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**denotes counsel who will seek pro hac
vice admission*

**IN THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH**

ESTATE OF PATRICK HARMON SR.;
PATRICK HARMON II, as Personal
Representative of the Estate of Patrick
Harmon Sr., and heir of Patrick Harmon
Sr., TASHA SMITH, as heir of Patrick
Harmon Sr.,

Plaintiff,

vs.

SALT LAKE CITY, a municipality; and
OFFICER CLINTON FOX, in his
individual capacity,

Defendants.

COMPLAINT AND JURY DEMAND

Case No.

Judge

Plaintiffs Estate of Patrick Harmon Sr., Patrick Harmon II, as personal
representative of the Estate of Patrick Harmon Sr., and heir of Patrick Harmon Sr., and
Tasha Smith, as heir of Patrick Harmon Sr., by and through undersigned counsel, allege
as follows:

I. INTRODUCTION

This case involves an all-too-familiar narrative: an unarmed black man shot to death by law enforcement without justification. On August 13, 2017, Patrick Harmon Sr. (“Mr. Harmon”) was fatally shot by Salt Lake City Police Department (“SLCPD”) Officer Clinton Fox. SLCPD officers had initially detained Mr. Harmon for the minor infraction of riding a bicycle without a taillight, yet Mr. Harmon’s encounter with the SLCPD left him dead. Although Mr. Harmon attempted to flee from arrest, he posed no threat to the officers that would have justified deadly force.

Fellow SLCPD Officers Kris Smith and Scott Robinson were also present during the deadly encounter with Mr. Harmon. When Mr. Harmon attempted to flee, only Officer Fox employed deadly force. Officer Smith fired his Taser, while Officer Robinson did not even draw a weapon. All three officers later claimed that Mr. Harmon, while fleeing, yelled words to the effect of “I’ll stab you,” and then lunged at the officers, knife in his hand. The problem with this description of events is that all three officers wore body cameras. From three different angles, there is no knife visible in Mr. Harmon’s hands. There are no words to the effect of “I’ll stab you.” And there was no lunge; rather, Mr. Harmon was shot in the back and left side of his body as he moved away from the officers.

The homicide of Mr. Harmon is reflective of a city plagued by a racial policing crisis. In a city that is just 2.7% black, SLCPD used force against black persons in

13.1% of all incidents.¹ As such, black Salt Lake City residents are nearly five times more likely to be subjected to force by law enforcement.

Mr. Harmon did not lead a perfect life. But, prior to his death, he had found renewed spirituality. He had reunited with his son and daughter, Patrick and Tasha, who looked forward to rebuilding their relationship with their father. Despite his mistakes, Mr. Harmon deserved the opportunity to grow with grace.

II. JURISDICTION

1. This Court has jurisdiction over this action pursuant to UTAH CODE § 78A-5-102(1). This Court has personal jurisdiction over Defendants pursuant to UTAH CODE § 78B-3-205.

2. All of the events and omissions alleged herein occurred within Salt Lake County. At the time of the events and omissions giving rise to this litigation, all of the defendants resided in Salt Lake County. The claims for relief relate to causes of action which substantially arose in Salt Lake County. Venue therefore lies in this Court pursuant to UTAH CODE ANN. § 78B-3-307.

III. PARTIES

3. The decedent, Patrick Harmon Sr., was a citizen of the United States of America and a resident of the State of Utah.

¹ See <https://dotnet.slcgov.com/police/useofforce#/chartpresentation> (data from between January 2017 and December 2018), attached as **Ex. 1**; <http://worldpopulationreview.com/us-cities/salt-lake-city-population/> (2.7% African American/Black figure). Mr. Harmon was killed in Salt Lake City's Council District 5. The zip code area in which Mr. Harmon was killed is 3.63% African American/Black. <http://www.healthysaltlake.org/?module=demographicdata&controller=index&action=index&id=40141§ionId=940>.

4. Plaintiff Patrick Harmon II (“Mr. Harmon II”) is the personal representative of the Estate of Patrick Harmon Sr. He is the son of Patrick Harmon Sr., and is a resident of the State of Colorado.

5. Plaintiff Tasha Smith is the daughter of Patrick Harmon Sr. She is a resident of the State of Missouri.

6. Defendant Salt Lake City is a municipal corporation. The Salt Lake City Police Department (SLCPD) is responsible for the oversight, supervision, and training of the officers in the SLCPD. Salt Lake City was the employer of Defendant Officers and is a proper entity to be sued under 42 U.S.C. § 1983.

7. At all times relevant to the subject matter of this litigation, Defendant Officer Clinton Fox (“Officer Fox” or “Defendant Fox”) was a citizen of the United States and a resident of Utah and was acting under color of state law in his capacity as a law enforcement officer employed by Salt Lake City.

IV. FACTUAL BACKGROUND

MR. HARMON'S LIFE AND THE LOSS TO HIS FAMILY



Photos of Patrick Harmon Sr.

8. Mr. Harmon was born on October 15, 1966, in St. Louis, Missouri. He was raised by a single mother, Belulah Mae Deliah.

9. Mr. Harmon grew up with his sisters.
10. Mr. Harmon moved to Salt Lake City as a young man and entered the job corps. There he fell in love with young woman whom he had met at work.
11. The young couple became pregnant with Patrick II and moved to Denver, Colorado to be closer to family.
12. Unfortunately, Mr. Harmon had difficulty finding consistent employment in Denver and so he moved back to St. Louis to look for work.
13. Patrick II remained in Denver where he was surrounded by a strong family support network.
14. Unable to earn enough to bring his family to St. Louis and depressed by a lack of economic opportunity, Mr. Harmon entered a downward spiral that oppresses many persons of color. A lack of employment opportunities led to desperate and ill-advised decisions and a criminal record, which led to even more decreased employment opportunities.
15. Mr. Harmon found himself in and out of prison, losing touch with his extended family in the process. However, Mr. Harmon kept in frequent contact with his children over the phone and made sure that they were being taken care of.
16. In 2010, Mr. Harmon reconnected with his children. Although it had been a while since they had last spoken with each other, Patrick II and Tasha had never ceased to miss him and their reunification was one of unadulterated joy. Mr. Harmon was extremely proud that both of his children had grown up to lead productive and law-abiding lives.

17. Although they regretted that they had grown up largely without a father, Patrick II and Tasha badly wanted Mr. Harmon in their lives. Patrick II and Tasha had high hopes of rebuilding their familial bond with their father at the time of his death.

18. The immense loss that they feel is not only the pain of losing a father but of losing the hope of what may have been.

THE SHOOTING DEATH OF PATRICK HARMON

19. On August 13, 2017, SLCPD Officer Kris Smith was on patrol in downtown Salt Lake City.

20. Officer Smith observed Mr. Harmon riding a bicycle without a red tail light.

21. Based on this alleged violation of a local traffic ordinance, Officer Smith stopped Mr. Harmon.

22. According to Officer Smith, Mr. Harmon gave varying and inconsistent names when asked to identify himself.

23. Mr. Harmon volunteered to Officer Smith that he likely had an outstanding warrant for a years' old prior incident. At some point during this interaction, Officer Smith radioed for backup.

24. Officer Smith returned to his patrol car to run a warrant check. While Officer Smith did so, Mr. Harmon stood calmly and waited for Officer Smith to return.

25. Soon thereafter, SLCPD officers Clinton Fox and Scott Robinson arrived on scene.

26. Officer Smith was eventually able to verify the warrant that Mr. Harmon had reported, and exclaimed to Officer Fox, "Yes! Excellent. We're going to go 82, 99,

Fox 2,"² indicating that Mr. Harmon should be taken into custody for an outstanding felony warrant.

27. Officer Smith exited his patrol car and he and the other two officers approached Mr. Harmon.

28. The officers told Mr. Harmon that he was going to be arrested and asked him to remove his backpack. Mr. Harmon complied.

29. Officer Smith told Mr. Harmon to place his hands behind his back. Mr. Harmon complied, while begging the officers to let him go.

30. Officers Smith and Robinson each took one of Mr. Harmon's arms to handcuff them behind his back.

31. Mr. Harmon allowed Officers Smith and Robinson to place his hands behind his back.

² Code 10-82 indicates "Prisoner in custody." *Utah State Public Service 10-Codes*, RADIO REFERENCE, last accessed August 8, 2018 (available at: http://wiki.radioreference.com/index.php/Utah_State_Public_Service_10-Codes). Code 10-99 indicates "Wanted/Stolen Indicated." *Id.* "Fox 2" likely indicates a level 2 felony charge.



View of Officer Fox. Mr. Harmon is pictured with a cigarette in his mouth. Officer Smith is pictured in the left of the frame behind Mr. Harmon's right shoulder. Officer Robinson is pictured in the center of the frame behind Mr. Harmon's left shoulder.

32. While Officers Smith and Robinson stood behind Mr. Harmon and pulled his arms behind his back, Officer Fox stood in front of and to the left of the others.

33. As Officers Smith and Robinson began to handcuff Mr. Harmon, Mr. Harmon pulled his arms away from the officers and strained to break free.



View of Officer Fox. Mr. Harmon is pictured in the center of the frame, with Officer Smith pictured in the left of the frame and Officer Robinson in the center of the frame.

34. While continuing to move away from Officers Smith and Robinson, Mr. Harmon also moved toward his left, away from Officer Fox.

35. Mr. Harmon continued to run forward, with his parked bicycle to his right side, in between himself and Officer Fox.

36. Officer Fox followed Mr. Harmon, proceeding around the back tire of the bicycle.

37. Mr. Harmon then turned back to his own left side and onto the nearby sidewalk.

38. Officer Fox followed closely behind as Mr. Harmon began moving down the sidewalk.

39. Mr. Harmon ran in a southward direction down the sidewalk.

40. Officer Robinson placed himself directly in Harmon's path and attempted to grab Mr. Harmon.

41. While attempting to grab Mr. Harmon, Officer Robinson struck Mr. Harmon near his head and neck, knocking the cigarette out of Mr. Harmon's mouth.



View of Officer Smith. Officer Robinson pictured in left of the frame trying to grab Mr. Harmon and knocking the cigarette out of Mr. Harmon's mouth causing sparks. Officer Fox pictured in bottom right of frame running toward Mr. Harmon with his left hand extended toward Mr. Harmon.

42. As Mr. Harmon pushed past Officer Robinson, Officer Fox began reaching for his gun with his right hand. Meanwhile, he reached toward Mr. Harmon with his left arm.



View of Officer Smith. Officer Fox is pictured drawing his firearm with his right hand as Mr. Harmon runs past him.

43. As Mr. Harmon ran past Officers Smith and Robinson, Officer Robinson fell backward to the ground.

44. At this point, there is clearly nothing visible in either of Mr. Harmon's hands.



View of Officer Robinson. Mr. Harmon's hands appear empty.

45. At this juncture, there appears no reason for Officer Fox to draw and brandish his firearm.

46. Mr. Harmon continued running past the officers. There is nothing visible in Mr. Harmon's right hand.



View of Officer Smith. Mr. Harmon is pictured in the left of the frame running away from the officers. His right hand is empty. Officer Robinson is pictured in the middle right of the frame falling toward the ground.

47. Officer Fox ran after Mr. Harmon with his gun drawn.



View of Officer Fox. Officer Fox's right hand is pictured holding his firearm in the middle right of the frame. Officer Robinson is in the upper right of the frame with his hand on the ground, getting up after having fallen to the ground.

48. As Mr. Harmon distanced himself from all three officers and was running away from their direction, Officer Fox took aim at Mr. Harmon.



View of Officer Fox. Officer Fox's forearms are pictured at bottom of frame and he is pointing his firearm at Mr. Harmon, pictured in the center of the frame.

49. Mr. Harmon heard Officers Smith and Fox giving chase.

50. Mr. Harmon turned his head to look at Officer Smith as he continued to run.



View of Officer Smith. Mr. Harmon is pictured in the middle of the frame looking backward at Officers Smith and Fox as he continues to move away from them.

51. Officer Smith drew his TASER and aimed it at Mr. Harmon.



View of Officer Smith. Officer Smith's arm is pictured on the left of all three frames aiming his taser at Mr. Harmon. Officer Fox's arms are pictured in the right and bottom frames aiming his firearm at Harmon. Mr. Harmon is pictured in the middle of all three frames looking at back at the officers.

52. Officer Fox yelled, "I'll fucking shoot you!" and immediately fired three shots in rapid succession.

53. Mr. Harmon had no opportunity to surrender as Officer Fox fired shots almost simultaneously to shouting, "I'll fucking shoot you!"



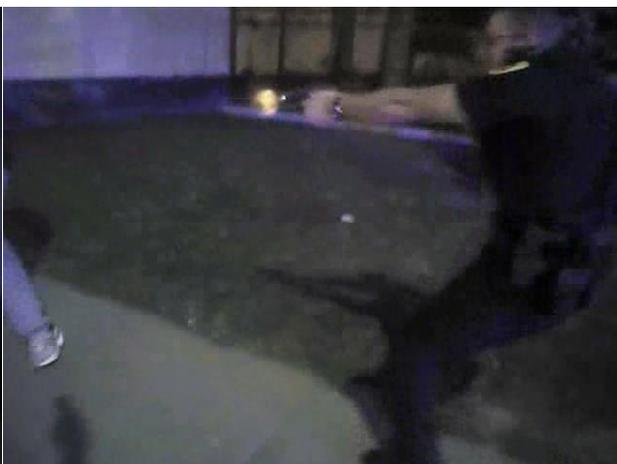
View of Officer Fox – Gun Shot 1



View of Officer Smith – Gun Shot 1



View of Officer Fox – Gun Shot 2



View of Officer Smith – Gun Shot 2



View of Officer Fox – Gun Shot 3



View of Officer Smith – Gun Shot 3

54. At approximately the same time that Officer Fox shot Mr. Harmon, Officer Robinson fired his Taser, striking Mr. Harmon.

55. Upon being shot, Mr. Harmon fell immediately to the ground.

56. Officer Fox did not issue any commands or warnings to Mr. Harmon other than yelling, “I’ll fucking shoot you!” less than a second before opening fire.

57. Neither Officer Smith nor Officer Robinson issued any commands or warnings to Mr. Harmon before Officer Fox shot and killed him.

58. Mr. Harmon did not audibly threaten the officers at any point during this incident.

THE IMMEDIATE AFTERMATH OF THE SHOOTING

59. After Officer Fox shot Mr. Harmon, all of the officers, including Officer Fox appeared to be in a state of shock.

60. Eventually, Officer Smith stated into his radio, “Priority, shots fired. Start medical.”

61. Officer Robinson was the first to approach Mr. Harmon.

62. Officer Robinson did not draw a weapon as he approached Mr. Harmon, who was lying face-down on the ground.

63. As Officer Smith next approached, Mr. Harmon began screaming out in pain but otherwise remained unmoving.



View of Officer Fox. Mr. Harmon is pictured in the bottom left of the frame. Officer Robinson is pictured in the bottom right of the frame.

- 64. Officer Fox did not warn Officer Robinson that he believed Mr. Harmon had a knife. Nor did he instruct Officer Robinson to look for a knife or to secure a knife.
- 65. Officer Smith did not warn Officer Robinson that he believed Mr. Harmon had a knife. Nor did he instruct Officer Robinson to look for a knife or to secure a knife.
- 66. Officer Robinson did not check Mr. Harmon's hands for a knife.
- 67. Officer Robinson did not check Mr. Harmon's hands or clothing for other weapons.
- 68. Officer Robinson did not search the area near Mr. Harmon's body for a knife.

69. Officer Robinson did not report to other officers that he had found a knife.

70. Although the Officers later claimed that knife was recovered near where Mr. Harmon's body had fallen, Officer Robinson did not secure any knife while approaching Mr. Harmon.

71. When Officer Robinson reached Mr. Harmon, he picked up Mr. Harmon's left arm to place Mr. Harmon in handcuffs. Mr. Harmon cried out in pain.

72. Officer Robinson dropped Mr. Harmon's left arm apparently surprised or shocked that Mr. Harmon was hemorrhaging blood.

73. As Mr. Harmon was bleeding to death, Officer Robinson finished handcuffing Mr. Harmon's hands behind his back.

74. Officer Robinson then examined Mr. Harmon's body for gunshot wounds.

75. Officer Robinson instructed Mr. Harmon, "Roll on your left side, bro. Roll on your left side."

76. Finding Mr. Harmon incapacitated, Officer Robinson forcefully rolled Mr. Harmon onto his side and back.

77. After Officer Robinson rolled Mr. Harmon onto his side, Mr. Harmon stopped crying out in pain and ceased making any noise.

78. Officer Fox ran back to his patrol car after telling the other officers that he was going to get gloves.

79. The officers found a large blood stain on the back of Mr. Harmon's pants, above his left buttock.

80. The officers rolled Mr. Harmon back onto his back and discovered that Mr. Harmon was hemorrhaging blood from his right thigh.

81. Officer Smith stated, "We've got something major right here."

82. Officer Fox returned from his patrol car and began cutting Mr. Harmon's clothing off with a knife.

83. Officer Smith began removing Mr. Harmon's pants by pulling them down.

84. The officers identified a gunshot wound on Mr. Harmon's left buttock.

85. At this point, other SLCPD officers began to arrive on scene.

86. Mr. Harmon was pronounced dead just after midnight.

87. According to the Office of the Medical Examiner, "Patrick Harmon died as a result of gunshot wounds of the torso (2) and extremity (1) during an encounter with police. Gunshot wound #3 injured the femoral artery and vein, major blood vessels in the body, causing significant blood loss. The other two gunshot wounds injured soft tissue and contributed to death through bleeding. The manner of death is homicide."

88. Notably, it was Officer Fox's third shot that struck Mr. Harmon's femoral artery and vein causing the injury that most seriously to his death by blood loss.

89. As captured on the video, Mr. Harmon suffered excruciating pain and suffering before passing.

OFFICER FOX'S STATEMENTS

90. Following the incident, Officer Fox participated in an internal investigation with SLCPD regarding the shooting.

91. As part of that investigation, Officer Fox provided a recorded interview regarding the incident and his decision to shoot and kill Mr. Harmon.

92. Officer Fox repeatedly states that he shot and killed Mr. Harmon because Mr. Harmon reached for and produced a knife.

93. Officer Fox stated, "As soon as he started running, both of his hands went to his right pocket. The moment he started going for the pocket, and I don't remember exactly what he said but I remember it was to the effect of, 'You'll get cut,' 'I'm gonna cut you' or something. I know that I heard it. I know that I processed it."

94. Mr. Harmon cannot be seen on any of the three bodycam angles reaching for his right pocket.

95. Mr. Harmon cannot be heard saying "You'll get cut" or "I'm gonna cut you," in the audio of any of the three bodycam recordings.

96. Officer Fox claimed in the interview, "And I can't remember but I think, I think Kris [Smith] was telling him to stop."

97. Officer Smith cannot be heard telling Mr. Harmon to stop in the audio of any of the three bodycam recordings.

98. Officer Fox stated that once Mr. Harmon pushed past Officer Robinson, "I see what he's doing, I see his hands are going for his right pocket still."

99. Officer Fox stated, "the entire time the guy is running, I can see him going for that right pocket."

100. Officer Fox stated, "When he broke direction and he started going North on the sidewalk again, he was still going for that pocket."

101. Officer Fox repeated similar statements about Mr. Harmon reaching for his pocket throughout the interview.

102. Officer Fox claimed that prior to shooting Mr. Harmon, Mr. Harmon, "stop[ped], turn[ed] around, and [came] back at [them]."

103. At no point in their interaction did Mr. Harmon come back at the officers.

104. Officer Fox claims repeatedly to have seen a knife in Mr. Harmon's hand.

105. Officer Fox claims that Mr. Harmon said, "I'll fucking stab you."

106. None of Officer Fox's justifications for shooting Mr. Harmon are supported by the video and audio recordings of the incident.

107. When asked why he had chosen the force option that he did, Officer Fox replied,

When he first started going in his pocket, and again, I don't remember exactly what he said but I know it was to the effect of 'I'll cut you' or 'You're going to get cut,' he said something to that effect, I immediately believed that he was going for a weapon and it was most likely going to come out as a knife. At that point I knew that was a lethal weapon, and every bit of my training from post to until – we actually had a lineup training that day and the sergeant had watched – had us watch a video and it was the video of the officer in South Carolina where he was confronting the guy and he drew a TASER, the guy ended up having a gun and we had talked about never leading into a situation where if there could be a potential for lethal force that we use a less lethal weapon.

108. Officer Fox stated, "[t]hrough every bit of training you don't respond to a knife or a lethal weapon with a less lethal option. So, that's why I drew my gun."

THE KNIFE

109. As pled above, Officer Fox relied extensively during the SLCPD internal investigation on his alleged belief that Mr. Harmon drew a knife.

110. SLCPD Officers claim to have recovered the knife that Mr. Harmon was allegedly carrying:

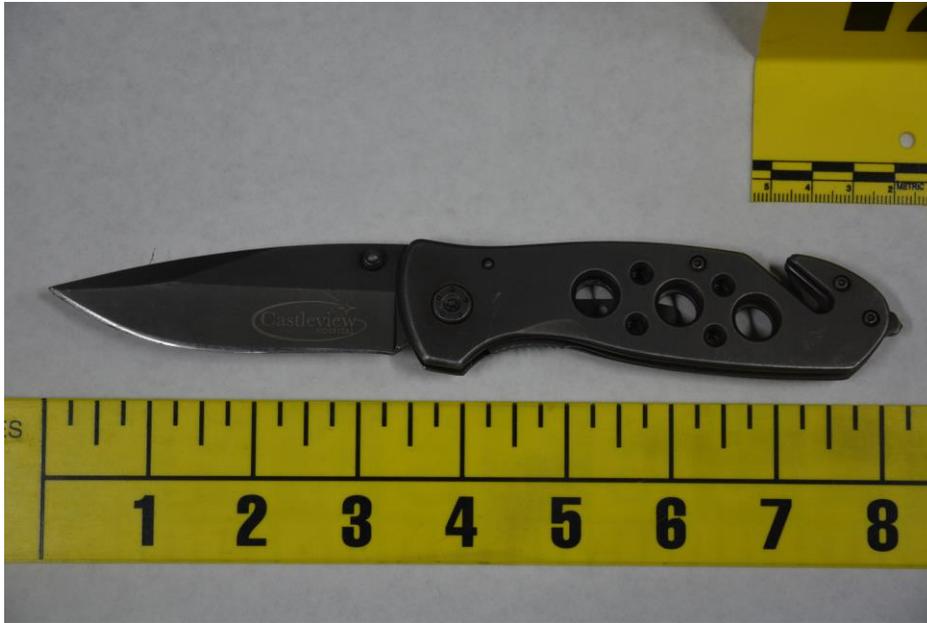


Photo of the knife recovered from the scene

111. The knife allegedly carried by Mr. Harmon appears to be a “rescue knife,” a style of folding knife with additional tactical features that can be used in emergency situations. For example, this particular knife features a glass breaker and seatbelt or strap cutter to assist in vehicle rescues.

112. The knife is also branded “Castleview Hospital.”

113. Castleview Hospital is a rural community hospital located in Price, Utah, about 120 miles from Salt Lake City.

114. As such, it is very likely that the knife allegedly recovered at the scene was originally the property of a Castleview Hospital employee.

115. Mr. Harmon was never an employee of Castleview Hospital.

116. The knife appears to be in pristine condition, lacking any noticeable fingerprints, smudges, or other indications that it was being held in a bare hand just prior to being dropped on the ground.

117. The SLCPD quickly disposed of this knife before conducting any testing to determine the presence of fingerprints or other evidence that could help establish possession of the knife.

118. Officers who responded to the scene and discovered the knife near where Mr. Harmon's body had fallen believed the knife belonged to Officer Fox.

119. Sergeant Alma Sweeney wrote in his police report, "After moving the subject I observed a folding style knife lying in the grass. At first it was believed this was Officer Fox's knife, . . .").

120. Officer Fox used a very similar type of knife to cut off Mr. Harmon's clothing.

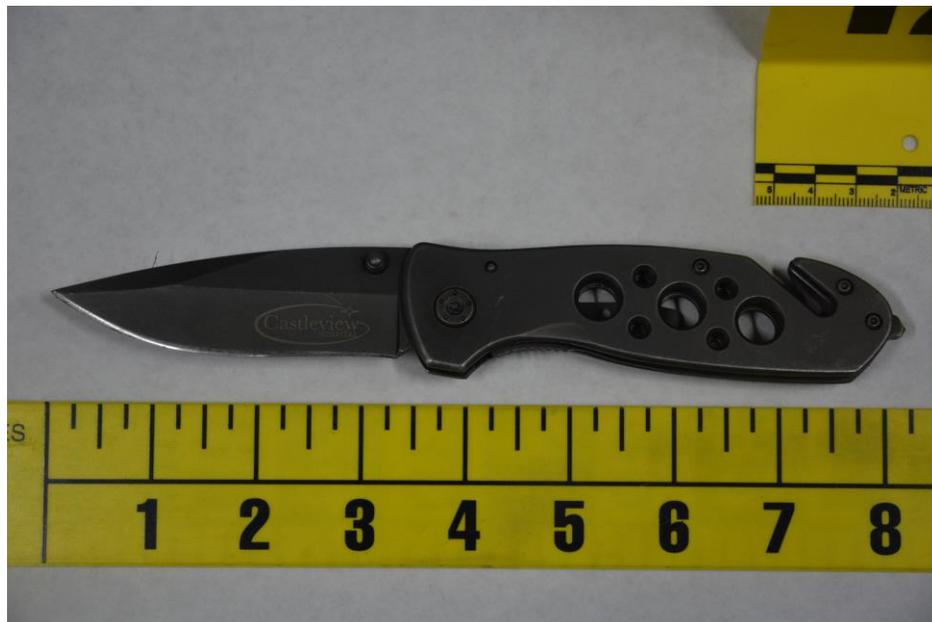


Photo of knife found near Mr. Harmon's body



Photo of Officer Fox's knife

121. The knife allegedly found near Mr. Harmon is a manually opening, folding-style knife.

122. Folding style knives generally require two hands to open.³

123. The knife near Mr. Harmon's body was found in the unfolded, or open, position.

124. At no point in the bodycam footage can Mr. Harmon be seen to using both hands to open a folding knife.

SALT LAKE CITY'S PATTERN OF RACIALLY BIASED POLICING

125. Salt Lake City has an unfortunate history of racially biased policing and use of force.

³ See, e.g., Anthony Awaken, Four Options for Deploying Your Knife, November 11, 2016, Recycled Firefighter (available at <https://recycledfirefighter.com/blogs/news/knife-opening-types>) ("These type of manual openers will also require 2 hands to open.").

126. In 2018 alone, there were seven police shootings in Salt Lake County. Of those seven shootings, four of the victims were people of color.

127. In 2018, all three fatal shootings in Salt Lake County involved people of color.

128. Salt Lake's excessive force and racial-policing problem has a deeply-rooted and well-established history.

129. In August 2014, a SLCPD Officer shot and killed Dillon Taylor, an unarmed 20-year old man.

130. In January 2015, a SLCPD officer shot and killed James Barker, in part because he was armed with a snow shovel.

131. In January 2016, the SLCPD settled a lawsuit which alleged that it had engaged in a racially motivated gang sweep of a local high school, exclusively targeting and arresting Latino, African American, and Pacific Islander students. See Complaint, *Winston v. Salt Lake City, et al.*, 12-cv-01134-PMW, WL 6216571 (D. UT 2012). The settlement included a term that "SLCPD officers shall not use race, color, ethnicity, or national origin in exercising discretion to conduct a warrantless stop or search, or to seek a warrant."

132. In February 2016, a SLCPD officer shot and paralyzed 17-year-old Abdi Mohamed, who had been carrying a mop handle.

133. These high-profile examples are indicative of the culture of excessive force and racially charged police tactics that pervade the SLCPD.

V. STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**42 U.S.C. 193 – Fourth Amendment Through Fourteenth Amendment
Excessive Force
(Against Officer Fox)**

134. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

135. Defendant Fox is a person for purposes of 42 U.S.C. § 1983.

136. At all times relevant to this claim, Defendant Fox was acting under the color of state law in his capacity as a Salt Lake City Police Department law enforcement officer.

137. Mr. Harmon had a clearly established constitutional right under the Fourth Amendment to the United States Constitution to be secure in his person against unreasonable seizure through excessive force, including excessive deadly force.

138. At all times relevant to this claim, it was clearly established that law enforcement cannot use deadly force against a suspect where a reasonable officer on the scene would have not found probable cause to believe there was a threat of serious physical harm to him or herself or others.

139. Defendant Fox engaged in deadly force that was objectively unreasonable in light of the facts and circumstances confronting him, violating Mr. Harmon's right to be free from excessive force.

140. Mr. Harmon did not pose an actual and imminent threat of serious bodily injury or death to any persons when Defendant Fox shot and killed him.

141. It was not objectively reasonable to shoot Mr. Harmon, who was unarmed and fleeing from the officers. Defendant Fox had no objectively reasonable belief that

Mr. Harmon posed an actual and imminent threat of serious bodily injury or death to any persons when Defendant Fox employed deadly force.

142. Defendant Fox's claim that Mr. Harmon had drawn a knife was objectively unreasonable. Evidence that his belief was unreasonable is that no knife is visible on the body camera footage, the officers never identified Mr. Harmon as holding a knife on the video, no other officer shot Mr. Harmon (or even drew their firearms), and none of them moved to secure a knife after he was shot.

143. Additional evidence that Defendant Fox's use of deadly force was objectively unreasonable is the video evidence showing Mr. Harmon being shot while fleeing from the officers. This is especially true in light of the fact that Defendant Fox did not order Mr. Harmon to drop a weapon or give him any chance to surrender. Instead, Defendant Fox shot Mr. Harmon dead just seconds after yelling "I'll fucking shoot you."

144. To the extent that Defendant Fox reasonably felt in danger of serious bodily injury or death, he created the need for deadly force in this incident through his own reckless, deliberate conduct that was immediately connected to his use of excessive deadly force.

145. By approaching Mr. Harmon with his gun drawn at a close distance, failing to issue a single warning, and limiting the distance between himself and Mr. Harmon, Defendant Fox created an unnecessarily dangerous situation. However, Mr. Harmon posed no danger as he was unarmed and fleeing when he was shot.

146. Defendant Fox's actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Mr. Harmon's federally protected rights.

147. Defendant Fox's actions were the legal and proximate cause of Mr. Harmon's death.

148. Defendant Fox's actions caused Mr. Harmon damages in that he suffered extreme physical and mental pain as a result of being shot in the thigh, arm, and buttock.

149. Defendant Fox's actions as described herein deprived Mr. Harmon of his constitutional rights and caused him other damages.

150. As a proximate result of Defendants' unlawful conduct, Mr. Harmon's Estate and heirs have suffered actual physical and emotional injuries in amounts to be determined at trial. These injuries include, but are not limited to, loss of constitutional and federal rights, physical injuries, extraordinary pain and suffering at the time of death, emotional distress and hedonic damages to which his Estate is entitled to claim on his behalf, and for his loss of enjoyment of life and the value of his life and continuing familial relationships.

SECOND CLAIM FOR RELIEF

**42 U.S.C. § 1983 – Fourth Amendment Through Fourteenth Amendment
Deliberately Indifferent Policies, Practices, Customs, Training, Supervision,
and Ratification
Fourteenth Amendment
(Defendant City of Salt Lake)**

151. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

152. At all times relevant to this claim, Defendant Salt Lake City failed to properly train, supervise, and discipline its officers in a manner amounting to deliberate indifference with respect to excessive force by police officers generally, and including obviously recurring situations faced by police such as suspects fleeing from arrest.

153. Defendant Salt Lake City's policies, customs, and practices, and failure to properly train, supervise and/or discipline its officers included the failure to train officers on avoiding the reckless and deliberate creation of the need to use force.

154. Defendant Fox's use of force arose under circumstances that constitute a usual and recurring situation with which police officers must deal, particularly suspects fleeing from arrest.

155. Defendant Salt Lake City failed to discipline, train, and supervise Defendant Fox concerning the Fourth Amendment and the use of excessive force, including deadly force, pedestrian stop and arrests, and the avoidance of the reckless and deliberate creation of the need to use force.

156. In light of the duties and responsibilities of those police officers that participate in arrests and covert operations, the need for specialized training is obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights, that not providing such training and supervision was deliberately indifferent.

157. Defendant Salt Lake City has trained its officers that they should always respond with lethal force if there is even the potential that a suspect has weapon. Essentially, Defendant Salt Lake City trains its officers to shoot first and ask questions later.

158. Defendant Fox fatally shot Mr. Harmon based on an objectively unreasonable threat perception without even waiting for other officers to employ available less lethal options.

159. Defendant Fox has stated that he acted pursuant to his training when he shot Mr. Harmon to death without justification.

160. Confirming that Defendant Fox acted in accordance with his training, Defendant Salt Lake City has not disciplined Defendant Fox for shooting Mr. Harmon.

161. Defendant Salt Lake City has failed to train and supervise its officers on the use of deadly force, and what a reasonable officer would perceive to pose an imminent threat to life of self or others.

162. Defendant Salt Lake City's conduct with respect to its failure to train and supervise its officers on the use of deadly force was a driving force behind the constitutional violations described herein.

163. The constitutional violations against and harming of decedent Mr. Harmon was a foreseeable consequence of Defendant Salt Lake City's actions and omissions.

164. Defendant Salt City was deliberately indifferent to the constitutional rights of members of the public, knowing that its officers presented a danger to them, by failing to properly train, monitor, supervise, and discipline its employees with respect to the use of excessive force, including in the specific principles described above. Defendant Salt Lake City could have and should have pursued reasonable methods of training, monitoring, supervising, and disciplining its employees.

165. Defendant Salt Lake City's policies, customs, and/or practices and failure to properly train and supervise its employees, including Defendant Fox, were the

moving force and proximate cause of the violation of decedent Mr. Harmon's constitutional rights.

166. Defendant Salt Lake City's actions and omissions caused Plaintiffs damages.

167. Defendant Salt Lake City's actions and omissions as described herein deprived Plaintiffs of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America and caused them other damages.

168. As a proximate result of Defendants' unlawful conduct, Mr. Harmon's Estate and heirs have suffered actual physical and emotional injuries in amounts to be determined at trial. These injuries include, but are not limited to, loss of constitutional and federal rights, physical injuries, extraordinary pain and suffering at the time of death, emotional distress and hedonic damages to which his Estate is entitled to claim on his behalf, and for his loss of enjoyment of life and the value of his life and continuing familial relationships.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983 – Fourteenth Amendment
Equal Protection Clause
(All Defendants)

169. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

170. At the time of the events described herein, Mr. Harmon had the clearly established constitutional right to be free from racial discrimination in law enforcement by police officers and to enjoy the equal protection of the law.

171. Mr. Harmon, as a black man, was a member of protected class, and thus also had the clearly established right to be free from racially motivated use of force.

172. Any reasonable police officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established.

173. The SLCPD exercises force against racial minorities at a disproportionately high rate.

174. The SCLPD exercises force against black persons at a disproportionately high rate.

175. In a city that is just 2.7% Black, SLCPD used force against black persons in 13.1% of all use of force incidents between January 2017 and December 2018.

176. Mr. Harmon's race was a substantial motivating factor in Defendant Fox's decision to use excessive force against him.

177. The acts or omissions of Defendant Salt Lake City as described herein deprived Plaintiffs of Mr. Harmon's constitutional right to be free from excessive force due to his race.

178. At all times relevant to this claim, Defendant Salt Lake City maintained longstanding policies, customs, and practices concerning unlawful race discrimination perpetrated by its police department, and failed to properly train, supervise, and discipline its officers in a manner amounting to deliberate indifference with respect to excessive force by police officers generally, and failure to train its officers on the use of deadly force.

179. Defendant Salt Lake City's policies, customs, and/or practices and failure to properly monitor, train, supervise and discipline its employees were the moving force and proximate cause of the violation of decedent Patrick Harmon Sr.'s constitutional rights.

180. Defendant Salt Lake City's acts or omissions are the proximate cause of Plaintiffs' damages.

FOURTH CLAIM FOR RELIEF
U.C.A. § 78B-3-106 – Death of a Person Caused by Wrongful Act
Utah State Law
(Defendant Fox)

181. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

182. Patrick Harmon II and Tasha Smith, as Mr. Harmon's natural children and heirs, are entitled to maintain a cause of action against Defendants for damages sustained based on Defendants' wrongful acts.

183. Officer Fox's shooting of Mr. Harmon was wrongful, willful, and unreasonable given the facts and circumstances at the time of the shooting and resulted in Mr. Harmon's death.

184. As alleged above, Officer Fox utilized excessive force by shooting Mr. Harmon, who was unarmed and did not reasonably present a danger to Officer Fox or the other officers.

185. Officer Fox acted with willfully and maliciously in by shooting Mr. Harmon, who was unarmed and fleeing.

186. Plaintiffs Harmon II and Smith have suffered damage as a result of Mr. Harmon's wrongful death.

187. Defendant Fox's acts and omissions caused Plaintiffs Harmon II and Smith's damages.

188. Plaintiffs Mr. Harmon II and Ms. Smith's damages include costs associated with his death and the value of services he would have provided, and the

loss of his society, comfort, association, love, counsel, care, consortium, protection, and the reasonable expectations of association with Mr. Harmon for the rest of his natural life.

FIFTH CLAIM FOR RELIEF
Article I, Section IX of the Utah State Constitution
Excessive Rigor
(All Defendants)

189. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

190. As alleged above, Officer Fox utilized unnecessary rigor to effect Mr. Harmon's arrest.

191. By shooting Mr. Harmon, who was unarmed and did not reasonably present a danger to Officer Fox or the other officers, Officer Fox's actions flagrantly violated Mr. Harmon's rights under the Utah state constitution.

192. Defendant Fox's actions were the legal and proximate cause of Mr. Harmon's death.

193. Defendant Fox's actions caused Mr. Harmon damages in that he suffered extreme physical and mental pain as a result of being shot in the thigh, arm, and buttock.

194. Defendant Fox's actions as described herein deprived Mr. Harmon of his rights under the constitution of the state of Utah and caused him other damages

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and award them all relief allowed by law, including but not limited to the following:

- (a) All appropriate relief at law and equity;
- (b) Declaratory relief and other appropriate equitable relief;
- (c) Economic losses on all claims as allowed by law;
- (d) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (e) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (f) Attorneys' fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- (g) Pre- and post-judgment interest at the appropriate lawful rate; and
- (h) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated: July 1, 2019

Respectfully submitted,

s/ Andrew G. Deiss
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**denotes counsel who will seek pro hac vice admission*