind his back, Mr. Harmon bolted and ran.

Officer Robinson said he tried to grab Mr. Harmon's clothing to stop him but couldn't. Officer Robinson said he heard Mr. Harmon say: "I stab" or something to that effect; Officer Robinson said he couldn't remember Mr. Harmon's exact words.

Officer Robinson said Mr. Harmon turned and ran again and said something about stabbing again.

Officer Robinson said he saw that Mr. Harmon had something in his hand. Officer Robinson said he couldn't tell for sure if it was a knife, but Mr. Harmon appeared to be holding it out towards the officers.

Officer Robinson said he heard a Taser "pop" and three gunshots almost simultaneously. Officer Robinson said he saw Mr. Harmon go down. Officer Robinson said he and the other officers secured Mr. Harmon in handcuffs and rendered first aid until medical personnel arrived to treat Mr. Harmon.

**Off. Kristopher Smith, herein referred to as W1, is a police officer, a witness and stated:**

On August 14, 2017, protocol investigators interviewed SLCPD Officer Kris Smith. Officer Smith said he was on duty on August 13, 2017 and on patrol when he saw a man on a bicycle riding on State Street. Officer Smith said he saw the man, subsequently identified as Patrick Harmon, ride across all six lanes of travel and across a median on State Street. Officer Smith said it was night, but Mr. Harmon's bicycle did not have a required red tail light. Officer Smith said he stopped Mr. Harmon to discuss the situation.

Officer Smith said he asked the man for his name, and the man gave him a name that had no match in his police computer. Officer Smith said he asked the man for his name a couple more times and each time, the man gave a different name. Officer Smith said he called on the police radio for other officers to assist him. Eventually, Officer Smith said the man said he was Patrick Harmon and Officer Smith found that Mr. Harmon had warrants for his arrest, including a felony warrant for aggravated assault.

Officer Smith said SLCPD Officers Fox and Robinson arrived and made contact with him and Mr. Harmon. Officer Smith said he walked from his patrol car to where Mr. Harmon and the officers were standing. Officer Smith said he told Mr. Harmon that he had warrants and was under arrest. Officer Smith said he reached for his handcuffs and Mr. Harmon started to put his hands behind his back. Officer Smith said that once Mr. Harmon's hands were behind his back, Mr. Harmon turned and ran northbound on the sidewalk. Officer Smith said Mr. Harmon turned quickly and started to run back towards the south. Officer Smith said he drew his Taser.

Officer Smith said he heard Mr. Harmon say "I'm going to cut..." Officer Smith said he saw Mr. Harmon reach towards his pants with his right hand. Officer Smith said he fired his Taser and simultaneously heard a gunshot. Officer Smith said he saw Mr. Harmon go down. Officer Smith said Officer Robinson placed Mr. Harmon in handcuffs and he and the other officers rendered aid until medical personnel arrived.

**Evidence:**

The following is from the DA's letter as it relates to evidence:

### ***Physical Evidence***

All three officers wore body cameras that recorded the incident. OICI protocol investigators reviewed the body-worn camera recordings and presented the recordings and still photographs made from the recordings to the District Attorney for this review. Some of the still photographs are included with this letter as an exhibit.

Officer Smith's body-worn camera recorded Mr. Harmon when he stopped and turned towards the officers with the knife in his hand. Still photographs from Officer Smith recording are included as Figures 1 and 2. In Figure 2, Mr. Harmon's toes and feet are shown pointing at Officer Fox. Officer Smith's recording also captured Officer Fox's abrupt stop when Mr. Harmon turned towards him with a knife. Figure 3 depicts Officer Fox up on his toes with his back arched away from Mr. Harmon as he fired his weapon.

OICI protocol investigators observed and photographed a knife on the ground near where Mr. Harmon went down. Photographs of the knife are depicted in Figures 4 and 5.

Protocol investigators inspected and documented Officer Fox's handgun and Officer Smith's Taser. Investigators determined that Officer Fox's weapon fired three shots during the incident. Investigators also determined that Officer Smith's Taser was fired. Investigators determined the officers' other weapons were not used in the incident.

PCRB noted the following evidence:

**E:** The DA's report is used extensively throughout this review and is noted as such, above. Portions related to their decision on the case and other sections related to areas not necessary of this review have not been included.

**E1:** Autopsy Photographs were made during that procedure and they captured the evidence gathering process undertaken by the Medical Examiner's Office. The wounds suffered by C were photographed as was the rest of the autopsy process. The three bullets fired by S were recovered during this process.

**E2:** Crime Scene Photographs were made after the incident. Blood is seen on the sidewalk with the associated spray pattern which was seen in S's videotape when his left arm was moved by an officer.

**E3:** Photographs of a silver, folding knife, with the blade open, were made. This knife was next to a pair of handcuffs in the grass abutting the sidewalk and appears to be roughly five feet from the blood stained sidewalk where C's body came to rest. Based upon C's facedown position and the location of the photographed knife, the knife's location corresponds to C's right hand, as reported by the officers.

**E4:** W1's Taser was downloaded and that data showed the use of it during this incident.

**E5:** Multiple body cameras were used in this incident, three by the officers who were most directly involved: S, W and W1, along with other footage made by other officers who arrived to assist. A review of S's body camera footage confirms the sequence of events as stated above in

the DA's letter. In viewing this videotape, and others related to this matter, there is no clear view of a knife being in the right hand of C, as alleged. That is not to say that one was not there, it simply means that due to the lack of illumination, the distances involved and the movement of S who was wearing the camera and was giving chase to C, along with C's motion while running from the officers, that no clear view of a knife was captured.

As C pulled away from the officers and began to run, W is thrown clear of the line of pursuit and tumbles to the ground. S and W1 give chase and after the initial distance created by his unexpected movement, the officers react quickly and begin to follow him. The recordings do not capture C saying anything to the officers during his flight, including the reported comment about "cutting" them but again, this is not unusual due to the distances and associated noise created by S's running after C.

C is clearly seen to slow down and pivot towards the officers in pursuit. It appears that C brings his right arm up, across his chest, in a position best described as if he were drawing the string on a bow. Distances are tough to determine due to the conditions and shaky motion of the camera on S's body, but it appears that C is within 5-7 yards, possibly closer.

S fired his weapon three times at C, striking him and causing him to fall to the ground, with his upper torso on the grass and his lower torso and legs remaining on the sidewalk. S is heard saying something about shooting C, perhaps something like "I'll fucking shoot you" prior to the rounds being discharged. The Taser light, a laser illuminator, can be seen on the buttocks of C as W applies the handcuffs. This sighting light was coming from W1's already deployed Taser.

In viewing W1's video tape and a captured screen shot, S is seen at the moment he fires his weapon. S's body position is unusual as he is almost in a backwards "C" position with his extended hands and his feet well forward of his arching torso. *(Note: this body position is unusual in that S is a new officer who had recently completed his training, including firearms training. The SLCPD currently teaches the "Isosceles" position for firing a handgun. This position has the shooter in a full erect position, facing the target, with hands fully extended creating a triangle with the shooter's chest as the base of the triangle. This position is one of a few firing positions taught across the nation and is designed to provide a stable, easy to sight from, recoil friendly firing position.)*

Once C was struck by the bullets, he fell to the ground with the officers approaching him to secure him in handcuffs and render first aid. When C's left arm is moved, a spurting blood stream is easily seen, likely indicating he has been struck in an artery in his arm or near his arm pit.

### **Allegations:**

Due to the fact that this matter was an Officer Involved Shooting, an automatic review of the matter was triggered.

### **Definitions**

Within Policy: the officer acted within policy

Not Within Policy: the officer did not act within policy

### **Analysis and Recommendation:**

The initial stop of C by W1 was a lawful stop for an observed, and dangerous move by C in crossing a busy street, six lanes wide, at night, without any visible lighting on his bike. The initial encounter was very calm with W1 asking C questions to determine his identity, while C is being evasive, at the very least. Eventually, after some questioning, C reveals his identity and W1 went to his car to check C's identity. W1 learns that C has active warrants for his arrest, including one for Aggravated Assault. Back up officers arrive, S and W, and they informed C that he is under arrest for his warrants.

C continued to comply with the requests of the officers including removing his back pack and putting his hands behind his back. Once C placed his hands behind his back, C pulled away from the three officers, made contact with W who went sprawling down onto the ground, and C began to run from S and W1. The following is from the policy manual of the SLCPD as it relates to the use of Deadly Force:

### **Authority to Use Deadly Force**

Peace officer's use of deadly force:

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

- The officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death.
- 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; and
  - 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.
- 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.

If feasible, a verbal warning should be given by the officer prior to any use of deadly force.

### **Considerations in Use of Deadly Force**

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical. Officers should consider:

- Other methods of effecting an arrest.
- The direction in which the firearm is to be discharged because of the possibility that innocent persons or property may be struck.
- The age of the suspect and the offense committed.
- Light conditions (extreme caution must be used at night or when other conditions obscure the officer's vision).
- The danger of firing while running or jumping.

In reviewing the videotapes of the incident, it was observed that C, who knew he was wanted on serious charges and was being evasive about properly identifying himself to W1, the officer who



observed his traffic violation, opted to pull away from the three officers who were arresting him. C was clearly told he was being arrested on the outstanding warrants and as he pulled away from the officers, he initially ran into W, who was propelled away from C and onto the ground. C then changed directions and began to run away from S and W1, who gave chase. The video is clear that C decided to stop his escape attempt as the officers had not closed the gap to the point where they could pull or tackle C to the ground. The obvious question is why did C stop fleeing? His actions do not seem similar to others who initially flee only to stop and surrender to the officers. C made no move to raise his hands, or lay on the ground, nor did he say anything to the officers indicating his desire to surrender to their authority. It was also clear that he was not exhausted from his short flight as his hands did not go to his knees, nor did he crumple to the ground, as is often seen in similar situations. Instead, C appears to stop and pivot towards the pursuing officers with his right arm in a cocked fashion. As said earlier, a knife was not discernible in the recordings, but a knife was noted by both S and W1, and they also said that C made a comment about “cutting”, this comment was also not audible in the recordings.

As stated in the Deadly Force Policy above, a salient fact set in play is:

- 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.

When examining this issue, it was noted that both officers reacted simultaneously with W1 firing his Taser and S firing his weapon. This action, which was not coordinated or agreed upon by the officers, is indicative of them both becoming aware of a threat that required them to take action. Other than the profanity laced statement issued by S, no warnings were issued prior to both of them firing at C, indicative of a rapidly changing tactical situation, which is supported by the video. As listed earlier, above, the body position of S was unusual in that his firing position was not the prescribed position, which he obviously was trained in, in great detail. There are two obvious explanations for this “backwards C” firing stance, one being that due to S running after C, that when he perceived a threat, he found himself in this awkward stance due to momentum and the other being that when S perceived a threat, his body automatically reacted, and he was attempting to keep his torso as far as possible from the threat. The defensive phenomenon occurs to many people during times of great stress and is a subconscious reaction. Examples of it are when officers see a gun being raised at them that despite their extensive training to shoot the “center of mass”, they shoot at the hand holding the weapon. It is unknown by this review if either of these reasons were the cause of his unusual firing position, but it was present in the screen shots of S’s firing sequence.

Often, when two officers are present, one officer may use technique or tactic A, while the second officer uses B. The fact that W1 used his Taser does not mean that S is automatically wrong in using his weapon, because as the Deadly Force Policy says: *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.* What one person believes is not necessarily what another person will believe when faced with the same situation. This difference, in police work, is due to experience in police work and/or training success. In any case, the point is that officers who take action need only to be “reasonable” in their actions, based upon what they knew, at the time of the incident.

An additional salient fact to be considered also comes from the Deadly Force Policy, see above, where it says:

### **Considerations in Use of Deadly Force**

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical.

In summary, the issue to be decided is if S was reasonable in his perception of a threat of death, or serious bodily injury, to himself or others and that his actions, using his weapon, conformed to that policy.

### **Panel Findings:**

As to the allegation that S used Deadly Force, the Panel makes a finding of Within Policy on that allegation.

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

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Gregory Bambo  
Panel Chair

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Date 11/3/17