



DANIEL SHUE

PROSECUTING ATTORNEY
TWELFTH JUDICIAL DISTRICT

SEBASTIAN COUNTY COURTS BUILDING
901 SOUTH B STREET, SUITE 209
FORT SMITH, ARKANSAS 72901
GENERAL OFFICE 479-783-8976

479-784-1554 (Restitution) 479-783-1069 (Victim/Witness)

November 8, 2023

VIA HAND DELIVERY

Agent Dwight Roam
Arkansas State Police
5728 Kelly Highway
Fort Smith, AR 72904

Re: USE OF FORCE

Dear Agent Roam:

The Office of the Prosecuting Attorney has completed its review of the investigative reports surrounding the shooting of Michael Fairburn. Michael Fairburn was shot at approximately 8:40 p.m. on October 25, 2023. I have reviewed the entire investigative file, including the police report, witness statements, and the body camera video of the officers involved, as well as a video taken by a citizen at the time of the incident. It is the opinion of this office that the involvement of Fort Smith Police Department officers Tucker Romesburg and Caleb Jenkins in discharging their weapons was justified under the laws of the State of Arkansas.

This decision is governed first by Arkansas Code Annotated § 5-2-610, Use of Physical Force by Law Enforcement Officers, which reads, in pertinent part, as follows:

(b) A law enforcement officer is justified in using deadly physical force upon another person if the law enforcement officer reasonably believes that the use of deadly physical force is necessary to:

(1) effect an arrest or to prevent the escape from custody of an arrested person whom the law enforcement officer reasonably believes has committed or attempted to commit a felony and is presently armed or dangerous; or

(2) defend himself or herself or a third person from what the law enforcement officer reasonably believes to be the use or imminent use of deadly physical force.

Under Arkansas law, deadly force is statutorily defined as “physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury” A.C.A. § 5-2-601(2). Further, pursuant to A.C.A. § 5-1-102(4) “Deadly Weapon” means: (A) firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious physical injury; or (B) anything that in the manner of its use or intended use is capable of causing death or serious physical injury;”.

From the facts and circumstances we know, this incident started in a wooded area across from Shamrock Liquor Store in Fort Smith when three FSPD Officers were trying to serve a felony warrant out of Indiana for the arrest of Michael Fairburn. They found Fairburn, and after they announced who they were, Fairburn threatened to kill the officers, brandished a knife, and aggressively walked towards (and lunged towards) the officers. His aggressive actions caused Officer Romesburg to back-pedal and fall to the ground, after which Romesburg regained his footing and continued to give Fairburn verbal commands to drop the knife and get on the ground. Fairburn then fled across Midland Boulevard towards Shamrock Liquor, and Officer Lewis attempted unsuccessfully to tase him. Fairburn then threw a knife at Officer Lewis (striking him in the inner thigh of his right leg) and was holding a second knife in his other hand when officers discharged their weapons. Officers then called for EMS and Romesburg undertook life saving measures by applying tourniquets to both of the Defendant's legs to stop him from bleeding out. Fairburn was then transported to Baptist Health, and later to UAMS in Little Rock. During interviews with officers, it was learned that Officer Lewis had an encounter with Fairburn on October 24, 2023 (the day before this incident) when Fairburn had fled from Officer Lewis, and left an area from which Lewis seized a BB air rifle and several knives that were stuck in a piece of wood. Lewis advised that it had appeared Fairburn had been throwing the knives at the wood.

Various videos were collected during the course of the investigation. Officers Tucker Romesburg, Arthur Lewis, and Caleb Jenkins all had body camera, and a review of their body camera shows them making contact with Fairburn and identifying themselves as police officers, after which Fairburn brandishes a knife at them, states multiple times that he is going to kill them, and refuses to drop the knife although he is repeatedly told to drop the knife. The videos also reveal Fairburn throwing a knife with his right hand that strikes Officer Arthur Lewis in the leg. Fairburn's other hand shows to be clenched into a fist as if grasping an item. After the knife is thrown, officers fire the shots that take him down. A video taken by a concerned citizen also shows Fairburn throwing the knife at officers, and the citizen can be heard remarking on the fact that he was throwing knives at police officers.

Numerous witness statements were taken during the course of the investigation. Tucker Romesburg was interviewed by the Arkansas State Police, and Romesburg stated that he had been with FSPD since August of 2021. He stated that he and Officer Lewis went to an unrelated call earlier during his shift on October 25, 2023, and Lewis told him about Fairburn, stating that Fairburn was a "good knife thrower". Romesburg stated that he, Officer Lewis, and Officer Jenkins went to 5520 Midland Boulevard in an attempt to locate Fairburn. Romesburg advised that the property owner said Fairburn wasn't there, but he would contact them when Fairburn came back. Later in the shift, Romesburg advised that they did get the call about Fairburn's return, and he, Lewis, and Jenkins parked at the Dairy Freeze and walked to the wooded area where Fairburn was supposed to be located.

Romesburg stated that while they were approaching the area, Fairburn ducked under a hole in the fence and started walking away from them. Jenkins stayed behind while he and Officer Lewis went through the fence. Romesburg stated he then shined his light at the subject who asked who he was. Romesburg stated that he identified himself as Officer Romesburg with the Fort Smith Police Department, and said at that point Fairburn became belligerent and pulled a knife out of his pocket. Romesburg thought the subject possibly had a second knife in his other hand. As a result, Romesburg stated he drew his firearm and began giving verbal commands to Fairburn to drop the knife, while Fairburn yelled that he was going to kill him. He stated that Fairburn also yelled "kill me".

Romesburg stated that Fairburn would walk towards him with the knife and then would back up. Fairburn then turned and started to run away. He stated that Jenkins and Lewis joined him at this point and gave chase to Fairburn as he exited the wooded area and approached Midland Boulevard. He stated that once they were on Midland Boulevard, Lewis attempted to tase Fairburn, but was unsuccessful. Romesburg stated that Fairburn then continued north across Midland Boulevard and turned around and took the knife he had in his right hand and threw it at Officer Lewis. At that point, Romesburg stated that he and Jenkins shot Fairburn. He stated that after Fairburn went to the ground, they cleared the knives from Fairburn's area, called EMS, and he (Romesburg) applied tourniquets to both of Fairburn's legs. Romesburg went on to state that when he fired his weapon, he was thinking about the other knife that Fairburn had and how he wanted to stop him before he had a chance to throw the other knife at someone.

Officer Arthur Lewis was interviewed by Arkansas State Police, and he stated that he has been with FSPD since June 16, 2016. Lewis advised that the night prior to this incident he was dispatched to 5520 Midland Boulevard regarding Michael Fairburn. Lewis stated that the owner of the property called dispatch advising them that Fairburn was there with a machete and would not leave. Lewis stated that when he arrived on the scene he spoke to Fairburn, and Fairburn stated that he lived behind 5520 Midland in the woods. Lewis advised that Fairburn fled and was not seen again that night. Lewis stated that he then saw where Fairburn had been throwing knives at a piece of wood, and he collected four knives that night along with a BB air rifle.

Arthur Lewis went on to state that he discovered that Fairburn had an outstanding felony warrant out of Indiana, so he, Romesburg, and Jenkins decided to go back to the 5520 Midland Boulevard area to attempt to arrest Fairburn on the felony warrant. When they arrived, the property owner told them that Fairburn was not there, but that he would be back in a few hours. Later in the shift, Lewis received a call from dispatch advising that Fairburn was back at the address. He stated that he, Officer Romesburg, and Officer Jenkins arrived on the scene and parked at the Dairy Freeze located at 5400 Midland Boulevard, southwest of the address where Fairburn was supposed to be located. He then advised Officers Jenkins and Romesburg to be cautious because Fairburn

was known to throw knives. Officer Lewis advised that he and Romesburg went ahead while Jenkins stayed back. He stated that he and Romesburg split up, and he heard Officer Romesburg giving Fairburn verbal commands to drop the knife. Lewis stated that when he got to Officers Romesburg and Fairburn, he drew his firearm and began giving verbal commands to Fairburn as well. He advised shortly after he confronted Fairburn with Officer Romesburg, Officer Jenkins arrived. Lewis stated that Fairburn then ran up the hill, out of the woods, and continued north onto Midland Boulevard.

Officer Lewis stated that he then holstered his firearm and drew his taser to have less lethal coverage since Officers Romesburg and Jenkins had lethal coverage with their firearms drawn. Lewis then deployed the taser, but the use of the taser was unsuccessful. He stated that Fairburn then ran north onto the sidewalk on the north side of Midland Boulevard in front of Shamrock Liquor Warehouse. He stated that once Fairburn was on the sidewalk in front of Shamrock Liquor, Fairburn quickly turned around and threw a knife at him. The handle of the knife struck Officer Lewis on the inner thigh of his right leg, and he advised that just as Fairburn threw the knife, Officers Romesburg and Jenkins fired their service weapons causing Fairburn to fall to the ground. He went on to state that after Fairburn fell to the ground, Romesburg applied two tourniquets to Fairburn (one on each leg) prior to the arrival of EMS.

Arkansas State Police Officers also interviewed Officer Caleb Jenkins with the Fort Smith Police Department. Officer Jenkins advised that he has been with the Fort Smith Police Department since May 16, 2022. He advised that on the night of the incident, he, Officer Romesburg, and Officer Lewis had gone out to 5520 Midland Boulevard to attempt to serve an arrest warrant on Fairburn, but he wasn't there. He stated that later in the shift, while he was on an alarm call, he received a telephone call from Officer Romesburg advising that Fairburn was back, and they were headed out there in an attempt to locate him.

Prior to their arrival, Jenkins stated that he knew that Fairburn had fled Officer Lewis the day prior and that he was in possession of multiple knives. Jenkins advised that Fairburn also had an outstanding felony warrant for a sex crime out of Indiana. Jenkins went on to relate that when he arrived the second time with Officers Lewis and Romesburg, he parked at the Dairy Freeze and walked to the area where Fairburn was supposed to be located. Jenkins stated that he stayed back while Lewis and Romesburg crossed the gate. He stated that he was going to stay back in case Romesburg and Lewis flushed Fairburn out in his direction. Not long after that, Jenkins said he could hear Romesburg and Lewis yelling at someone in the woods to "drop the knife". Jenkins stated that he immediately went to where he heard the yelling and observed Fairburn holding two knives. Jenkins said that he began giving verbal commands to Fairburn to drop the knife, but Fairburn would not listen. Jenkins stated that he was concerned for his life as Fairburn was approaching him with a knife in each hand. He stated that he felt that Fairburn would attempt to kill him if he had the opportunity, but he was conflicted because the other officers were in a

crossfire situation. Jenkins also noted that he heard Fairburn say that he was going to kill them and that they needed to kill him.

Jenkins went on to state that Fairburn ran out of the woods onto Midland Boulevard through a deep ditch. Jenkins stated that he went around the ditch to stay on top of the road hoping to get in front of Fairburn. Officer Jenkins stated that he saw Lewis attempt to tase Fairburn, but Fairburn pulled the prongs out and continued across Midland Boulevard towards Shamrock Liquor Warehouse. When Fairburn got to the edge of the grass, Officer Jenkins advised that he observed Fairburn turn around and throw a knife at Officer Lewis that struck Lewis in the leg. Jenkins advised that when he saw this, he discharged his firearm at Fairburn. He also stated that he knew Fairburn had an additional knife in his other hand. Officer Jenkins stated that after Fairburn went down, he was placed in handcuffs, and Jenkins then asked for a chest seal so he could render aid to Fairburn.

Officers interviewed Shyi Bolz, who stated that Fairburn was a wanted fugitive from Indiana and that FSPD had been attempting to locate Fairburn. Bolz said that Fairburn had been working for him since December of 2022 doing side jobs. He went on to explain that Fairburn had been having issues with the customers. Specifically, a few days prior to this incident, Fairburn hit a customer with a machete and began poking her with it. Bolz said that on October 24, 2023, Fairburn had been able to get away from police officers, so when Fairburn returned on October 25, 2023 to collect his belongings, Bolz called the non-emergency police line and told dispatch that Fairburn was back. He stated that he was present when several FSPD officers arrived at his business and made contact with Fairburn in a wooded area next to the business. Bolz went on to relay that he heard the officers verbally command Fairburn to get on the ground and drop the weapon. Bolz stated that he did not see what kind of weapon Fairburn had at the time. He said that when Fairburn and the officers entered Midland Boulevard, he observed that Fairburn had a knife. Bolz saw one of the officers deploy his taser on Fairburn and he also saw Fairburn throw the knife at an officer. He said it appeared like the knife struck the officer. After the knife was thrown, he saw two officers shoot Fairburn.

Officers also interviewed Anthony Andrews, who stated that he was present when the property owner, Shyi Bolz, contacted law enforcement on Michael Fairburn. Andrews said that Fairburn was wanted in Van Buren, Arkansas and Indiana. Andrews said the officers located Fairburn in a wooded area near his location, and he heard Fairburn tell the officers to get away from him. Andrews said Fairburn and three officers exited the wooded area and entered Midland Boulevard. Andrews said that the officers deployed their tasers, but Fairburn did not go down. Andrews said Fairburn then threw a knife at one of the officers, and the officers drew their weapons and shot Fairburn. Andrews stated that the officer's life was threatened, and that they did what they had to do.

Officers interviewed Lesley Alvarenga, who stated that she was present when the property owner, Shyi Bolz, contacted law enforcement on Michael Fairburn. Alvarenga said she knew Fairburn as “Boone” and that he was wanted by law enforcement. Alvarenga said that she, Shyi Bolz, and Anthony Andrews saw Fairburn close to Bolz’ business. Bolz then called law enforcement and advised that Fairburn was at the property. Alvarenga said the officers went to a wooded area close to their location and she heard the officers give Fairburn commands to get on the ground. Alvarenga said she then saw Fairburn and the officers come out of the wooded area, and said that Fairburn entered Midland Boulevard and stopped. Alvarenga related that Fairburn was still not compliant with officer’s commands, and she stated that Fairburn was mocking and taunting the officers. Alvarenga then witnessed Fairburn throw a knife at an officer after which the officers shot Fairburn.

The second knife that Fairburn held in his left hand was located at the scene. At Baptist Health, while the ER staff was attending Fairburn, they located the following items in his clothes and/or on his person: a baggie of suspected methamphetamine, a second baggie with white residue, a baggie with a small amount of suspected marijuana, additional empty baggies, rolling papers, and a glass pipe. The Defendant is a habitual felon who has more than four prior felony convictions, and he is a sex offender who is required to register.

Considering the totality of the circumstances, Officers Romesburg and Jenkins had a reasonable belief that Michael Fairburn was in the process of committing the offenses of Attempted Capital Murder and Attempted Battery in the First Degree of a Law Enforcement Officer and that he was holding a second knife which he might use to attempt a further count of Attempted Capital Murder at the time that they fired on Fairburn. Officer Lewis had been unsuccessful in tasing Fairburn, and Officers Romesburg and Jenkins were confronted with an armed and dangerous assailant. Law enforcement officers are required to make split second decisions to exercise deadly force or not to use deadly force, and they are trained to use tactical techniques to mitigate or deescalate the potential lethality of an encounter with another person. Had Officer Romesburg and Jenkins not shot Fairburn, I could just as easily be writing a letter to the family of Officers Romesburg, Jenkins, or Lewis regarding their homicide as I am trying to evaluate the use of force by an officer to defend himself against one of our citizens.

In *Graham v. Conner*, 490 U.S. 386 (1989), the United States Supreme Court declared the law with regard to use of force analysis: the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 perspective of hindsight; the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving regarding the amount of force that is necessary in a particular situation; the reasonableness inquiry in an excessive force case is an objective one—the question is whether officers’ actions are objectively reasonable in light of the facts and circumstances

Agent Dwight Roam
Re: Use of Force
November 8, 2023
Page 7 of 7

confronting them, without regard to their underlying intent or motivation. In this situation where Fairburn was actively attempting to murder or batter the officers with a knife, I do not find Officer Jenkins' and Officer Romesburg's use of deadly force to be unreasonable at the moment they made the decision to fire. Probable cause to charge Officer Romesburg or Officer Jenkins with a criminal act does not exist. The shooting of Michael Fairburn by Officers Romesburg and Jenkins was justified under Arkansas law and the result of deadly physical force being reasonably and justifiably applied pursuant to the above-referenced statute and relevant Constitutional law.

SINCERELY,



DANIEL SHUE
PROSECUTING ATTORNEY

DS:kgk
CC: Chief Danny Baker FSPD