

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT DEPARTMENT
NEWTON DISTRICT COURT
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REPORT ON THE INQUEST INTO THE DEATH OF MICHAEL CONLON
IN NEWTON, MASSACHUSETTS ON JANUARY 5, 2021

On January 5, 2021, Michael Conlon (Conlon), age 23, was shot by Newton Police Officers Richard Benes and Francis Scaltreto at 18 Lincoln Street in Newton, Massachusetts, and died as a result. The circumstances of his death are the subject of this inquest. Conlon's death was the subject of a State Police investigation. His death was classified as an on-duty police shooting. The Middlesex District Attorney, Marian T. Ryan, chose not to make a charging decision. On June 4, 2021, the District Attorney requested that the District Court, Newton Division, conduct an inquest into the death under the provisions of G.L. c. 38, § 8. The Chief Justice of the District Court, Hon. Paul C. Dawley, by order dated June 10, 2021, assigned Hon. Jeanmarie Carroll (the court) for purposes of conducting an inquest.

An inquest is a quasi-judicial proceeding whose purpose is to establish how a person died or "when, where, and by what means" a person died and "all material circumstances attending the death, and the name...of any person whose unlawful act or negligence appears to have contributed" to the death. G.L. c. 38, § 10. The statutory reference to "negligence" does not change the focus of an inquest, which is to determine if a crime has been committed. See District Court Standards of Judicial Practice: Inquest Proceedings (1990) ("Standard"), Standard 4:01.

The unique character of the inquest procedure focuses on the investigatory role of the judge. Inquests are not adversarial, and it is the judge who must control the procedure and ensure that all relevant information is produced. There are no procedural rules of court applicable to the conduct of inquests; the rules of criminal and civil procedure do not apply.

To conduct a thorough investigation and properly serve the lawful investigative purpose of the inquest, the court permitted the presentation of some evidence that would not be admissible in a criminal trial. In its findings, however, the court considered only evidence that it determined to be substantially reliable. Following the guidance of Standard 4.00, the court applied a preponderance of the credible evidence standard.

The court was assisted by General Counsel Bethany Stevens from the Administrative Office of the District Court and Lawrence Okstein, Assistant Clerk Magistrate of the Newton District Court. The court conducted preliminary hearings (by Zoom on the record) on August 18, September 13, October 6, and November 30, 2021, with Assistant District Attorney Christopher M. Tarrant, who appeared for the Commonwealth; Attorney Kenneth H. Anderson, who appeared for Members of the Newton Police Superior Officers Association, Attorney Alan MacDonald who appeared for the Newton Police Association, including Officers Richard Benes and Francis Scaltreto, the identified targets of the inquest; and Attorney Kimberly West, who appeared for the Conlon family. The purpose of these preliminary hearings was to discuss the procedures to be followed at the inquest, any potential issues, scheduling, and arranging for a view. All four attorneys participated in all inquest proceedings, were given access to view all impounded materials, and allowed to question witnesses.

THE HEARING

In accordance with the statutory mandate, the court conducted a hearing to determine the circumstances surrounding the death of Conlon and whether an unlawful act caused Conlon's death. The hearing commenced on December 6, 2021, and continued for three additional days over six weeks concluding on January 27, 2022. The court heard from nineteen witnesses and fifty-five exhibits were admitted into evidence.¹ The court followed the procedures set forth in G.L. c. 38, §§ 8 and 12, and in *Kennedy v. Justices of District Court of Dukes County*, 356 Mass. 367, 378 (1969). The court also utilized the Standards as a guide. Under the *Kennedy* procedures, the public was excluded from the hearing. The family of Conlon were all permitted to attend the hearing. Witnesses were sequestered. Benes and Scaltreto were present in court for all testimony.

Findings of Fact

The court makes the following findings of fact based on the credible evidence it received and inferences drawn therefrom:

The View

On Monday, December 6, 2021, the court conducted a view at 18 Lincoln Street, Newton, Massachusetts. The purpose of the view was to assist the court in understanding the evidence to be presented. The building at 18 Lincoln Street is a multi-unit apartment complex above two storefronts; Indulge! (16 Lincoln Street) and Walnut Food Shop (20 Lincoln Street). The

¹ Officers Benes and Scaltreto did not testify at the hearing. They submitted recorded interviews/transcripts which the Massachusetts State Police conducted on January 7, 2021.

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entrance to the apartments is between the two storefronts. Once inside, stairs lead up to the apartments. Apartments #1 and #2 are located on the second floor of the building. Apartments #3 and #4 are on the third floor of the building. The hallways are extremely narrow – thirty-three inches from the banister to the wall – and there are small landings in front of apartment doors.

The front entrances to apartments 3 and 4 are approximately 13 feet apart and located at opposite ends of the third-floor hallway.² An entrance at the rear of 18 Lincoln Street leads to a very steep and narrow staircase that provides access to common areas and the rear porches of apartments #3 and #4.

Testimony regarding events of January 5, 2021

On January 5, 2021, Linda Gulman was working alone in her store, Indulgences at 18 Lincoln Street, Newton Highlands, MA. Gulman was speaking on the phone with the Postal Service when Michael Conlon, a regular customer entered the store. Conlon lived above the store and would frequent the store weekly to purchase the same amounts of the same candy. He was always respectful to Gulman and she never had a problem with him. On this day, he was unmasked and appeared rattled and unhinged. Gulman was preparing to tell him he needed to put on a mask when she noticed what appeared to be a kitchen steak knife in his right hand. Holding the knife at his waist, he told Gulman he wanted her to come upstairs with him because he wanted to show her and that "D" girl something. Gulman managed to disconnect

² The front entrance to unit four is nearest to Lincoln Street.

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her phone call and somehow dial 911 leaving the line open while she continued to speak with Conlon. Gulman told Conlon several times that he was scaring her and that she would not go upstairs with him. Conlon continued to plead with her to come upstairs and talk to his third-floor neighbor. Gulman persuaded him to leave the store saying she would meet him outside after she locked the door. Gulman's conversation with Conlon was captured on the 911 recording. Conlon noticed the police arriving and fled into his building at 18 Lincoln Street.

Casey Murtagh, the resident of 18 Lincoln St unit #4, was working from home, when, at 1:45 p.m., she heard loud banging and screaming in the hallway outside her apartment. She peered out her front door and saw her downstairs neighbor, Michael Conlon, banging on the door to unit #3, Danielle "Dani" Kaflon's apartment. While banging on the door, Conlon was screaming and pleading for Dani asking if she was "in on this". He was yelling he wanted the FBI and repeatedly saying how he was looking for his father – his "real" father and he was yelling about being in a simulation. Murtagh, who was aware Conlon had mental health issues, had sometimes seen him disconnected or disassociated, but had never seen him acting this way. Very quickly the police arrived. Conlon was threatening to kill himself and although she did not see a knife, she repeatedly heard the police yelling at him to "put down the knife".

From the window of her apartment, Murtagh saw Dani, standing in front of the hair salon where she worked. Murtagh called Dani on the phone and told her what was happening and that Conlon was looking for her. Dani informed the police there was a back door to the building and offered to unlock it for them. She told them she knew that Conlon, her downstairs neighbor, was looking for her and asked if she could talk to him. An officer on-scene said they

would look for her in about 10 minutes. Dani stayed on site for a bit but, due to the cold weather, went back inside the hair salon. She never spoke to Conlon.

Murtagh heard the police coming up the back stairs. She opened the door and allowed them access to her apartment. After providing them some information regarding the layout and Conlon, she asked if she could leave.

Officer Zachary Raymond, a 20-year veteran of the department was the first Newton Police officer on the scene. Raymond, was on patrol when at 1:45 pm he was dispatched to an armed robbery at 16 Lincoln Street in Newton Highlands. Raymond was less than a minute away. Upon arrival, he saw a woman frantically waving to her left where he saw a party, later known to him as Conlon, wearing a large green coat and holding a knife in his right hand. Raymond drew his firearm and repeatedly commanded Conlon to drop the knife. Conlon turned and ran into the building at 18 Lincoln Street. Raymond, with Officer Alexander Spinney closely behind him, followed Conlon into the building yelling to him to drop the knife. Raymond followed Conlon up to the second floor while Conlon continued up to the third floor. Conlon stopped at the top of the stairs leading to the third floor. He was standing in front of apartment 3. He placed the knife to his throat and threatened to kill himself if the officers came any closer. The officers stopped advancing and remained on the second-floor landing. An apartment door to their left was open.

Conlon was agitated and yelled about being in a "simulation". He banged aggressively on the door to unit 3 yelling for Dani to "open the door and come out". Conlon was screaming that the Newton police were fake, that he wanted the FBI, and that he wanted to contact his

father – his “real father”. At some point, Conlon picked up a fire extinguisher and began swinging it around, threatening to throw it at the officers.³ Raymond, who prior to becoming a police officer had worked for the Department of Corrections and the Department of Mental Health and was trained in de-escalation techniques, tried to calm Conlon and diffuse the situation by engaging him and asking his name, offering to contact his father, and to get him help.

Additional Newton Officers arrived on the scene to assist. Lt. Kenneth D’Angelo, Sgt. Sean McLean, Det. Carolyn Curry, Officers Andrew Spinney, Frances Scaltreto, Michael Gaudet, Andrew Umina, and Captain Christopher Marzilli were all, at one time, on the second-floor landing. The Northeastern Massachusetts Law Enforcement Council (NEMLEC) was contacted, and a negotiator requested.⁴ Also on-site, although never requested to enter the building, was Sarah Eknaian, a social worker employed by the Newton Police Department.

McLean brought into the building with him his less-than-lethal shotgun, which is an orange shotgun that fires a bean bag and can hold five rounds.⁵ McLean, with the less-than-lethal, and D’Angelo, holding a body bunker, situated themselves near Raymond on the second floor at the foot of the stairs leading to the third floor. McLean kept the less-than-lethal shotgun shielded from Conlon’s sight. Efforts to engage with Conlon and develop a rapport

³ The officers were concerned that Conlon might use the fire extinguisher on them or charge down the stairs at them with sufficient force to push them back and through a second-floor window behind them.

⁴ NEMLEC is a consortium of 63 police departments in Middlesex, Essex, and Suffolk County and two County Sheriff’s Departments. Members of NEMLEC share resources and personnel to provide supplemental services and mutual aid when special circumstances arise.

⁵ Newton Sergeants assigned to patrol units carry these firearms and are specially trained in their use. Training is updated annually.

were made by several of the officers. Conlon, however, remained agitated, yelling and screaming at the officers. Conlon began asking the time and, when police told him, he responded that it was "fake time" and they only had minutes before he cut his own throat.

Marzilli exited the building where he approached Sgt. Glenn Chisholm and told him to get his less-than-lethal shotgun and head to the rear entrance of 18 Lincoln Street with additional officers to secure the back exit. Scaltreto joined Chisholm. Two troopers, who were on the scene with tasers, were asked to assist. The group of officers entered through the rear entrance of 18 Lincoln St. and headed up the steep and narrow rear staircase, which was dark, to the third floor. There, through a peephole in a door at the top of the back stairs, Conlon was observed with his hand to his throat, violently swinging a fire extinguisher, and screaming.

Marzilli came up the back stairs and joined the officers in apartment #4 where he observed Chisolm, holding his less-than-lethal shotgun, in the doorway of the front entrance to the apartment. Scaltreto, an officer recognized by colleagues for his ability to de-escalate situations involving mental health crises, was in the hallway, a few feet away from Chisolm, trying to engage with Conlon. He stood less than 13 feet from Conlon with nothing separating them. The two State Troopers, Officer McSweeney, and Officer Benes were also present in the apartment. Marzilli reassured the officers that they had plenty of time and that NEMILAC was on their way and to try and keep Conlon talking and wait this out.

Marzilli left apartment #4 and went outside of the building where he encountered Capt. Dennis Dowling, the incident commander, whom he updated on the situation. He advised Dowling that the incident involved an individual experiencing a mental health crisis and

informed him that NEMLAC was contacted. It was agreed that time was on their side and that they could "wait this out." Dowling proceeded up to apartment #4, entering through the rear entrance. Dowling could hear Conlon yelling and, at one point, he looked out the front door of the apartment and saw Conlon wearing a green army coat with a knife to his throat.

Marzilli returned to apartment #4 carrying a box of less-than-lethal rounds. Dowling and Marzilli discussed next steps. It was agreed that, if needed, Chisholm would use his less-than-lethal supported by the State Troopers with their tasers. Benes, with his lethal firearm, would be the backup. Chisholm handed Dowling the less-than-lethal to confirm that it was fully loaded. After checking the firearm, he handed it back to Chisholm and told him it was ready. Dowling left the apartment to join the officers on the second-floor landing and requested Marzilli to remain on the third floor.

Marzilli reviewed the strategy with the officers in the apartment and reiterated the hope that NEMLAC would arrive making it unnecessary to implement. The troopers expressed concern that the tasers might be ineffective because of the heavy coat Conlon was wearing. Scaltreto, who appeared to be making progress continued speaking with Conlon and attempting to de-escalate the situation.

Minutes after Dowling left for the second floor, Scaltreto repeatedly yelled out that Conlon had dropped the knife. Marzilli immediately radioed this information to Dowling telling him there was an opening to engage Conlon with the less-than-lethal. Dowling gave the go-ahead to engage and Marzilli instructed Chisholm to "take the shot". Chisholm, who was about twelve feet away from Conlon, stepped through the threshold of the apartment and sought to

aim the less-than-lethal shotgun at Conlon's center mass. Conlon was moving back and forth and waving his arms; Chisholm aimed for his collar bone and fired. The shotgun did not discharge.⁶ Chisholm attempted to clear the weapon but could not.⁷ Conlon grabbed the knife and ran at Chisholm. Officers repeatedly yelled, "drop the knife". Conlon held the knife up to shoulder level in his right hand and started to bring it down in a stabbing motion towards Chisholm. With the knife coming down just inches from Chisholm, Officers Scaltreto and Benes discharged their firearms and one of the troopers deployed his taser. Conlon fell in the hallway in front of the apartment door. The knife was found by Conlon's side and one of the officers kicked it away. Marzilli, assisted by Raymond, began to render aid to Conlon as paramedics entered the building.

Medical Testimony

An autopsy of Conlon was performed on January 6, 2021, by Dr. Christina Stanley, a medical examiner for the Massachusetts Office of the Chief Medical Examiner. Dr. Stanley testified that Conlon was six feet, two inches tall and weighed two hundred fifty-seven pounds. Dr. Stanley testified to the detection of methamphetamine, lorazepam, gabapentin, hydroxyzine, pseudoephedrine, and prescribed amphetamine, alprazolam, buprenorphine, chlorcyclizine, and quetiapine metabolite in femoral blood collected at autopsy.⁸ Dr. Stanley

⁶ Trooper Christian Howell observed something fall out of the less-than-lethal firearm when Chisholm attempted to fire it.

⁷ Newton Police Departments' inspection documents from July 2020 - February 2021 revealed that the less-than-lethal shotgun chambered and ejected rounds properly. Range personnel did not test fire the shotgun during these inspections. Lt. David Cahill of the State Police Firearms Identification Section tested the less-than-lethal on December 29, 2021, and it fired on each pull of the trigger. Its failure on January 5, 2021, may have been the result of operator error, bad ammunition, and/or a weapon's jam.

⁸ Dr. Stanley testified that the only illicit drug detected was methamphetamine, also known as crystal meth and that the level detected, 500 nanograms/ml, was very high. In her experience, she would typically see levels under 100 nanograms/ml.

testified that Conlon's death was the result of multiple gunshot wounds, and that the manner of death was a homicide at the hands of another as Conlon had been shot by police.

Use of Force Expert Testimony

Charles M. DiChiara (DiChiara), a member of NEMLEC, has been with the Waltham Police Department for 25 years and has been a police officer for 33 years. He has an extensive record of training and instructing and is a qualified expert in use of force by police officers. He testified as an expert on this case without offering an opinion on the particular facts or circumstances of Conlon's death. His testimony was consistent with the Newton Police Department Use of Force Policy (Policy) dated 6/15/20 (exhibit 18). The purpose of that Policy is to establish uniform guidelines for the lawful use of force by officers when necessary. Use of force is defined as the amount of force required by police to compel compliance from an unwilling individual. The policy defines levels of force available and provides officers with a use of force model that describes possible responses to different situations.

DiChiara's testimony focused on the use of lethal force. An officer may use lethal force to defend himself or another if the officer has reasonable ground to believe and actually believes, that he or she is in imminent danger of death or serious bodily injury. DiChiara highlighted that all officers within the Commonwealth of Massachusetts are trained under the "Totality Triangle" and are taught to respond to both the "risk assessment" of the arena they are operating in, as well as to respond to the "subject's actions."

Some of DiChiara's more pertinent testimony follows:

1. Police are trained to aim for center mass (chest/torso) because it is easier to hit the target. The police are not trained to aim for limbs because it is easier to miss and more likely they may hit a bystander.
2. A bullet proof vest is ineffective against edged weapons. A stab or puncture with a knife will penetrate a tactical vest.

3. The 21-foot rule applies to a subject with edged weapons and an officer with a holstered firearm. A person within 21 feet who possesses knives would be able to attack a police officer with a knife before the police officer would have time to draw his gun. Such a close distance would put the situation in a lethal arena.
4. A taser is an electric charge weapon that is intended to incapacitate a subject without using deadly force. It can be used at a distance with prongs and wires. A taser may be ineffective due to a subject's indifference to pain, clothing, muscle mass or a barrier.
5. Less-than-lethal shotguns may help to incapacitate a person. It can be effective to gain compliance of a person. It is necessary to have lethal coverage when using a nonlethal bean bag.
6. In a lethal situation where a person is resisting, even though they drop a knife, the ongoing nature of the event would make the use of less than lethal force reasonable.
7. Officers are trained to shoot to stop.
8. A shooting may be justified, but bad tactics may have caused it.

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Legal Conclusions

Michael Conlon died of multiple gunshot wounds sustained at 18 Lincoln Street, Newton, Massachusetts on January 5, 2021. Scaltreto and Benes each discharged their firearms multiple times. The firearm of Benes was matched to fatal injuries sustained by Conlon. The on-scene commander Captain Dowling issued the order to abandon efforts at de-escalation and engage Conlon with the less-than-lethal, an effort that was unsuccessful and resulted in

Conlon's death. The circumstances of the shooting were the subject of State Police and Newton Police investigations.

The goal of this inquest was to determine if the fatal shooting of Conlon was the result of an unlawful act or legally justified. Specifically, whether the actions of Officer Scaltreto, Officer Benes, or Captain Dowling, given all the circumstances confronting them at the scene, might constitute a criminal act in light of the applicable case law on the use of force by law enforcement.

It is not the purpose of the inquest to resolve or facilitate a determination of civil negligence or a civil suit for monetary damages.⁹ The court makes no recommendations as to possible prosecution. Ultimately, the decision whether to prosecute lies exclusively with the Middlesex County District Attorney (Standard 5:00). The District Attorney may make an independent decision to initiate a criminal prosecution by way of grand jury indictment or complaint.

To be a lawful or justified use of deadly force, the actions of the officer must be objectively reasonable, given all the circumstances confronting the officer at the scene. As the United States Supreme Court has observed, "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 vision 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

⁹The inquest and report should not address the issue of civil negligence per se.

tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386, 396-397 (1989).

Had the police waited for NEMLAC and a trained negotiator or had the less than lethal deployed properly Conlon might be alive. However, the actions of Benes/Scaltreto and the tactical decision-making of Dowling cannot be judged with 20/20 hindsight.

Applying the credible evidence to the applicable case law pertaining to the use of deadly force in defense of oneself or others, the court finds that the decision of Dowling to authorize officers to engage with the less-than-lethal shotgun was objectively reasonable within the meaning of *Graham v. Connor*. When Officers Benes and Scaltreto fired their weapons, any reasonable law enforcement officer in the same position would reasonably believe that he and his fellow officers as well as others, were in imminent danger of being seriously injured or killed. At that moment no reasonable alternative existed, except for the use of deadly force.

The court does not find that the actions of any of the Newton officers or supervisory responsibilities make them criminally responsible for the tragic death of Conlon or that they are otherwise criminally responsible.

The above constitutes the court’s report. The report and a copy will be forwarded to the Clerk-Magistrate of the Newton District Court, who is to transmit the official report and transcript to the Clerk-Magistrate of the Woburn Superior Court for filing upon receipt of the official transcript. A copy of the report and transcript shall be maintained at the Newton District

Court.

/s/ Jeanmarie Carroll
Jeanmarie Carroll, Justice

Dated: March 14, 2022

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