

**STATEMENT OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING RESULTS OF
THE INVESTIGATION INTO THE POLICE SHOOTING IN WATERTOWN, MA
ON APRIL 19, 2013**

The Middlesex District Attorney's Office and Massachusetts State Police Detectives assigned to the Middlesex District Attorney's Office have concluded the investigation into the circumstances surrounding the death of Tamerlan Tsarnaev, the injury to MBTA Police Officer Richard Donohue and the possible injury to Dzhokhar Tsarnaev on Laurel Street in Watertown on April 19, 2013. The issues addressed in this investigation were whether the police shooting of Tamerlan Tsarnaev (and likely Dzhokhar Tsarnaev) on Laurel Street and the shooting of Officer Richard Donohue near the corner of Laurel Street and Dexter Avenue amounted to criminal conduct or whether, in the totality of the circumstances, the officers who discharged their weapons were justified in their use of deadly force in the proper exercise of self-defense and/or defense of another.

The District Attorney's Office, by statute, has the duty and authority to direct and control all death investigations within Middlesex County. As such, the primary goal of the investigation was to determine if any person or persons bears/bear criminal responsibility in connection with the death of Tamerlan Tsarnaev. Additionally, the District Attorney's Office investigated the circumstances surrounding the injury to MBTA Officer Richard Donohue and the possible, even likely, injury to Dzhokhar Tsarnaev on Laurel Street in Watertown. The Middlesex District Attorney's Office's Chief of Homicide was assigned to direct the investigation.

This statement summarizes the results of the investigation. After applying the appropriate legal standards related to the use of deadly force in self-defense and/or defense of another, the criminal investigation into this matter is now closed without prosecution.

Materials Reviewed During the Investigation¹

During the course of the investigation into the shooting on Laurel Street in Watertown, information was gathered and reviewed from a wide variety of sources. All police officers who reported that they had fired their weapons were interviewed and those interviews were audio recorded. Three of those officers accompanied State Police investigators assigned to the Middlesex Detectives Unit to the location of Laurel and Dexter Avenue and identified their positions when they fired their weapons. Those three interviews were video-recorded. One of those three officers, MBTA Officer Lucas Kitto, was instrumental in identifying his partner Officer Richard Donohue's locations, activities and movements leading up to his being shot on the morning of April 19, 2013. Additionally, Boston Police officers who were present on scene during the incident but who did not fire their weapons were also interviewed and recorded by the Boston Police and those audio recordings were provided to the Middlesex investigators and were also reviewed.

¹ These materials include witness statements and exhibits that are expected to be offered at the trial of the case of Commonwealth v. Dzhokhar Tsarnaev, a matter presently pending in Middlesex Superior Court.

In the aftermath of the events on Laurel Street, a canvas of the neighborhood was conducted and those civilian interviews as well as photographs and videos taken by those civilians and provided to investigators were also reviewed.

Police radio communications and dispatch transmissions from the MIT Police, the Cambridge Police, the State Police, the Watertown Police, and the Boston Area Police Emergency Radio Network (BAPER²) were obtained and reviewed.

Police reports and witness statements were gathered and reviewed. Additionally, Massachusetts State Police Forensic Science Group reports concerning Firearms Identification, Fingerprints and Pattern Evidence, Criminalistics and DNA testing and the Explosives Unit response concerning the examination of the scene, the vehicles involved, and evidence collected were reviewed and carefully considered.

Records of the Office of the Chief Medical Examiner concerning the autopsy of Tamerlan Tsarnaev and medical records from the Beth Israel Deaconess Medical Center concerning the diagnosis and treatment of Dzhokhar Tsarnaev were obtained and reviewed in connection with this investigation. Additionally, information concerning the injury to Officer Donohue as the result of the gunshot wound he suffered was reviewed and considered.

Factual Summary

On Monday, April 15, 2013, the Boston Marathon was run. During the Marathon, explosive devices were detonated near the finish line of the race and three people were killed and hundreds more were seriously injured. As a result, the Boston Police, the Massachusetts State Police and the Federal Bureau of Investigation along with other federal agencies engaged in a joint investigation. Boston Police were placed on a special schedule which required all officers to work twelve hour shifts. That schedule was still in effect on April 19, 2013.

On Thursday, April 18, 2013, at or around 5:00 p.m., the Federal Bureau of Investigation released photographs depicting Dzhokhar Tsarnaev, and his brother, Tamerlan Tsarnaev. The FBI sought the public's assistance in identifying the brothers in connection with their suspected role in the bombings in Boston on April 15, 2013. In the early evening of April 18, 2013, the Tsarnaev brothers became aware of the release of their photographs.

On April 18, 2013, at around 10:24 p.m., uniformed MIT Police Officer Sean Collier was shot and killed in Cambridge while seated in his marked police cruiser by two men who attempted to steal Officer Collier's department issued firearm. At 10:30 p.m. Officer Collier was found shot by an MIT Police Sergeant. The Cambridge and Massachusetts State Police were immediately notified and initiated an investigation.

As investigators were on scene at the MIT campus, Cambridge police received a call at 12:19 a.m., from a carjacking victim, Dun Meng. Meng reported that he had been carjacked by

² BAPER² is an interagency radio communications network facilitating communications in the Greater Boston area between local, state, county, campus and federal law enforcement agencies.

two men who still had his black Mercedes Benz SUV. Meng was able to escape when they stopped for gas at the Shell station on Memorial Drive and River Street in Cambridge. From there, Meng ran to a Mobil station directly across the street and called police. A radio transmission was sent to Cambridge Police officers reporting the call and dispatching uniformed officers to respond.

The Mobil station was a short distance from the MIT campus and, thinking this carjacking might have been related to the Collier murder, Cambridge and State Police detectives investigating the murder also responded. Information concerning the carjacked Mercedes was communicated to the Cambridge Police dispatcher who immediately contacted Mercedes and requested activation of the GPS in the vehicle and the resulting vehicle location information. The company complied and the vehicle was first "pinged" in the area of Dexter Avenue in neighboring Watertown.

As a result, a radio transmission was sent out via Cambridge Police, Watertown Police, State Police and Boston Area Police Emergency Radio Network (BAPEREN) dispatchers that the black Mercedes SUV was "pinging" to the Dexter Avenue, Watertown area. Additionally, a Cambridge Police dispatcher called the Watertown Police dispatcher to directly report the "pinged" locations of the carjacked Mercedes SUV to be Dexter Avenue in Watertown.

Uniformed Watertown Police Officer Joseph Reynolds, in a marked police vehicle, located the Mercedes (with the assistance of information provided by the Mercedes representative concerning the location of the carjacked vehicle) on Dexter Avenue in Watertown and began to follow it until back-up could respond to the area and assist in the stop. The Mercedes SUV turned onto Laurel Street and, as the officer began to follow, the Mercedes and the Honda Civic traveling in front of it suddenly stopped. Tamerlan Tsarnaev, the operator, emerged from the Mercedes and began shooting at the officer, who immediately reported over the radio that shots were being fired. He backed his vehicle up the street to create some distance between himself and Tsarnaev. It was subsequently determined that Dzhokhar Tsarnaev was the operator and sole occupant of the Honda Civic.

This information was broadcast over the BAPEREN police radio network along with a request from Watertown Police for general "mutual aid." Numerous officers from not only Watertown, but also the Boston Police, the Cambridge Police (who were investigating the carjacking), the State Police, the MBTA Police and the Boston University Police, among others, responded.

On Laurel Street in Watertown, a residential area, a gun fight ensued between the occupants of the Mercedes SUV and the Honda Civic and uniformed officers from the Watertown Police, the Cambridge Police, the State Police, the MBTA Police, the Boston University Police and the Boston Police. During the course of the gunfight, Dzhokhar and Tamerlan Tsarnaev also threw several explosive devices at the police officers, some of which detonated and others which did not explode.

Orders directed to the suspects by Watertown Police Sergeant John MacLellan to "give it up" were ignored and the suspects quickly escalated the encounter by the introduction of

explosive devices, three of which exploded, including a pressure cooker device, which caused a huge cloud of smoke and debris to rain down around the officers who were concentrated at the top of Laurel Street near the intersection of Dexter Avenue. See attached map of the area.

Uniformed Watertown Police Sergeant Jeffrey Pugliese arrived at that area within one minute of the original call. He heard gunshots and an explosion. After assessing the situation, he concluded that his officers could not advance to the line of fire so he made a decision to flank³. He walked through the backyards of the houses on the odd numbered side of Laurel Street and as he did so he continued to hear gunfire and explosions on Laurel Street. At one point, he saw a homeowner run across the yard and over the fence toward Cypress Street. Sergeant Pugliese continued through the backyards and came out through the side yard of the residence at 53 Laurel Street, adjacent to the driveway and residences at 55/57 Laurel Street. This was closer to the suspect vehicle and the sergeant saw both suspects periodically coming out from behind the SUV and observed shots fired from their location, but didn't know if one suspect or both suspects were shooting. Pugliese kept them in his sight and took a few shots at the suspects. He could see the suspects' ankles and decided to try a ricochet type shot at their ankles, referred to as "skip shots."

Tamerlan Tsarnaev noticed Sergeant Pugliese and started charging at him. Tsarnaev ran up alongside a vehicle in the driveway of 55-57 Laurel Street. He came up about 5 – 7 feet from the sidewalk and was standing about 4 – 5 feet away from Pugliese when they initially exchanged shots. Sergeant Pugliese was out of rounds at that point so he dropped the empty magazine and reloaded. Tamerlan Tsarnaev had a problem with his gun and, seemingly out of frustration, he threw the gun at Pugliese and hit him in his left bicep.

After Tamerlan Tsarnaev threw his firearm, he turned and ran down the sidewalk into the street and ran westbound on Laurel Street toward the other officers. Sergeant Pugliese went out through the open gate and followed Tsarnaev down Laurel Street. Pugliese tackled Tsarnaev and tried to handcuff him, but Tsarnaev was actively resisting. Other officers came over to assist Pugliese.

Meanwhile, Dzhokhar Tsarnaev turned the Mercedes SUV around and Pugliese saw the headlights of the SUV approaching them. Other officers seeing this unfold called out to warn of the approaching SUV. Sergeant Pugliese grabbed Tamerlan Tsarnaev by the back of his belt and tried to pull him to side of road, as other officers dispersed to get away from the quickly approaching SUV. Pugliese moved Tamerlan Tsarnaev a distance of about a foot, but was forced to let go of him and roll back to avoid being struck by the Mercedes SUV being operated by Dzhokhar Tsarnaev. The vehicle missed Sergeant Pugliese by inches.

The rear wheel of the SUV ran over Tamerlan Tsarnaev, who got caught in the rear wheels and was dragged approximately 25 – 30 feet. The vehicle smashed into a marked cruiser, and briefly got hung up on it. The SUV got free and fled across Dexter Avenue and continued down Laurel to School Street. At that time, officers finished handcuffing Tamerlan Tsarnaev and called for an ambulance. Tamerlan Tsarnaev was moaning and trying to roll over. Pugliese

³ Flank, as a military term, means an attack on the sides of an opposing force. If this maneuver succeeds, the opposing force would be surrounded from two or more directions.

remained with him until the ambulance arrived. Boston EMS arrived and transported Tamerlan Tsarnaev to the Beth Israel Deaconess Medical Center in Boston.

Meanwhile, after striking the police cruiser, the Mercedes SUV operated by Dzhokhar Tsarnaev continued westbound on Laurel Street through the intersection of Dexter Avenue and Laurel Street. There were police officers on all sides of the intersection of Laurel and Dexter⁴ and positioned around all sides of the SUV, firing in the direction of the vehicle and its driver. It was at this time that Officer Richard Donohue of the MBTA Police was struck with a bullet and suffered grievous bodily injury. Officer Donohue was treated at the Mount Auburn Hospital and the bullet remains in his leg to this day. It will only be removed if it becomes medically necessary to do so. The location of the bullet is such that surgery to remove it is potentially life threatening.

The Shooting of Officer Donohue

Officer Donohue does not have a memory of the events on Laurel Street. As a result, the information provided by Officer Lucas Kitto, his partner that evening, was the primary source used to reconstruct Officer Donohue's movements and actions leading up to the shooting.

After arriving at the corner of Dexter and Laurel, Officers Kitto and Donohue got out of the cruiser and took cover in the area of 43-45 Laurel Street, near a group of trees. There was a lot of gunfire. There was a Watertown cruiser at the top of Laurel Street (near where they were positioned). They waited for a few seconds to push forward toward those officers. As soon as they did, people ahead of them yelled, "Get back," and there was an explosion. It sounded to Kitto like a grenade; there was a flash and an odor of smoke. The explosion was around 15 – 25 yards away and he could feel dirt coming down on them. After the explosion, there were a series of gun shots, then an explosion, then gunfire, coming around and behind them. He and Donohue went behind 43 Laurel to cover it, but saw there was a big picket fence and they realized there was no way the suspects would come over that fence. Kitto heard a series of five explosions. They would move forward, there would be an explosion and then gunfire, which briefly stopped them. They would try to move forward again and it would be repeated. The last explosion was the big one. It was a deafening boom, with more debris falling than from the others. It shook the buildings. Kitto was not injured, but was hit with debris. He was still in the same area as Officer Donohue. Up to this point he could not see the suspects from his vantage point.

After the big explosion, the firing stopped for a few seconds and then rapid gunfire commenced again. Officer Kitto heard a car rev up and come up the street toward them. He could not see very far down Laurel Street; he heard the car before he saw it. He and Donohue were both looking at the car; Donohue was standing to his left as the car was traveling up Laurel Street, from their right to their left. They were standing in a grass side yard abutting the driveway for 144 Dexter Avenue and the side of the residence located at 47/45 Laurel Street.

As the car was coming up Laurel, Kitto saw what appeared to be muzzle flashes coming from the driver's side toward them prior to the intersection with Dexter. He thought the muzzle

⁴ Dexter Avenue intersects Laurel Street at an angle. Laurel Street is oriented east to west, while Dexter is oriented north east to south west at an approximate 45° angle.

flashes were coming from the car because the muzzle flashes were moving at the same speed as the car. As the SUV continued down Laurel Street, Kitto had a clear shot at the driver's door and he fired three times. He was conscious that there were officers on the other side of the street potentially in the line of fire and only fired when he had a clear shot of the driver's door.

As the car drove through the intersection, Kitto saw Donohue go down to the ground to his left and he initially thought Donohue was diving for cover. Meanwhile, the SUV crossed Dexter and took off down Laurel Street. Once the SUV passed through the intersection and was in front of 33 Laurel, there was no more firing.⁵

Officer Kitto saw Officer Donohue stand up, take one step, say he was shot and then go down and start crawling away. Kitto turned Donohue over on his back and saw a large pool of blood form. Kitto put his hand on the wound and another officer came over to assist. Kitto took off Officer Donohue's uniform and gear. He could see that there was a wound on the right leg up toward the hip. The last thing Officer Donohue said was, "Oh my God, I've been shot." Kitto could see Donohue "going downhill fast." He stopped breathing and Kitto couldn't get a pulse. With the assistance of other officers, CPR was initiated. As soon as people became aware that Donohue had been shot, the report of "officer down" went out over the radio. A trooper with a medical bag (Dumont) arrived and the bag valve mask was put on Donohue. The ambulance arrived, Donohue was placed in the ambulance and Kitto accompanied Donohue in the ambulance. Donohue did not regain consciousness in the ambulance.

Scope of the Investigation

It was not until approximately twenty hours after the events on Laurel Street and Dexter Avenue that Dzhokhar Tsarnaev⁶ was arrested in a boat in the yard of a house on Franklin Street and was taken into custody by the federal authorities. That scene, by agreement, was under the control of the Federal Bureau of Investigation who collected all the evidence from that location. It was decided that day that the State Police would process the Watertown scene on Laurel Street, up to School Street, which included Dexter Avenue, and the FBI would process "the boat scene". Therefore, this report is limited to the analysis of the justifiability of the police shooting of Tamerlan Tsarnaev (and likely Dzhokhar Tsarnaev) on Laurel Street and the shooting of Officer Richard Donohue near the corner of Laurel and Dexter Avenue.

⁵ Unbeknownst to Officer Kitto, there were officers, including Boston Police officers and a Boston University Police officer, on Laurel between Dexter Avenue and School Street, who fired at the Mercedes SUV as it fled the scene.

⁶ In April of 2015, Dzhokhar Tsarnaev was convicted in federal district court in Boston of offenses related to the Boston Marathon bombing, the shooting of Officer Sean Collier, the carjacking of Dun Meng and the commission of offenses in Watertown which resulted in injury to Officer Richard Donohue.

Dzhokhar Tsarnaev is presently under indictment in Middlesex County for the following offenses: murder of MIT Police Officer Sean Collier, attempted armed robbery of Officer Sean Collier, kidnapping of Dun Meng, armed robbery of Dun Meng, four counts of armed assault with intent to murder Watertown Police Officer Joseph Reynolds, Sergeant John MacLellan, Sergeant Jeffrey Pugliese, and Officer Miguel Colon, four counts of assault and battery by means of a dangerous weapon on those same four Watertown officers, possession of a firearm, possession of a firearm with defaced serial number during the commission of a felony, and possession of a large capacity feeding device. He has not yet been arraigned on these charges. Thus this remains an open case in Middlesex Superior Court.

Evidence Recovered at the Scene

At the Laurel and Dexter Avenue scene, State Police personnel assigned to the Massachusetts State Police Forensic Science Group's Firearms Identification Section recovered discharged cartridge cases totaling two hundred and fifty-one. They examined twenty-one firearms – 1 discharged by the Tsarnaevs, 19 reported to have been discharged by police officers and Officer Donohue's firearm. All discharged cartridge cases were linked to 18⁷ of these 21 firearms. All discharged cartridge cases recovered at that location were connected to a specific gun.

Of the two hundred and fifty-one (251) cartridge cases recovered at that Watertown location fifty-six (56) of them were fired by the firearm used by the Tsarnaevs, which Massachusetts State Police Lieutenant David Cahill opined, in his testimony in the trial of United States v. Dzhokhar Tsarnaev, was the firearm used to kill Officer Sean Collier at MIT on the evening of April 18, 2013.

Of the nineteen police officers who self-identified as having fired on Laurel Street through the intersection of Laurel and Dexter Avenue down to School Street, seven were Watertown Police officers, two were State Police troopers, two were Cambridge Police officers, one was a Boston University Police officer, one was an MBTA Police officer and six were Boston Police officers.

As a result of the firefight on Laurel Street through and past the intersection of Dexter Avenue, there were up to three people shot: Tamerlan Tsarnaev, MBTA Police Officer Richard Donohue, and possibly Dzhokhar Tsarnaev.

Police Radio and Phone Communications

Police radio communications and recorded call lines and logs have been used to construct a timeline leading up to the events on Laurel Street in the early morning of April 19, 2013.

April 18, 2013

22:24:55	Call from a person at the MIT Koch Institute to MIT Police reporting loud noises outside the building
22:30:21	MIT Sergeant Henniger discovers MIT Officer Sean Collier has been shot; radio transmission reporting same is broadcast
22:31:28	Cambridge Police are notified of the shooting
22:34:49	Cambridge Police notify the State Police of the shooting

⁷ No discharged cartridge cases were recovered that were matched to the firearms submitted by MBTA Officer Lucas Kitto and one of two Cambridge police officers who reported firing their weapons. Officer Donohue did not fire his weapon; no casings linked to his firearm were located.

April 19, 2013

00:19:15 Mobil station manager calls Cambridge police by 911 to report the carjacking for Dun Meng

00:25:15 Mercedes plate number broadcast over the Cambridge Police radio

00:28:41 General radio broadcast to surrounding cities and town by Cambridge Police concerning the Mercedes plate number and descriptions

00:29:55 Mercedes Benz tracking notified

00:41:11 Cambridge dispatcher calls Watertown dispatcher directly on the phone to report the vehicle location information to the Watertown PD dispatcher

00:41:13 Units are advised by radio that tracking shows the Mercedes in Watertown at Dexter Avenue

00:41:47 Vehicle reported in area on 89 Dexter; also reported that there may be a gun in the vehicle

00:43:18 Watertown Officer Reynolds radios he had the vehicle in sight; asks "do you want me to stop it?"

00:44:18 Reynolds radios "he just took a left onto Laurel"; Watertown Sergeant John MacLellan tells him to activate the blue lights because he is right behind

00:43:49 First radio transmission of "shots fired!"

00:44:00 All Watertown units are told to respond
General "mutual aid" request made over Central District (BAPERN) radio to assist Watertown Police

00:45:33- Radio transmission, "Throwing explosives" and "shots being
00:46:21 fired"

00:47:32 MacLellan can be heard yelling, "Give it up. Give it up" over the radio

00:47:54 Watertown Sergeant Pugliese broadcasts he is in backyards and saw someone run, either a suspect or a resident

00:48:52 Radio transmission that shots are still being fired

00:49:44 Throwing explosives

00:50:14 Radio transmission, "Coming toward us"

00:51:01 Radio transmission request for ambulance (for Tamerlan Tsarnaev)
MacLellan radios, "suspect took off in the SUV after he ran over his partner"

00:51:55 "There is unexploded ordnance in the middle of the street." "We need an ambulance in front of 45 Laurel"

00:53:54 "We need an ambulance now. Transit officer down."

From the Watertown radio transmissions, which are time stamped, the amount of time between Officer Reynolds reporting that the SUV turned onto Laurel at 12:44:18 a.m. and Sergeant MacLellan requesting an ambulance for Tamerlan Tsarnaev at 12:51:01 a.m., totaled 6 minutes and 43 seconds.

Forensic Examinations

Explosives

Massachusetts State Police personnel assigned to the Fire Marshal's Office/Bomb Squad responded to Laurel Street and Dexter Avenue in Watertown and conducted post-blast examinations of multiple functioned (i.e., activated) devices which had been deployed during the shootout with law enforcement. At that location two intact devices were removed by Bomb Squad personnel. They were described as two pipe bombs (improvised grenades) that were recovered in Watertown. Additionally, there was one pressure cooker bomb which had been detonated at the scene and the components of that device were located, documented and collected.

Massachusetts State Police Bomb Squad personnel were also called to respond to Spruce and Lincoln Street where the carjacked Mercedes was abandoned. They were asked to determine whether there were any explosive devices which needed to be rendered safe within the carjacked Mercedes in which Dzhokhar Tsarnaev fled the Laurel Street scene. Inside the vehicle they found an improvised explosive device (IED) on the rear driver's side floor. The item was a covered plastic container which held approximately 3 lbs. of flash powder with numerous lengths of hobby fuse on top of the powder. The lid had a small hole in the center of it, with three lengths of hobby fuse⁸ protruding from it as a fuse to initiate the IED. In the opinion of a trained bomb technician, this item was a completed IED that if initiated would have caused serious personal injury or death to a person, and further caused substantial property damage.

Crime Scene Investigation and Examination of Evidence

Criminalists from the Massachusetts State Police Forensic Science Group reported to the scene at Laurel Street and Dexter Avenue on the morning of April 19, 2013, where they documented and collected evidence. In the area where Sergeant Pugliese reported that he fired low "skip shots" at the Tsarnaevs and where he and Tamerlan Tsarnaev faced each other separated by a distance of four to five feet, a criminalist noted a red-brown drip trail extending from between the driveway of 57/55 Laurel Street down Laurel Street to 45 Laurel Street when red-brown drag marks in the road commenced. The red-brown drag marks extended down Laurel Street west to the front of Officer Reynolds' cruiser. A screening test for the presence of blood was positive on these drip and drag stains. This evidence is consistent with Tamerlan Tsarnaev having already been shot and injured, with resultant bleeding, traveling down Laurel Street as described until tackled by Sergeant Pugliese and then dragged, while injured and bleeding, by the Mercedes SUV being driven by his brother.

Tamerlan Tsarnaev's sneakers were recovered at the scene and the right sneaker was found to have red-brown stains and two holes in the toe area, one on the medial (interior) side

⁸ Hobby fuse "burns externally and consumes itself in the burning process. [It] is used ...in improvised devices (homemade bombs) ...to initiate low explosives.... [It] is usually initiated with a common match or similar item." Thurman, James T., Practical Bomb Scene Investigation, Second Edition, (CRC Press 2011)

and the other the lateral (exterior) side. These holes were positive for the presence of lead and copper residues, consistent with a bullet passing through them.

The criminalist also noted three areas of “bomb seats”, i.e., points of origin of a bombing, one in front of 60/62 Laurel Street, one on the sidewalk in front of 57/55 Laurel Street and the third in the middle of the street between 53 and 56 Laurel Street. This is consistent with witness descriptions of five devices being thrown and three actually exploding.

Dzhokhar Tsarnaev’s clothing was subsequently submitted to the Massachusetts Forensic Science Group and examined. There were holes noted to the right and left side of the hood of his hooded sweatshirt, two (2) holes to the right and eight (8) holes to the left and red-brown stains. There were holes noted to right front leg/thigh areas, to the front right leg/shin area, to the left leg/lower thigh area and to the back of the left leg/lower thigh. Red-brown saturation stains were noted to back of the left leg, the lower back of the right leg, and the medial side of the right leg.

Criminalistics Examination of the Mercedes SUV

The Mercedes SUV was a brand new vehicle and had no known damage or defects up until the carjacking, per the lessee, Dun Meng. There was extensive damage to the exterior of the Mercedes. The driver side front and rear tires and the passenger side rear tire were all flat. The passenger side front window, the passenger side rear window and the rear windshield⁹ of the vehicle were broken and mostly absent, with some remaining pieces of glass around the frame. The passenger side cargo window was also broken, with a portion absent. A total of sixty-five (65) holes/damage to the Mercedes were noted. There were at least twenty-seven (27) such areas of damage to the passenger side of the vehicle, approximately thirteen (13) such areas of damage to the driver’s side; seven (7) areas of such damage to the rear of the vehicle; and twelve (12) areas of such damage to the front of the vehicle. Most, if not all, tested positive for the presence of either lead or copper residues; all appeared consistent in size and shape with defects caused by a gun shot.

The interior of the Mercedes revealed glass-like particles in the trunk, front driver’s seat, front passenger seat and both the rear seat and floor areas. There were many pieces of ballistics evidence observed throughout the interior of the Mercedes. A magazine with 9mm ammunition was observed between the driver side front seat and door. Red-brown stains were observed on the magazine and they tested positive for blood in a screening test. However, due to the limited sample size, further characterization was precluded. Red-brown stains were observed on the driver side front floor, the driver side front interior door panel and window. A screening test for the presence of blood was positive on these stains. In the interior compartment of the vehicle holes were noted to the passenger side front floor, the middle rear seat, the driver side door, the passenger side front door, the steering wheel (with an apparent projectile lodged), the dashboard, the driver side front seat head rest, the passenger side front seat bottom, the passenger side rear seat bottom and the passenger side rear seat headrest. All of these holes tested positive for the presence of lead or copper residues or both.

⁹ The back of the Mercedes was the closest portion of either the Mercedes or the Honda to the police during the time when there was return fire from the police positioned up the street.

Red-brown stains consistent with spatter were observed on the driver side front tire rim and a transfer stain was observed on the driver side front tire rim, adjacent to the spatter stains. These tested positive in the screening test for the presence of blood. Red-brown stains consistent with spatter and transfer stains were observed on the undercarriage of the driver side front area near the wheel and other portions of the undercarriage. These stains are consistent with the witness descriptions of the SUV running over and dragging Tamerlan Tsarnaev.

Tsarnaev Firearms-Related Evidence

A 9mm Luger caliber Strum Ruger P95 semi-automatic pistol with an obliterated serial number and a large capacity magazine, used by the Tsarnaevs, was recovered from the driveway of 55/57 Laurel Street. When recovered it contained a large capacity magazine with a capacity for eighteen (18) live rounds of ammunition. A live round of 9mm caliber ammunition was recovered from 61 Laurel Street, along with a box of 9mm Luger caliber live cartridges head stamped "FC", another magazine for the Ruger, and a .177 caliber pellet/BB/airsoft gun.

Nine (9) 9mm live cartridges head stamped "FC 9MM Luger" were also recovered between 43 and 45 Laurel Street. As noted above, there was also an additional 9mm magazine containing seven (7) live rounds of ammunition head stamped "WIN 9MM Luger," which was found on the front driver's floor of the carjacked Mercedes.

Copper jacketed lead spent projectiles recovered at 61 Laurel Street, 53 Laurel Street, 55 Laurel Street, in front of 49 Laurel Street, in an exterior wall of 130-132 Dexter Avenue, at 40 Laurel Street, in the engine compartment firewall of Watertown Officer Reynolds' cruiser 465, and in the rear passenger side foot well of Sergeant MacLellan's cruiser 468 were all determined to have been fired by the Tsarnaevs' Luger caliber Ruger.

As stated earlier, Massachusetts State Police Lieutenant Cahill opined that the Tsarnaevs' 9mm Luger Caliber Strum Ruger P95 recovered in Watertown was the weapon the killed MIT Officer Sean Collier, and he testified to this opinion at the trial of United States v. Dzhokhar Tsarnaev.

Discharged Cartridge Case Evidence

A total of two hundred fifty-one (251) discharged cartridge cases were recovered from Laurel Street and adjacent portions of Dexter Avenue in Watertown. They were compared to test fires from twenty-one (21) submitted firearms. Those firearms were, as follows:

- One (1) 9mm Luger caliber Ruger Model P95, used by the Tsarnaevs,
- Seven (7) .40 caliber S&W caliber Glock model 23 semi-automatic pistols, used by Watertown Police
- Six (6) .40 S&W caliber Glock model 23 semi-automatic pistols, used by Boston Police Officers
- One (1) .40 S&W caliber Glock model 22 semi-automatic pistol, used by Boston University Police Officer

- Two (2) .40 caliber Sig Sauer model P226 semi-automatic pistols carried by MBTA Police Officers Kitto and Donohue
- Two (2) .45 caliber Smith & Wesson model M&P 45 semi-automatic pistols, used by Massachusetts State Police Troopers
- Two (2) .40 S&W caliber Sig Sauer model P229 semi-automatic pistols, used by Cambridge Police Officers

Thus, fourteen (14) of the twenty (20) law enforcement firearms examined were .40 caliber S&W caliber Glock model 23 and 22 semi-automatic pistols.

As noted above, fifty-six (56) 9MM Luger caliber discharged cartridge casings were all fired by the 9MM Luger caliber Ruger Model P95 used by the Tsarnaevs.

The remaining one hundred ninety-five (195) discharged cartridge cases were microscopically compared to test fires for the twenty (20) police officer firearms submitted; nineteen that were used by officers who self-reported that they fired their weapons and one carried by MBTA Officer Donohue. Those one-hundred ninety-five cartridge cases were identified as having been fired by 17 of the 20 law enforcement firearms. The breakdown of the 195 cartridge cases identified as having been fired by specific firearms is, by department, as follows:

- Seven Watertown Police officers were linked to 126 of the discharged cases
- Six Boston Police officers were linked to 44 of the discharged cases
- Two Massachusetts State Police troopers were linked to 18 of the discharged cartridge cases
- One Cambridge Police officer was linked to 5 of the discharged cartridge cases
- One Boston University Police officer was linked to 2 of the discharged cartridge cases

There were no discharged cartridge cases recovered that matched the firearms of one Cambridge Officer and MBTA Officer Kitto, who each acknowledged that they fired their service weapons. The Cambridge Officer reported that he fired 3 to 4 times and Officer Kitto reported that he fired 3 times. Thus, their self-report of firing would increase the law enforcement tally of shots fired by 6 to 7, i.e. from 195 to 201 or 202.

MBTA Officer Donohue's weapon did not appear to have been fired, i.e., it was fully loaded.

Not surprisingly, by discharged cartridge case count alone, the Watertown Police, as a department, fired the most shots. The first Watertown Officer on scene fired the most shots of any law enforcement officer, 27, but he still fired less than half of the total shots fired by the Tsarnaev weapon, 56, by that same count method, (i.e., discharged cartridge cases).

Spent Projectiles and Projectile Fragments Recovered

Spent projectiles and projectile fragments were collected and submitted from a variety of locations, including the scene on Laurel Street and Dexter Avenue, a residence on Oak Street, from Watertown and MBTA Police cruisers, vehicles parked on Laurel Street, in the carjacked Mercedes SUV, in the Tsarnaev Honda, from houses on Laurel Street and Dexter Avenue, and from the body of Tamerlan Tsarnaev recovered at autopsy.

Twenty spent projectiles and twelve bullet fragments were recovered from the carjacked Mercedes SUV. Projectiles were recovered from: under the hood at the driver's side headlight; inside the driver's side front door; the driver's side rear door; the driver side rear quarter panel by tail lights; under the carpet of the front passenger floor; the passenger side rear door; the passenger side front fender; the passenger side pillar above the rear door; the inside rear lift gate; the passenger side muffler under the vehicle; under the passenger side front floor mat; the driver side rear B pillar; the steering wheel; the passenger front door in the frame above the glass; the back of the rear seat bottom; between the passenger side front door bottom and front fender; the passenger side rear foot well; two from the passenger side front floor mat; and under the seat belt in the middle rear seat. Fragments were recovered from: two from the driver's side running board; the passenger side middle post; two from the front passenger side fender near the headlight; above the passenger side rear window by the pillar; three from the front passenger side fender; on the driver's seat and on the passenger side front floor mat.

Two spent projectiles and two bullet fragments were recovered from the Tsarnaev Honda. One projectile was recovered from behind the dashboard and the other on the interior console. One bullet fragment was recovered on the hood near the passenger side wiper and the other in the rear trunk passenger side reservoir. It should be noted that the Honda remained stationary with the Mercedes SUV between it and the police vehicles throughout most of the shooting incident.

Examination of those spent projectiles and fragments revealed that they had similar class characteristics to the test fires but there was insufficient correlation of individual markings and, therefore, no one weapon could be tied to this evidence. Most, if not all, were consistent with test fires from weapons with polygonal rifling, i.e., the Glock.

One spent projectile was recovered from Watertown Police cruiser 471 (Colon cruiser). Two spent projectiles were recovered from Watertown Police cruiser 465 (Reynolds cruiser); one recovered from the driver's side front tire and one from the engine compartment firewall. Three spent projectiles from Watertown Police cruiser 468 (MacLellan cruiser); one from the rear passenger door, one from the rear driver's foot well and the other from the rear passenger side over the wheel well. Only two of these, the one to the engine compartment firewall of the Reynold's cruiser and the one on rear driver's side foot well of Sergeant MacLellan's cruiser could be identified to have been fired from by a specific firearm, i.e., the 9MM Ruger used by the Tsarnaevs.

In addition to those two projectiles that were identified to have been fired from the Tsarnaev 9MM Ruger, 6 additional spent projectiles that were recovered were identified to have

been fired by the Ruger, as follows: one at 61 Laurel Street, one at 55 Laurel Street, one at 53 Laurel Street, one at 49 Laurel Street, one at 40 Laurel Street, and one in the exterior wall of the house at 130-132 Dexter Avenue. Thus a total of eight projectiles recovered were identified as having been fired by the Ruger.

Two state troopers each had .45 caliber Smith and Wesson model M&P 45 semi-automatic pistols. A spent projectile recovered at 40 Laurel Street was fired from one of the trooper's firearm. Two spent projectiles recovered from inside the residence at 39 Oak Street, one at base of stairs to second floor, the other on the dining room floor, were fired by the other trooper's firearm. Another spent projectile recovered at 61 Laurel Street could have been fired by either of the troopers' firearms.

Thirty-one spent projectiles and eight bullet fragments were recovered from areas on Laurel Street from 11 Laurel Street down to 75-77 Laurel Street, including three from inside 75-77 Laurel Street, and from vehicles, including one from the left rear tire of the MBTA cruiser, on Laurel Street and Dexter Avenue. These other projectiles could not be tied to a particular weapon, but were consistent with having been fired by a .40 caliber weapon with polygonal rifling, i.e., a Glock. Watertown Police officers, Boston Police officer and the Boston University Police officer all had department issued the .40 caliber Glocks. Thus any one of those 14 Glock firearms could have fired those projectiles collected and examined by the State Police Firearms Identification Section. In the opinion of Detective Lieutenant Cahill, each of the copper jacketed lead spent projectiles and fragments had similar class characteristics to the Glock test fires, but due to damage to the bearing surfaces of the projectiles/fragments there was insufficient correlation of individual markings. Therefore, they cannot be associated with a specific law enforcement Glock firearm.

During the autopsy of Tamerlan Tsarnaev, bullet fragments were recovered from the right rear calf and the left forearm and spent projectiles were recovered from the left upper back, the left upper arm, the right thigh, and the right pelvic region. These were examined by Detective Lieutenant Cahill who has opined that each of the copper jacketed lead spent projectiles and fragments had similar class characteristics to the Glock test fires, but due to damage to the bearing surfaces of the projectiles/fragments there was insufficient correlation of individual markings. Therefore, they cannot be associated with a specific law enforcement Glock firearm.

No spent projectiles associated with injuries to Dzhokhar Tsarnaev and MBTA Officer Richard Donohue have been recovered.

Injuries to Tamerlan Tsarnaev, Dzhokhar Tsarnaev, and Officer Richard Donohue

i. Tamerlan Tsarnaev

An autopsy of Tamerlan Tsarnaev was performed by Chief Medical Examiner Henry Niels. The cause of death was ruled "gunshot wounds of torso and extremities and blunt trauma to head and torso" and the manner of death was "homicide (shot by police and then run over and dragged by motor vehicle)." There were two gunshot wounds of the torso and both bullets were recovered. There were seven gunshot wounds of the extremities and two bullets and three fragments were recovered from those injures.

The gunshot wounds of the extremities consisted of three gunshot wounds to the right thigh, one gunshot wound to left upper arm, one to the left forearm, one to the right upper arm, and one to the right big toe.

ii. Dzhokhar Tsarnaev

The Beth Israel Deaconess records described Dzhokhar Tsarnaev's injuries. Among those injuries were a penetrating injury to the left face/jaw; multiple facial bone fractures; a complex temporal bone fracture; a superficial anterior neck wound; a shattered right scapula; a penetrating wound to the left wrist; penetrating injuries of the right thigh and the right lower extremity; and an open wound of the lower left extremity.

Given the description of the "skip shots" fired by Sergeant Pugliese, the damage to the carjacked Mercedes (much of it attributable to gunshots fired at it as Dzhokhar Tsarnaev drove away when making his escape from the scene), one of the Boston Police officer's description of Tsarnaev wincing as the officer fired toward the car, spent projectiles recovered from the SUV, and the presence of some blood on the driver's inner door, it is entirely possible that some of his injuries may have occurred on Laurel Street. However, because it cannot be determined what injuries, if any, are attributable to his capture on Franklin Street, and because no ballistics evidence related to any of his injuries was submitted for examination by the Massachusetts State Police, any injuries he may have sustained cannot definitively be attributed to weapons fired by law enforcement at Laurel Street and Dexter Avenue.

iii. MBTA Officer Richard Donohue

MBTA Officer Richard Donohue suffered a gunshot wound to the right upper inner thigh in the groin area which severed his femoral artery and caused considerable blood loss. Because the bullet that injured MBTA Officer Donohue remains in his leg, his injury cannot be correlated to a specific weapon fired by anyone at Laurel Street and Dexter Avenue. However, even if it were recovered, its condition may or may not be suitable to enable a match to a particular weapon, although it could possibly identify a type of weapon or type of ammunition that caused the injury which could, in turn, correlate to one of the submitted firearms and ammunition in a comparative analysis.

Nevertheless, it is highly likely that the injury sustained by Officer Donohue was due to friendly fire of officers shooting at the fleeing Mercedes being operated by Dzhokhar Tsarnaev. That conclusion is based on his partner Officer Kitto's description of their whereabouts and activities leading up to the point that the Mercedes was traveling down Laurel Street at a high rate of speed toward the intersection of Dexter Avenue. Officer Kitto was positioned in the grassy area between 43 Laurel Street and 144 Dexter Avenue with Officer Donohue to his left when he fired three shots at the speeding Mercedes as it approached and passed him. At that point, Donohue said, "I've been shot" and stumbled onto the driveway for 144 Dexter Avenue.

At the time when the Mercedes was traveling down Laurel Street toward Dexter Avenue, the Ruger used by the Tsarnaevs on Laurel Street and at MIT was on the ground in the driveway

of 55/57 Laurel Street so that weapon could not have caused the injury. No other firearms tied to the Tsarnaevs were recovered. Although a partially loaded magazine for a 9mm semi-automatic handgun was found on the front driver's floor of the Mercedes, it was consistent with a magazine that would be used with the Ruger. At the time Officer Donohue was shot, law enforcement officers were firing at the Mercedes from at least three, if not all four, sides, as Dzhokhar Tsarnaev operated the Mercedes, running over Tamerlan Tsarnaev and dragging him, hitting the front quarter panel of the Reynolds cruiser, and then speeding down Laurel across Dexter Avenue toward School Street.

Summary of Findings

The investigation could not identify conclusively which police officer or officers fired the shots that struck Tamerlan Tsarnaev, although the ballistics evidence has limited the universe of officers who could have done so to the fourteen officers, from the Watertown police, the Boston police and the Boston University police who all used Glock .40 caliber firearms. Witness interviews as well as the evidence of a blood trail leading from the area of the driveway of 55/57 Laurel, where Sergeant Pugliese fired numerous rounds at Tamerlan Tsarnaev from the side yard of 53 Laurel Street, a distance of four to five feet away, to the area where Sergeant Pugliese tackled him to the ground in an effort to arrest him, as well as Sergeant Pugliese's description of firing low to the ground, targeting the suspect's lower extremities, and the corresponding injuries to Tamerlan Tsarnaev noted at autopsy, all point to Sergeant Pugliese as the person who most likely fired those rounds. In any event, because Sergeant Pugliese was acting in self-defense and defense of others, i.e. police officers and civilians, when he fired shots at Tamerlan Tsarnaev, it is our determination that his conduct was not criminal. See pp. 17-18.

The investigation could not determine conclusively that Dzhokhar Tsarnaev was shot on Laurel Street in the early morning of April 19, 2013, due to the absence of ballistics evidence associated with his injuries, particularly given the shooting events on Franklin Street leading up to his arrest hiding in the boat. However, there are indications that some of the injuries he sustained (which were documented in the Beth Israel Deaconess Medical Center records) could have occurred as he fled the area of Laurel Street in the carjacked Mercedes, based on witness statements, the condition of the Mercedes, the presence of some small blood stains on the interior of the driver's door, and the number of bullets which penetrated the interior of the Mercedes. The officers who fired their weapons at Tamerlan and Dzhokhar Tsarnaev, after the Tsarnaevs initiated the use of deadly force in the form of gunshots being fired at the first Watertown police on scene, (as well as those officers who arrived to assist them in defending against them), and explosives being hurled at the officers, had a reasonable belief that they were in imminent danger of death or serious bodily injury and that no other means other than the use of deadly force in the discharge of their department issued firearms would suffice - to protect and save their lives, the lives of their fellow officers and the lives of the residents of that thickly settled residential neighborhood. Accordingly, it is our determination that his conduct was not criminal.

The investigation could not identify which gun fired the bullet which struck MBTA Officer Richard Donohue, given that the bullet still remains in his leg. However, based on (1) witness accounts of where Officer Donohue was located when he was shot, (2) witness accounts of where other officers were positioned, at all four sides of the vehicle, when they fired at

Dzhokhar Tsarnaev as he drove the carjacked Mercedes down Laurel Street through the intersection of Dexter Avenue, (3) the fact that the Tsarnaev firearm, used by them during the firefight which preceded Officer Donohue's shooting, had already been discarded on Laurel Street in the vicinity of 55/57 Laurel Street and could not have been the weapon that fired that shot, (4) the absence of any evidence that Dzhokhar Tsarnaev had a firearm aimed to his left when he crossed the intersection of Laurel Street and Dexter Avenue, which was the precise time when Officer Donohue was shot, it seems highly likely that the shot which struck Officer Donohue was not fired by Tsarnaev, and more likely that Donohue was injured by one of the shots fired by the law enforcement officers who were firing in self-defense and defense of others as Dzhokhar Tsarnaev made his escape from the Laurel Street scene. If Officer Donohue was, in fact, struck by a bullet fired by one of these officers who were all acting justifiably in defense of themselves and of others, when they intentionally fired that shot aimed at Dzhokhar Tsarnaev, that officer was, nevertheless, entitled to use deadly force in the circumstances. Accordingly, it is our determination that the conduct of the officer would not have been criminal.

Legal Analysis

A review of the summarized facts, which is not exhaustive of all facts considered and relied upon, reveals that in the totality of the circumstances, the officers who responded to Laurel Street in the early morning hours were each justified in their use of deadly force in defense of themselves and others, based on each officer's reasonable belief, in the face of a constant barrage of gunfire and detonation of explosive devices which shook the ground, caused debris to rain on the officers and the area, and the rapidly evolving circumstances, that he, his fellow officers, and the residents of that thickly settled residential neighborhood were in imminent danger of death or serious bodily injury.

Watertown Officer Reynolds had probable cause to conduct a felony stop of the black Mercedes SUV operated by Tamerlan Tsarnaev, based on the very recent report of the carjacking minutes earlier. Rather than submit to lawful authority, Tamerlan Tsarnaev immediately exited the Mercedes and began to assault Officer Reynolds with a barrage of gunfire. Back-up in the form of a sergeant and then another officer arrived on scene and they were similarly assaulted with shots also fired at them. All three of the first officers on scene were met with gunfire with bullets striking their marked cruisers as they arrived on Laurel Street. Sergeant MacLellan ordered the Tsarnaevs to surrender and give it up and those commands were ignored. In short order, the Tsarnaevs introduced explosive devices into their attack on the police which raised the stakes even higher for the police and the residents of the area. Given the limited number of sworn officers on duty and available to respond at that hour in Watertown and the magnitude of the threat presented by the gunfire and detonation of explosives, a request for mutual aid was made by the Watertown Police Department to other departments and radio transmissions were broadcast seeking aid, which resulted in the quick response of additional law enforcement personnel from other departments in addition to response by uniformed off-duty Watertown police personnel. Those officers responded to the area, putting themselves in imminent danger of death or serious bodily injury, in order to defend both the Watertown officers, who were in the thick of the situation from the outset, and the residents of that neighborhood.

This was a sudden emergency entirely orchestrated and executed by the Tsarnaevs and the officers were reacting in very challenging circumstances to defend themselves, their fellow officers and the community against an attack which included the use of explosive devices, including a pressure cooker IED. The fact that Dzhokhar Tsarnaev may not have had a firearm as he fled in the Mercedes SUV was not known to the officers. Even without a firearm he continued to assault them by aiming the Mercedes SUV at them. The officers, in particular Sergeant Pugliese, narrowly avoided being hit by the SUV operated by Dzhokhar Tsarnaev. Importantly, Dzhokhar Tsarnaev had other items at his disposal, specifically an IED, at that time when he fled in the SUV which he could have used to cause death or serious bodily injuries to the officers and the residents, if he was not stopped immediately. The officers were justified in their use of deadly force to stop Dzhokhar Tsarnaev, who had, by his actions, demonstrated an utter disregard for the lives and safety of the police and residents. In fact, the conduct of the Tsarnaevs starting with the alleged murder of Officer Sean Collier, the armed carjacking of Dun Meng, through and including the assault on police with gunfire and explosives indicates their escalating desperation and escalating threat to the community if not stopped.

Every officer who responded to that situation did so recognizing that they were putting themselves in harm's way, placing themselves in danger of death or serious bodily injury to come to the aid and defense of their fellow officers and the citizens they are sworn to serve and protect. These officers responded to this encounter in a courageous fashion which was testament to their commitment and training. It is notable that the officers engaged the Tsarnaev brothers in such a manner that they minimized the potential for injury to any of the residents of Laurel Street and the surrounding area and no residents were injured.

Because the officers were each privileged to use deadly force in the face of the extreme threat posed by the Tsarnaevs, i.e., that they each reasonably believed that there was an imminent danger of death or serious bodily to them personally and to the other officers and residents of the neighborhood and that there were no other means available to prevent the danger, their conduct was not criminal.

There is insufficient evidence to conclusively identify which officer or officers fired the bullets that actually struck and/or caused the death of Tamerlan Tsarnaev. However, to the extent that the non-ballistics witness accounts identify that officer to be Sergeant Pugliese, his use of deadly force was justified.

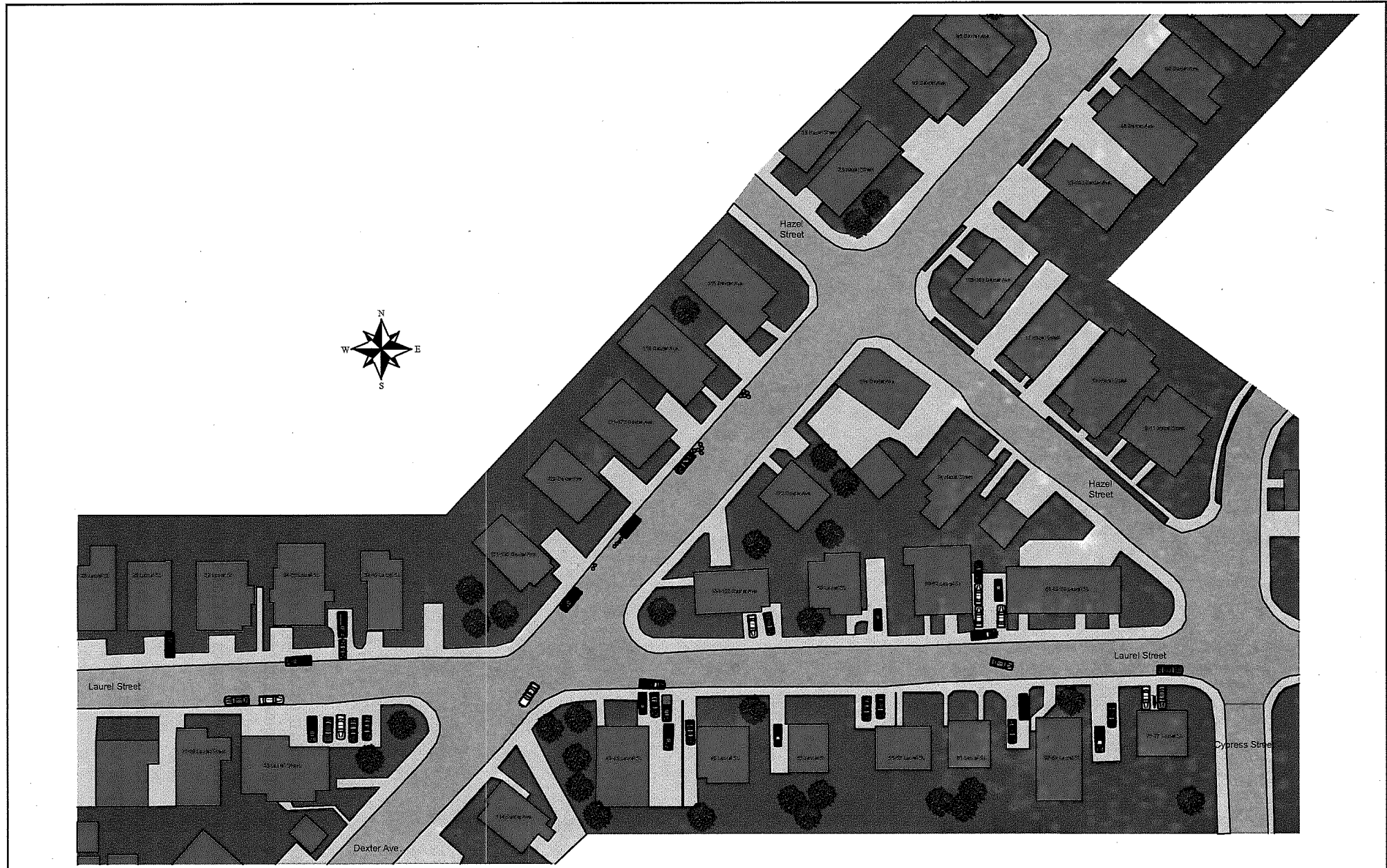
There is similarly insufficient evidence available to determine which officer, if any, injured Dzhokhar Tsarnaev. Nevertheless, to the extent that he was injured on Laurel Street, that conduct was not criminal.

There is insufficient evidence available to determine who fired the shot which injured Officer Richard Donohue. Nevertheless, to the extent that Officer Donohue was injured by an officer acting in self-defense and/or defense of another person against Dzhokhar Tsarnaev, in those circumstances, that conduct was not criminal. Although it is not possible to identify the person who fired the bullet that struck Officer Donohue, it cannot be disputed that all officers who fired their guns were not intentionally shooting Officer Donohue, but were aiming for Dzhokhar Tsarnaev, who was clearly on a deadly rampage and needed to be stopped. Because

the officers were justified in using deadly force toward Dzhokhar Tsarnaev and may have unintentionally struck Officer Donohue, they were, nevertheless, acting in self-defense/defense of others.

After applying the appropriate legal standards related to the use of deadly force in self-defense and/or defense of another, the criminal investigation into this matter is closed without prosecution. The matter is being referred back to the police departments of the officers who fired their firearms on Laurel Street on April 19, 2013, for whatever further action, if any, they deem appropriate.

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DRAWING LOCUS			
Watertown, Massachusetts			
Watertown, Massachusetts			
DATE:	4/19/2013	SCALE:	1"=90'
<p>90 45 0 45 90 SCALE IN FEET</p>			

	Massachusetts State Police Collision Analysis & Reconstruction Section 200 Hanscom Drive, Suite 210 Bedford, MA 01730
	DRAWING NO.: 2013-CAR-0105 Watertown DRAWING BY: Sgt. Timothy E. Dowd #2514

FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING ANON-FATAL POLICE INVOLVED SHOOTING ON MARCH 31, 2014, IN CARLISLE, MA

The Middlesex County District Attorney's Office and the Massachusetts State Police assigned to the Middlesex County District Attorney's Office have concluded the investigation into the non-fatal shooting of Donald Hall, 30, of Everett, MA. Hall was shot by two members of the Carlisle Police Department on Monday, March 31, 2014.

A thorough investigation into the circumstances surrounding the shooting of Mr. Hall revealed that Lieutenant Leo Crowe and Detective Richard Tornquist fired only after Mr. Hall assaulted each of those law enforcement officers with a firearm. The actions of uniformed Carlisle Police Lieutenant Leo Crowe and Carlisle Detective Richard Tornquist, in shooting and wounding Donald Hall were justified in the exercise of self-defense and/or defense of another. Under the circumstances, Lieutenant Crow and Detective Tornquist acted reasonably and lawfully. Therefore, no criminal charges are warranted.

I. INTRODUCTION

The primary goal of the investigation was to determine if any person/persons bears criminal responsibility for the shooting of Donald Hall on March 31, 2014. I designated Senior Trial Counsel, Thomas F. O'Reilly, to direct the investigation.

II. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Attempted Armed Carjacking and Subsequent Armed Carjacking in Haverhill, MA

On March 31, 2014 at approximately 2:25 a.m. Haverhill police responded to the Tedeschi Food Mart. Upon arrival police spoke with an individual who reported having just exited his vehicle when he was approached by two men, one of which was later identified as Donald Hall. The victim reported that one of the men held a firearm to his (the victim's) head and demanded his car keys. The victim gave the men a set of keys and then heard the gun click twice. The men entered the victim's vehicle but were unable to drive due to the victim having accidentally given the men the wrong keys. The men thereafter fled the scene on foot.

A few minutes later, at approximately 2:28 a.m. Haverhill police were notified of a second incident at 7 Arch Street. Upon arrival police spoke with another victim and witness who reported that they were sitting in their car when approached by Hall who brandished a firearm and forced them from the vehicle. Hall fled in the victim's vehicle, a 2011 Nissan Altima.

b. Criminal Conduct in Newton, MA

At approximately 5:14 a.m. Newton police were advised of a motor vehicle crash in the area of Craft Street and Ashmont Avenue. Police responded and observed the previously stolen Altima in the front yard of 99 Craft Street. That vehicle had damaged a chain-link fence on two different properties. At the time of police response, the vehicle was unoccupied. Witnesses reported having seen two men flee from the Altima.

At approximately 5:40 a.m. Hall approached another victim who had been sitting in his driveway. As Hall approached he brandished a firearm, threatened the victim and demanded his vehicle. That victim grabbed Hall's wrist at which time Hall fled.

At approximately 12:50 p.m. Hall approached a Newton home and spoke with the homeowner. Hall falsely told her that he had sideswiped her car. He then entered her home and took her car keys. While brandishing a firearm, Hall fled in the victim's 2002 Acura. Police investigation later revealed that Hall had also entered a residence on the second floor of that home. This second homeowner reported that his home had been rummaged through and that several items were missing.

Newton Police were notified and located Hall driving the Acura at approximately 1:00 p.m. Newton Captain Dennis Dowling exited his police cruiser and approached Hall in the Acura. When Captain Dowling was within feet of Hall, he accelerated the Acura and drove directly at Captain Dowling. Hall fled after striking and damaging three other vehicles. Newton police pursued Hall but eventually lost sight of the Acura.

c. Armed Carjacking in Billerica

At approximately 1:30 p.m. Hall parked the Acura at Rick's Automotive in Billerica. After a short exchange with the owner, Hall approached another victim who was exiting his Toyota Tundra. Hall pointed a gun in the victim's face and demanded his keys. The victim gave Hall the vehicle's keys and Hall fled in the Toyota.

d. Attempted Armed Carjacking and Armed Assault on Carlisle Police Lieutenant Leo Crowe

A short time later the Toyota was located in Carlisle and the chase resumed. Hall crashed into a Dodge van causing damage and then fled, extending the chase. Donald Hall forced a silver Toyota Prius off the road, approached the Prius, pointed a gun at the operator and repeatedly tried to open the vehicle's door. The operator of the Prius jumped out of the vehicle and Hall entered and attempted to drive away. During this time, Carlisle Lieutenant Leo Crowe, in full uniform, approached Hall as he accelerated the Prius. The Prius was stuck in mud and unable to move. Ignoring Lt. Crowe's repeated command to exit the car, Hall fired his gun through the vehicle's windshield directly at Lt. Crowe. Lt. Crowe returned fire, firing 5 rounds. During this exchange Hall was struck once in the leg. Still undeterred, Hall brandished, but did not fire, his firearm a second time at Lt. Crowe before fleeing back into the Tundra.

e. Second Attempted Armed Carjacking and Armed Assault on Carlisle Police Detective Richard Tornquist

A short time later Hall forced another vehicle, a black Audi SUV, off the road. Hall approached and pointed his firearm at the operator of the Audi SUV. During this exchange Hall turned and pointed his firearm directly at Carlisle Detective Richard Tornquist who had arrived on scene. Detective Tornquist fired on the suspect a total of ten times. Hall was not struck by any of those shots. Unable to gain entry into the Audi, Hall returned to the Toyota and once again fled.

f. Attempted Armed Carjacking in Concord

At approximately 1:41 p.m. the chase continued into Concord where Hall crashed the Toyota into a tree and ran into the nearby RiteAid parking lot. Hall ran towards a civilian who was entering his vehicle, pointed a firearm at him, grabbed him and threw him to the ground. Hall then jumped into the victim's vehicle, a Ford Flex, and drove out of the parking lot, with the police in pursuit.

g. Arrest of Hall in Bedford

The pursuit continued into Bedford at which time Hall sideswiped another vehicle, causing damage. Hall continued driving until he ultimately crashed his vehicle and was taken into custody.

h. Follow-up Investigation

The investigation established that Hall had been on an aggravated crime spree that day, committing multiple violent felonies, armed with a gun, in many jurisdictions in Essex County (Haverhill) and Middlesex County (Medford, Newton, Billerica, Carlisle, Concord). He had car-jacked a number of cars at gun point and had physically assaulted citizens, including several senior citizens. When Lt. Crowe approached the Prius, it was after Hall, at gunpoint, had forced the driver from the car. As Lt. Crowe approached, Hall attempted to drive towards the Lieutenant, but the car was stuck in the mud. Hall chose to fire a round through the front windshield at the lieutenant. Crowe returned fire and is believed to have struck Hall in the leg at that time. Hall fled in another vehicle and was later confronted by Det. Tornquist as Hall was attempting to force a driver at gun point from his vehicle. Hall pivoted and pointed his firearm at Detective Tornquist who returned fire at Hall. Hall again managed to escape in another hijacked vehicle. Massachusetts State Police were eventually able to stop Hall. He had a gunshot wound to his leg, corresponding with the blood loss in the Prius. Found in the vehicle with Hall was a 9mm Luger caliber Walther Model P-38 semi-automatic pistol, serial #6500Z with a round in the chamber, one discharged 9MM Luger caliber casing. Ballistics testing conducted by State Police Lt. David Cahill established that the discharged shell casing in the Prius was fired from the 9MM Luger recovered from Hall.

III. APPLICABLE LAW

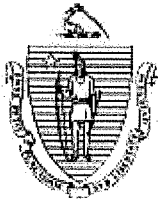
My office's analysis of whether the actions of the involved police officers constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time. A person may use deadly force to defend himself/herself or another if the person has reasonable grounds to believe, and actually believes, that he or she is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm.

Applying this standard, our review of the facts reveals that, in the totality of the circumstances, Lieutenant Crowe and Detective Tornquist were each justified in their use of deadly force either in self-defense and/or defense of others, based on their reasonable belief that he and his fellow officers and citizens were in imminent danger of death or serious bodily injury. Each reasonably believed when they fired their weapon that Hall was about to shoot and, in the case of Lieutenant Crowe, Hall did, in fact, fire his weapon at close range.

IV. CONCLUSION

Based upon all of the foregoing, the two Carlisle police officers – Lieutenant Crowe and Detective Tornquist acted justifiably in defense of themselves personally and in defense of others, citizens and other law enforcement personnel. Many officers in many jurisdictions were attempting to stop and apprehend Hall for his serious, violent crime spree, while armed with a hand gun. Rather than submit to the authority of Newton Captain Dennis Dowling, he fled Newton resulting in a wide dragnet being cast in numerous suburban Middlesex towns. When confronted by two Carlisle officers, Hall again chose to disregard their authority and shoot at Lieutenant Crowe and then separately, at another location, point his weapon at Detective Tornquist. The fact that Hall was only shot once in the leg showed restraint on the part of the officers involved and was no more force than was reasonably necessary to defend themselves and others.

This matter is now referred back to the Carlisle Police Department for whatever further action, if any, may be deemed appropriate.



THE COMMONWEALTH OF MASSACHUSETTS

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**STATEMENT OF DISTRICT ATTORNEY MARIAN T. RYAN ON THE
INVESTIGATION REGARDING OFFICERS INVOLVED IN THE NON-FATAL
SHOOTING ON JANUARY 17, 2014, IN ARLINGTON, MA**

Woburn, MA - The Middlesex County District Attorney's Office and the Massachusetts State Police assigned to the Middlesex County District Attorney's Office have concluded the investigation into the non-fatal shooting of James Riley, 36, of Quincy, MA, who was shot by a member of the Arlington Police Department on Friday, January 17, 2014.

The primary goal of the investigation was to determine if any person bears criminal responsibility in connection with the shooting of James Riley on January 17, 2014. District Attorney Ryan designated Senior Trial Counsel, Thomas F. O'Reilly, to direct the investigation.

"A thorough investigation into the circumstances surrounding the shooting of Mr. Riley has revealed that Officer Michael Foley fired only after Mr. Riley assaulted him with a handgun," said District Attorney Ryan. "The actions of Arlington Officer Michael Foley, who was in uniform, in discharging his weapon at James Riley and striking him were justified in the exercise of self-defense and/or defense of another. Under the circumstances Officer Foley acted reasonably and lawfully. Therefore, no criminal charges are warranted."

Summary of Findings

On January 17, 2014, on-duty Arlington Police Officer Michael Foley shot James Riley, while Riley operated a getaway car away from a bank robbery at the Leader Bank, located at 141 Massachusetts Avenue in Arlington. An investigation was conducted by Assistant District Attorney Thomas O'Reilly and members of the Massachusetts State Police Detectives Unit assigned to the Middlesex District Attorney's Office and members of the Arlington Police Department into the

circumstances under which Riley was shot and whether or not that shooting was justified.

James Riley survived his injuries. He is presently under indictment in Middlesex Superior Court and charged with two counts of unarmed robbery and assault by means of a dangerous weapon on Officer Michael Foley. Shawn Bambushew, his accomplice, is also under indictment and charged with two counts of unarmed robbery and resisting arrest.

The investigation revealed that Riley and Shawn Bambushew went to Arlington in order to rob the Leader Bank on Massachusetts Avenue in Arlington. Bambushew entered the bank while Riley waited in the vehicle on Windsor Street, a side street close to the bank.

During the robbery Bambushew was wearing a black hooded sweatshirt, black leather gloves and huge black sunglasses, with his shirt pulled tight over his face as he walked up to the teller. He was carrying a bag with a strap that went across the front of his body. Bambushew said, "give me everything you have," "give me large bills," "give me more," and "how about the bottom drawer." The teller gave him money in an amount that was approximated to be less than \$150. Bambushew looked at another teller and he told the original teller that he wanted the other teller's money too. That teller gave Bambushew multiple ten-dollar bills; Bambushew then demanded all of her "large." As this was transpiring, there were customers in the bank, including children. The robber said to the teller, "nothing is going to happen, I don't hurt kids."

Another bank employee, who noticed the robbery in progress, followed Bambushew out of the bank to Windsor Street, and saw him get in the passenger side of a Jeep Patriot. The bank employee provided the Massachusetts registration plate number and the vehicle description to police. Surveillance video from the time of the bank robbery was retrieved from Maida Pharmacy, located at the intersection of Massachusetts Ave and Windsor St, which showed the Jeep Patriot drive onto Windsor Street shortly before the bank robbery and a white male, later identified to be Bambushew walked past the front door of the pharmacy towards the bank, returning a short time later. The Jeep was not captured on the video during the bank robbery, however, it could be seen pulling out of Windsor St onto Massachusetts Ave again heading eastbound after Bambushew, the bank robber, returned to the car.

Arlington Police Officer Michael Foley was on patrol in uniform and in a marked police cruiser when the tone alert for the bank robbery was announced and the description of the getaway car and plate number was given out. He proceeded past the bank to the intersection of Massachusetts Ave and Route 16. After traveling a short distance, Foley observed the suspect Jeep Patriot weaving in traffic and, at one point, go up on the curb. It took a right on Rt.2 westbound and then took the Lake Street exit. Officer Foley drove to Lake Street and saw the Jeep heading towards Massachusetts Ave. Officer Foley caught up to and pulled over the Jeep on

Lake Street, near Homestead Road in Arlington, less than a mile from the bank robbery. After Foley called in the stop and began to exit his cruiser, the Jeep took off. Officer Foley radioed that there was a failure to stop and that he was in pursuit.

The fleeing Jeep, being operated by James Riley, took a right on Brooks Street and pulled over again at Brooks and Melrose Street. After stopping, Riley immediately got out of the car and turned towards Foley producing a handgun from his waist area. Foley exited his cruiser and ordered Riley to drop the gun. Riley continued to raise the gun in Foley's direction. Foley, in fear for his life, began firing his department issued firearm. Foley then observed Riley twist to Riley's left and fall, chest first, into the car with his knees on the ground. He then collapsed backward on to the street. The handgun Riley had been brandishing was observed on top of the console closest to the driver's seat. James Riley was handcuffed as he lay on the ground next to the driver's side front door of the vehicle. Riley was bleeding from two gunshot wounds. He was transported by ambulance to Massachusetts General Hospital.

Shawn Bambushew was seated inside the car in the front passenger seat. He was subsequently arrested and was interviewed by Arlington and State Police. Bambushew stated that as they were driving Riley said the cops were chasing them. He said he told Riley to pull over, which he did. Riley then stated, "I'm not going back for life," reached in the back seat of the vehicle, pulled out a gun, then opened the driver's door and got out. Bambushew said, "Jimmy (Riley) wanted to die."

Lt. David Cahill of the Massachusetts State Police Firearms Identification Section responded to the scene and assisted in the collection of firearms related evidence and examined the hand gun found on the front console of the Jeep. Examination revealed that the handgun Riley brandished was, in fact, a pellet gun. However, by all appearances, it looked to be a firearm to the officer. Examination of the Jeep at the scene revealed that there were two bullet holes in the front driver's side door's window which was partway down and there was blood on the ground outside the driver's side door. There were spent shell casings on the ground near and on the hood (near the windshield wipers) of Officer Foley's police cruiser. There were bullet holes in homes on Brooks Street.

Ballistics evidence showed that Officer Foley had discharged eleven (11) rounds in the shooting from his department issued firearm. Ambulance records indicate that Riley was struck by two bullets. One round struck Riley below the right scapula which went across his back and lodged under his left arm pit; his second wound was just off center to his left shin. One projectile was recovered from Riley at the hospital and two projectiles were recovered from a neighborhood home. There is no indication that the pellet gun was fired.

Applicable law

The Middlesex District Attorney's Office's analysis of whether the actions of the involved police officer constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "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 – about the amount of force that is necessary in a particular situation."

Conclusion

Based on all of the foregoing, Arlington Police Officer Michael Foley acted justifiably in defense of himself and in defense of other citizens and law enforcement personnel. The standard for use of deadly force in Massachusetts is that a person may use deadly force to defend him or herself or another if the person has reasonable ground to believe, and actually believes, that he or she is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm. The person using deadly force must actually believe that he or she is in imminent danger of death or serious bodily harm. In addition, the circumstances as perceived and understood by the person using deadly force must be such that a reasonable person would believe that he or she was about to be attacked, and that he or she was in immediate danger of being killed or seriously injured.

Applying this standard, in the totality of the circumstances, Officer Foley was reasonable in his belief that he was in imminent danger of being shot and killed by James Riley. Therefore, the use of lethal force by Officer Michael Foley was justified based on his need to protect himself from the immediate threat of death or serious bodily harm from James Riley. The police officer's use of lethal force was not excessive in the circumstances and, therefore, the shooting was justified in the reasonable exercise of self-defense, under Massachusetts law.

This matter is now referred to the Arlington Police Department for whatever internal review may be deemed appropriate.

4

FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING OFFICERS INVOLVED IN THE FATAL SHOOTING ON FEBRUARY 17, 2015, IN TEWKSBURY, MA

The Middlesex County District Attorney's Office and the Massachusetts State Police assigned to the Middlesex County District Attorney's Office have concluded the investigation into the fatal shooting of Douglas Sparks, 30, of Medford, MA, who was shot by Tewksbury Police on Forest Avenue on Tuesday, February 17, 2015.

A thorough investigation into the circumstances surrounding the fatal shooting of Mr. Sparks has revealed that Detective McLaughlin and Detective Jackman fired only after Mr. Sparks pointed his gun at Detective Jackman and his partner Detective Donovan, and had already refused the detectives repeated commands to "Drop the gun." Under the circumstances, Detective McLaughlin and Detective Jackman acted reasonably and lawfully. Therefore, no criminal charges are warranted.

I. INTRODUCTION

The District Attorney's Office, by statute, has the duty and authority to direct and control all death investigations within Middlesex County. As such, the primary goal of the investigation was to determine if any person bears criminal responsibility in connection with Mr. Sparks' death. I designated my Chief of Homicide, Adrienne Lynch, to direct the investigation. Assistant District Attorney Lynch responded to the scene that morning upon notification.

During the course of our investigation, numerous civilians were interviewed, including the two stabbing victims, and the medical examiner who performed the autopsy. In addition, Tewksbury and other local and State Police personnel were interviewed, Sparks' cell phone was examined, fingerprint and ballistics tests were conducted, and results of those examinations were reviewed. Police reports and written witness statements, the autopsy report and case notes from the Office of the Chief Medical Examiner, and reports of fingerprint, footwear and ballistics examinations were reviewed along with photographs of the scene and the autopsy. The officers involved in the shooting, as well as those who were on scene at the time of the shooting, were interviewed and those interviews were recorded. Recorded calls to the police station, emergency and non-emergency line, as well as Tewksbury Police Department Dispatch transmissions were also reviewed.

II. APPLICABLE LAW

My office's analysis of whether the actions of the involved police officers constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "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 – about the amount of force that is necessary in a particular situation.”

Our review of the facts reveals that in the totality of the circumstances, Detective McLaughlin was justified in his use of deadly force in defense of others, based on his reasonable belief that his fellow officers were in imminent danger of death or serious bodily injury. Similarly, Detective Jackman was justified in his use of deadly force when Sparks was pointing what appeared to be a gun toward him and his partner at close range. The initial command for Sparks to “get on the ground” was ignored and instead Sparks removed a gun from his waistband and brandished it at Detective McLaughlin. The ensuing repeated commands to drop the gun were also ignored by Sparks. It was only when Sparks began to walk away from Detective McLaughlin and walk towards Detectives Jackman and Donovan, with his arm at his side and his gun pointed at Detectives Jackman and Donovan that McLaughlin and Jackman, each reasonably believing that Sparks was about to shoot, simultaneously fired at him until he dropped the gun and fell to the ground.

III. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Incidents at the Salter School

On Tuesday, February 17, 2015, Douglas Sparks drove to the Salter School at 515 Woburn Street in Tewksbury in a rental car and waited there for the arrival of his former girlfriend, who was an employee at the Salter School, and her male co-worker. Several students and employees of the school reported that as early as 7:15 a.m. they observed the rental car occupied by a man who appeared to some to be trying to hide from view in the vehicle. The car was seen at different locations in the school parking lot from 7:15 a.m. up to 9:00 a.m. when the persons he was waiting for arrived at work.

The male employee drove the female employee’s vehicle into the lot and parked it in a space several rows away from the entrance to the lot. Sparks immediately followed the vehicle and pulled up behind it, blocking the woman’s car into the space. Sparks got out of the rental car and opened her passenger side door and said, “I’m slashing your tires,” as he removed a knife from his sleeve, and then slashed the front and right rear tires. After this the woman got out of the car to confront him. Sparks then punched the woman in the face and spun her around causing her to almost fall to the ground.

At that time, the male driver got out of the car and came around the back of the car toward the passenger side, asking Sparks if he was serious and pointing out that he was “hitting a girl.” Sparks then chased him, trying to stab him. On the driver’s side of the vehicle the man sought cover from the car door, but Sparks slashed his hand. Sparks then returned to the woman and attempted to take her handbag, but he was unable to gain control of it. He then grabbed for her cell phone and ripped it out of her hand.

After grabbing the female's cell phone, Sparks ran back to his car and got in. She ran after him to get her cell phone back. As Sparks sat in the car and the woman stood outside they fought for control of the phone. Sparks told her to have her boyfriend buy her a new phone. Sparks was holding onto the woman saying, "Fuck you; you're a fucking bitch; I hate you". Sparks then put the car in drive and "floored it", dragging her, while still holding the knife. At some point they hit something, possibly a snow bank, and he put the car in reverse and dragged her in the opposite direction. During this struggle, Sparks sliced the woman in the right index finger and on the back of the hand with his knife. As she was being carried by the moving car, she was fearful that she would die by being run over by the car Sparks was driving. As she was being dragged, she saw a gun in the center console. Sparks dropped the knife and it appeared that he was grabbing for the gun.

The woman was able to grab the keys in the ignition, the car stopped, and she fell to the ground. She told Sparks, who still had possession of her phone, she was going to call the cops on him. He responded, "I don't care. I will kill the cops too." Sparks then left with the gun and the phone. At that time she ran to the school in order to get medical help for her hand. The man, who was also cut in the hand, had already entered the school and sought help.

Meanwhile, people in the school had been calling 911 to report the assaults in the parking lot. Two 911 calls were received almost simultaneously by Tewksbury Police Dispatch at 9:00:26 a.m. As a result police units were dispatched to the school and uniformed and plainclothes officers responded at that time.

Police dispatchers radioed the suspect's path of flight which was from Woburn Street to Greenwood to Lowell. As a result, officers began to search those side streets in an effort to find him. As this was unfolding, a resident from Greenwood Avenue called saying a man ran up her street and behind a snow bank on Greenwood at Lowell. This call was received at 9:07:28 a.m. Another resident from Elm Street called and reported that she was listening to the scanner and saw the man run from Greenwood to the middle of the intersection with Lowell and look behind him over his shoulder as he ran. She went to pick up her cell phone and lost sight of him, but she didn't think he came up to the Forest Ave intersection with Lowell because she would have seen him. That call was received at 9:08:24 a.m. That information was broadcast to police units at 9:08:46 a.m. After that radio transmission, Detective McLaughlin called out over the radio, that he had the party being sought on the "next street after Greenwood".

At 9:09:47 a.m., Tewksbury police received a radio transmission of shots fired at 55 Forest and requesting an ambulance. Less than ten minutes passed from the original notification of the stabbings and property offenses at the Salter School and the shooting of Sparks on Forest Avenue. Less than one minute passed between when Detective McLaughlin radioed he had a person on the next street after Greenwood, i.e. Forest Avenue, and the call for an ambulance.

b. Events on Forest Avenue

Detective Michael McLaughlin

As of February 17, 2015, Detective Michael McLaughlin had been a Tewksbury Police Officer for three and one-half years. He was a patrol officer until May of 2014 when he was assigned to the Criminal Bureau. In mid-January of 2015, he was assigned as a narcotics detective.

On February 17, 2015, he was working the 8:00 a.m. to 4:00 p.m. shift. That morning he took the unmarked car he was going to use that day to the town DPW facility to put air in one of the tires. The vehicle was a Honda Accord and was equipped with lights and siren. As he was just finishing up at DPW, a call came over the radio of a stabbing at the Salter School. As a result, Detective McLaughlin then got into the car and made his way with lights and siren on to the Salter School. He recalled that the call was for a possibly Hispanic or black male who had stabbed two people, slashed tires and fled the scene in the direction of Woburn Street into the neighborhood across the street from the school. He was approximately three miles away from the school and it took approximately five minutes for him to get to the area with lights and siren. He was alone at that time.

As Detective McLaughlin approached the area he saw a marked cruiser in front of him and a detective car behind him. He could observe other police vehicles traveling up and down the side streets looking for the suspect. As this was transpiring, while he was on Lowell Street, a transmission was received about a caller who reported that the suspect was seen behind a snow bank near the corner of Greenwood and Lowell. Detective McLaughlin headed over to Greenwood and Lowell; he observed two marked units on Greenwood past the Lowell intersection.

A woman in a vehicle on Forest Avenue traveling towards Woburn Street, who had followed the suspect from the Salter School, pointed "that's him" to Detective McLaughlin as he turned right from Lowell onto Forest. At that time, McLaughlin saw a male wearing clothing that matched the description, who was covered in snow, in the middle of the road on Forest. That man was later identified to be Douglas Sparks. McLaughlin drove to the area of the driveway of the first house on Forest and stopped his vehicle. Sparks was standing still in the middle of the street near the first house on the other side of the street on Forest Avenue. There was no one else on the street; no other officer and no civilians. He could see Sparks wore a dark coat with snow on it, a sweatshirt underneath and lighter colored pants. Sparks had a very blank stare, which McLaughlin described as "a thousand mile stare."

Detective McLaughlin got out of the car with the blue lights still on and his lanyard and badge displayed around his neck, over his coat. He also called out over the radio that he had the suspect on the street next to Greenwood. McLaughlin ordered the man to get on the ground because he believed he still had a knife and McLaughlin was close to him. McLaughlin in a strict, loud voice yelled, "Get on the ground. Get on the ground." As he did so, McLaughlin did not have his gun drawn.

At that time, Sparks pulled a gun from his waistband and lifted it straight up. When he took it out and brandished it, it looked to McLaughlin like he "meant business; he was serious." McLaughlin yelled, "drop the gun" and unholstered his own service gun and pointed it at Sparks. From his vantage point, McLaughlin could see what appeared to be a black semiautomatic handgun with a silver ejection port. McLaughlin again told him to "drop the gun." Sparks did not drop his gun, but instead lowered it to his side and turned his back to walk away from McLaughlin. At around this time, McLaughlin saw Tewksbury Detectives Donovan and Jackman coming from the back end of the street; it appeared that they must have come from Greenwood to Felker to Forest. They pulled up in an unmarked Ford Explorer and stopped in the middle of the street and approached where McLaughlin was located. As the two detectives approached, Sparks had the gun to his side and turned around and walked to the right side of the road, near where a fog line would be. Jackman and Donovan were approaching, getting closer to Sparks, and giving verbal commands to drop the gun. At this time, Sparks lifted the gun which was at his side and pointed it in the direction of Jackman and Donovan. Believing that Sparks — who had not spoken a word and who had not adhered to any of the officers' commands was about to shoot Jackman and Donovan, McLaughlin fired twice at the suspect, who did not go down immediately, so McLaughlin fired two more times. McLaughlin also heard Jackman start shooting and Sparks fell to the ground. He estimated the time from his initial encounter with the suspect and shots fired to be approximately 30 seconds.

At the time of his encounter with Sparks, Detective McLaughlin did not know Douglas Sparks and had no prior interaction with him, but he did know that he had been reported to have stabbed two people and slashed tires. He did not see Sparks with a knife, but knew he had been armed with one at the Salter School. Thus, at the time when he shot he believed that Sparks was armed not only with the gun that was pointed at him but he might also still have the knife used in the Salter School assaults.

Up to the time of the shooting all the officers were yelling for Sparks to drop the gun. He just stared at them and made no verbal statements at all. At no time did Sparks ever comply with any verbal command made by the officers.

When Sparks fell to the ground, McLaughlin holstered his firearm and, by this time, there were other officers on scene. Then other officers initiated CPR.

At the scene, McLaughlin turned his firearm over to Officer Andre Gonzalez. McLaughlin became aware that Sparks' gun was a BB gun after the incident.

Detective Edward Jackman

As of February 17, 2015, Detective Edward Jackman had been a Tewksbury police officer for three and one-half years. He had been assigned to patrol until May of 2014 when he was assigned to detectives.

On February 17, 2015, Jackman was working the day shift with Detective Michael Donovan. Donovan was driving an unmarked Tewksbury Police Ford Explorer, which was equipped with a siren and emergency lights, and he was in plainclothes. Shortly before 9 a.m.

that day, Jackman and Donovan were responding to a bank alarm call, when they were called-off. At that time, they received a call for the stabbing at the Salter School and responded. The information provided was that there were two victims and the suspect was a male, black or Hispanic, who was wearing a gray sweatshirt, slashing tires. The two detectives were a few miles from the school when they received the call and responded with blue lights and siren activated.

En route, they received a transmission that a witness reported that the suspect crossed Woburn Street and ran into the neighborhood. They first started checking side streets. On Whipple Road he noticed Detective McLaughlin's unmarked Honda Accord. There were also marked police vehicles in the area, including one in front of them. They drove from Park to Woburn Street, where they noticed a beige/tan house and looked down that street. While they were canvassing in this way, the detectives received the radio call from dispatch that a resident called and reported seeing a man covered in snow on Greenwood Avenue. They then took Woburn to Greenwood with blue lights still activated. They went down Greenwood to the end, took a left onto Felker and then a left onto Forest. As they were doing so, they heard Detective McLaughlin radio that he thought he had the person on Forest Avenue. As they turned onto Forest Avenue, the lights were on, and they could see the individual, wearing a gray sweatshirt with something on the back in the middle, wearing a hat or a hooded sweatshirt covering his head.

Detective Jackman saw McLaughlin exit his vehicle from behind this individual and draw his weapon. At that point, Jackman drew his own weapon. Jackman sprinted over to McLaughlin and heard McLaughlin yell, "Drop the gun." Sparks then turned toward Jackman and Donovan. He could then see what appeared to be a firearm in Sparks' hand. Until Sparks turned toward Jackman and Donovan, Sparks' arm had been obscured from Jackman's view. Jackman said he took his firearm out when he did because he assumed that there was some sort of threat, based on McLaughlin's words and actions.

Jackman yelled, "Stop. Drop the gun" in an authoritative manner, when he saw the gun in Sparks' right hand. It was black with silver at the part attached to the barrel. He could hear Detective Donovan yell, "Crossfire." Jackman was across the street and the width of the street was the distance between him and Sparks. He and Donovan were just beyond Sparks. Sparks did not say a word, he just stared. Jackman saw the gun and saw Sparks start to raise his hand with the gun pointed toward Jackman. At that moment Jackman believed the man was going to shoot him and Donovan; Sparks had not dropped the gun as commanded. As Sparks pointed the gun at Jackman, Jackman fired his gun. He believed he fired twice but later learned he had expended three rounds. When he fired, Donovan was standing to the rear of Jackman. Sparks then fell to the ground on top of the gun. Jackman pulled Sparks away from and off the gun and then reholstered his own weapon.

At the scene, Detective Jackman turned over his service weapon to Officer Andre Gonzalez. Subsequent to the shooting, Jackman learned that Sparks had a BB gun. Jackman did not recognize Sparks as anyone he had ever seen before.

Detective Michael Donovan

As of February 17, 2015, Detective Donovan had been a Tewksbury police officer for seven years. That day, he was working as a day detective and was partnered with Detective Edward Jackman. They started their shift at 8:00 a.m. and were in plainclothes. At around 9:00 a.m., they received the radio transmission about the stabbing at the Salter School. At that point all cars started to head in that direction. Donovan was operating their unmarked Ford Explorer equipped with lights and siren. They learned that two people had been stabbed and that tires had been slashed.

When they got to the area of Woburn Street there was a radio dispatch reporting that the man went through a yard. Donovan drove down Greenwood to Felker and back out up Forest. As they turned onto Forest, Donovan could see Detective McLaughlin get out of his car, on Forest, closer to Lowell Street. McLaughlin stopped his car closer to the left side of the street. Donovan could see Sparks who he described as having a medium build, around 6 feet tall and 200 lbs. At that time, Sparks was walking away from McLaughlin, as McLaughlin was saying, "show me your hands."

Donovan and Jackman pulled up and stopped. Donovan saw the suspect with a black gun in his right hand pointed towards Donovan and Jackman. The man's arm was to his side, but the gun was pointed at the officers. Sparks was looking at McLaughlin and then looking at them. They yelled, "Show us your hands" loudly. He and Jackman were further away from Sparks than McLaughlin. Donovan and Jackman both drew their firearms as McLaughlin had. He and Jackman made numerous verbal commands to "show your hands"; when they noticed the weapon, they also stated, "Drop your weapon." Sparks just stared; it "looked like he meant business."

Sparks was in the middle of the road and Donovan was concerned about a crossfire situation. He then heard 3 to 5 shots and saw McLaughlin shoot as Sparks walked towards Jackman and Donovan with the gun pointed at them. Jackman was a few steps in front of Donovan; Donovan didn't even realize that Jackman had fired. Because he was behind Jackman, Donovan didn't shoot for concern for shooting Jackman.

When the shots were fired, the suspect did not go down right away. Once he fell to the ground Donovan approached. He never heard the suspect say anything. Other officers began administering first aid. EMTs were requested and so Donovan started moving cars, because the street was too narrow for an ambulance to get in.

c. Immediate post-shooting events

Tewksbury Fire emergency medical personnel responded and transported Sparks to Saints Memorial Medical Center where he was pronounced dead.

The State Police Middlesex Detectives Unit attached to the Middlesex District Attorney's Office was notified and responded at that time and initiated this investigation.

Detective McLaughlin and Detective Jackman each turned over their firearms to Tewksbury Officer Andre Gonzalez who subsequently turned them over to troopers assigned to the State Police Firearms Identification Section who responded to the scene.

A canvas of the neighborhood was conducted and witnesses were interviewed. One of those witnesses was the resident of number 47 Forest Avenue, who was home with her four young grandchildren at the time. She saw Sparks in her yard prior to the shooting and noticed he was covered in snow. She thought that he may have been clearing snow on the roof of her neighbor's house. She walked to her bathroom on the left side of her house (as you are facing it from outside in front) and saw Sparks pacing in her neighbor's driveway. She saw him walk to the end of the neighbor's driveway. Her view was somewhat obscured by a fence and snowbank separating her property from the neighbor's property. A photo taken from inside that home is attached.

It appeared to her that the man went to the end of the driveway and raised his right arm as if letting someone know where he was. She next saw a man, one of the police detectives (believed to be Detective McLaughlin) with his right arm stretched out, using his left to steady his elbow, and a gun pointing to the man who was now on Forest Avenue. She then heard four shots and told everyone in her house to get down. She could not observe what if anything was in the man's hands due to him being behind a very large snow bank.

It appeared that the man had entered her yard from Lowell Avenue and may have tried to get into her house by way of the rear door.

The residents of 55 Forest Avenue, Tewksbury, were inside their house and from inside they heard four pops.

A silver Ginzu knife was recovered from a snowbank on Lowell Avenue near Forest Avenue later that same day. A photograph of that knife is attached.

d. Officer training in connection with firearms

The Tewksbury Police Department officers all received firearms, rifle, and shotgun training in the police academy. They are all trained in the Municipal Police Training Committee (MPTC) standards on the use of force and adhere to those standards during their annual firearms training (both at the range and in the Middlesex Sheriff's Department's Mobile Training Center), annual defensive tactics training, and annual active shooting/critical incident training.

IV. OFFICE OF THE CHIEF MEDICAL EXAMINER

An autopsy was performed by Dr. Henry Nields, who determined the cause of death to be gunshot wounds to the torso and the manner of death to be homicide. Sparks was shot a total of four times. There were three shots to the torso and one shot to the knee.

One bullet entered the right clavicle, front and top of the region, with a wound path that traveled downward and backward, perforating the right second rib, the lobes of the right lung,

and perforating the right fourth intercostal space and fifth rib, where it became lodged in the soft tissue of the right side of the back. The bullet was recovered.

Another bullet entered the left side of the chest under the armpit, with a wound path going left to right, upwards and forward, perforating through the left lung, the heart, the right lung, and into the soft tissue of the right upper arm where it lodged. This was the second bullet recovered.

Another bullet entered the right side of the back, with a wound path that traveled forward, rightwards and upward, through the lobe of the right lung, the diaphragm, the liver, and exited the chest.

These three wounds resulted in significant internal bleeding.

The fourth bullet entered the front of the right knee through the knee and out through the back of the right leg. The direction of the bullet was front to back, downward and slightly right.

The last two wounds described were through and through wounds. The other two bullets, as stated above, were recovered.

Toxicology testing results were positive for ethanol (alcohol) with results of 0.03 g % and 0.05 g%.

V. BALLISTICS

Massachusetts State Police Lieutenant David Cahill responded to the scene of the shooting and also conducted all test firings and comparative analysis of firearms related evidence.

From the scene police recovered a .177/4.5 mm caliber Colt model Defender by UMAREX BB gun, with a CO2 cartridge, with 12 .177 copper colored BBs. This BB gun had no orange tip and nothing to identify it as a BB gun to an observer in the position of the police officers here when they first saw it in Sparks' hand. The BB gun was charged and was loaded with 12 BB pellets when recovered. A photograph of the Colt Defender is attached hereto.

Lieutenant Cahill also took custody of the two .40 Smith & Wesson caliber Glock model 22 semi-automatic pistols that Detectives Jackman and McLaughlin discharged during the course of the incident. Serial number SBF356 was Detective McLaughlin's firearm and SBF343 was Detective Jackman's firearm. Each firearm had one round in the chamber when received. The magazine from Detective McLaughlin's gun contained 11 rounds of live ammunition. The magazine from Detective Jackman's gun contained 12 rounds of live ammunition. Each magazine had a fifteen round capacity, which would enable a total of 16 rounds of live ammunition if one round were in the chamber with a fully loaded magazine.

Four spent projectiles were recovered; two were recovered from Sparks during autopsy, the other two were recovered at the scene on Forest Avenue. All were consistent with being

fired by a .40 Smith & Wesson caliber Glock model 22 semiautomatic pistol, based on class characteristics. Due to the absence of sufficient individual characteristics, Lt. Cahill was unable to identify or eliminate them as having been fired by either of the two submitted pistols.

On February 17, 2015, five discharged cartridge casings were recovered from Forest Avenue. On March 17, 2015, as the snow cover in the area was beginning to melt, two additional discharged cartridge cases were recovered. Those items were submitted to the State Police Firearms Identification Section for examination. Based on his education, training and experience, Lieutenant Cahill formed the opinion that four of those casings were discharged from Detective McLaughlin's firearm, and the other three casings were discharged from Detective Jackman's firearm.

VI. FINGERPRINTS AND FOOTWEAR EVIDENCE

The scene and certain evidence items were documented by troopers assigned to the Massachusetts State Police Crime Scene Services Section.

Footwear impressions in the snow of the driveway at 55 Forest Avenue in Tewksbury corresponded to footwear worn by Douglas Sparks in class characteristics.

Trooper William Eiserman of the Massachusetts State Police Forensic Services Group, Crime Scene Services Section, examined the .177 caliber Colt model Defender BB gun, for the presence of friction ridge evidence. Trooper Eiserman, based on his education, training and experience, located a print on the BB gun on the interior frame of the handle, which he compared to the known fingerprints of Douglas Sparks. That print was matched to the right index finger of Douglas Sparks. The CO2 cartridge and twelve BB's found in the gun were examined for prints but no further prints of sufficient quantity or quality were located.

VII. EXAMINATION OF SPARKS' CELL PHONE

Police recovered Douglas Sparks' phone which was examined in connection with this investigation. In the days leading up to his fatal encounter with the police, his phone and text activity with the female victim was prolific, threatening, and indicative of his obsession with her and her new boyfriend.

In addition to his constant barrage of text messages, Sparks repeatedly called the female victim's cell phone during the same time period. His last outgoing call on the 17th was at 8:54 a.m. to her. There were 23 other calls from his phone to her phone from midnight up to that point. On February 16, 2015, Sparks' cell called her cell phone approximately 60 times.

VIII. SPARKS' ACTIVITIES IN THE DAYS LEADING UP TO FEBRUARY 17, 2015

The Wilmington police had an encounter with a highly intoxicated Sparks at 12:18 a.m. on February 14, 2015. A resident called the police to report a suspicious man on Webber Street.

On the morning Saturday, February 14, 2014, a retired Tewksbury police sergeant was walking near the Salter School, on the bridge directly across from the school, when he observed foot tracks in the snow and a man, believed to be Douglas Sparks, lying in three feet of snow. Fearing the man was deceased, the sergeant flagged down a passing motorist and asked him to call the police. Once the man in the snow heard this, he jumped up and said he was fine. He went on to say that he was there to surprise his girlfriend, who worked at the Salter School, for Valentine's Day. That day, Sparks left a Valentine's Day present on the female victim's car in the Salter School parking lot. When she walked over to see what was on the car, Sparks came out of nowhere and the two spoke briefly before she returned to work.

As set forth above, on Monday, February 16, 2015, Sparks called the female victim's cell phone approximately 60 times leading her to block his calls. That evening sometime after 5:00 p.m. Sparks went to the female victim's home and left flowers and a card on the doorstep where they were intercepted by her mother.

IX. DOUGLAS SPARKS' CRIMINAL RECORD

Investigation revealed that the deceased had a record of violent crimes and had previously done state prison time for two separate incidents, one in Somerville, involving an assault with a gun and a stabbing with a knife and the other in Arlington, involving an armed robbery with a BB gun. He received a house of correction sentence in 2005 for an offense involving an assault and battery with a BB gun. In 2013, Sparks was placed on probation by the Somerville District Court for a drug offense. At the time of his death, the Somerville Police had identified Sparks as a suspect in connection with a serious but non-fatal stabbing in Somerville on January 17, 2015.

IX. CONCLUSION

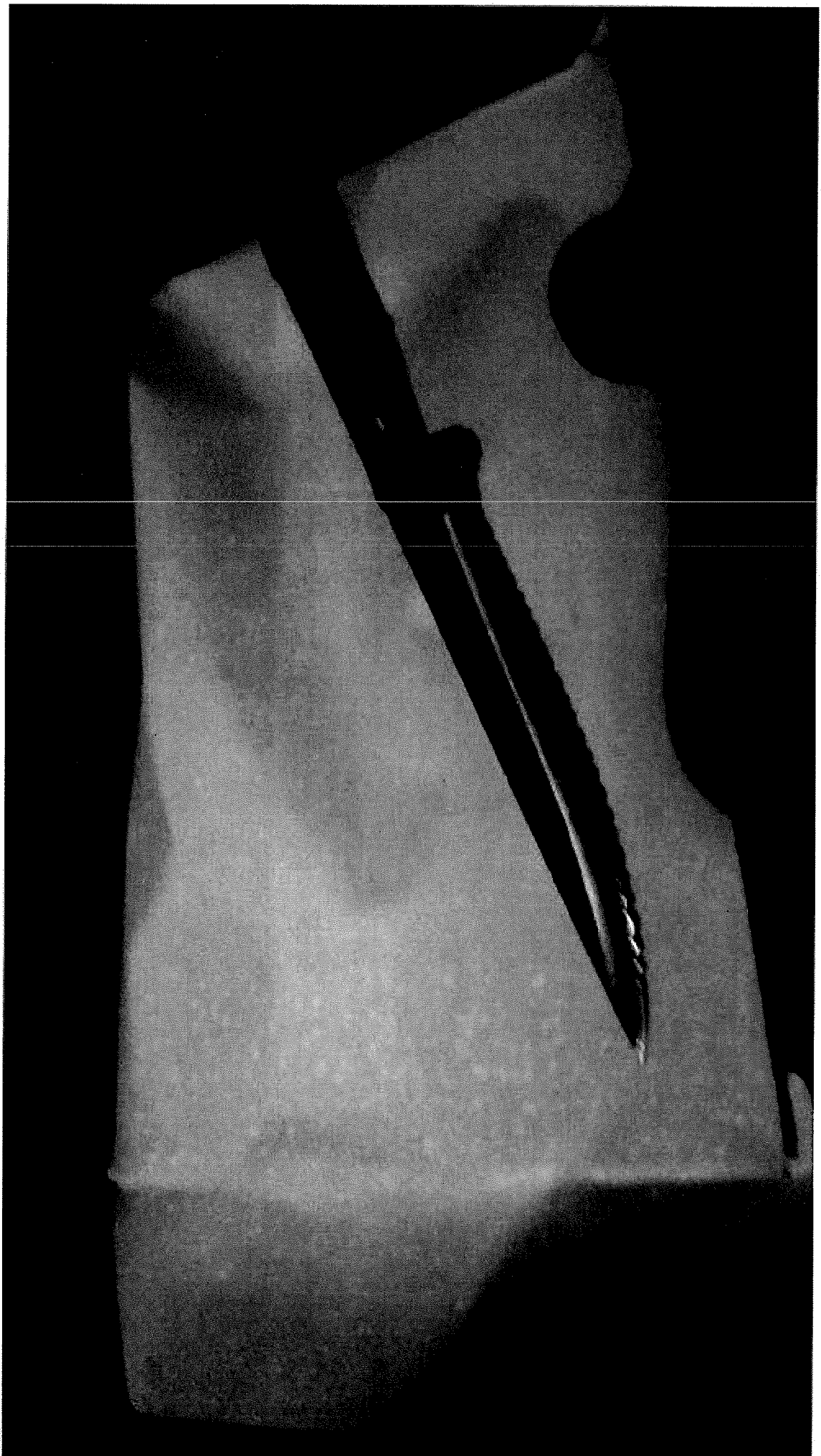
The totality of evidence from a wide variety of sources showed that in the days leading up to February 17, 2015, Sparks was preoccupied with his former girlfriend and was becoming increasingly jealous that she was spending time with someone else. He went to the Salter School with the intent to confront her there and while there engaged in criminal conduct in broad daylight that was viewed by a number of people who reported same to the police, who responded to the area and searched for Sparks who by that time had fled.

Rather than submit to lawful authority when police located him, Sparks brandished a weapon and ignored the detectives' commands to drop the weapon and then pointed it at officers. Detective Michael McLaughlin acted reasonably and lawfully in defense of his fellow police officers, Jackman and Donovan, firing only when Sparks pointed the gun at Jackman and Donovan. Detective Edward Jackman acted reasonably and lawfully in self-defense when Sparks pointed the gun at him and refused to drop the gun. Their belief that Sparks was about to fire that gun and that death or serious bodily injury to them was imminent was reasonable in the totality of the circumstances.

This matter is now referred to the Tewksbury Police Department for whatever internal review may be deemed appropriate.







FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING OFFICERS
INVOLVED IN THE FATAL SHOOTING ON MARCH 26, 2016, IN LOWELL, MA

The Middlesex County District Attorney's Office, the Massachusetts State Police assigned to the Middlesex County District Attorney's Office along with the Lowell Police Department have concluded the investigation into the fatal shooting of Jose Perez, 39, of Lowell, MA, who was shot by Lowell Police on Cambridge Street on March 26, 2016.

A thorough investigation into the circumstances surrounding the fatal shooting of Mr. Perez has revealed that Officer Guillermo Rojas and Gang Officer Chase Suong fired only after Mr. Perez advanced on the officers armed with a substantial knife in each hand, and after he had already refused multiple demands to drop the knives. Under the circumstances, Officers Rojas and Gang Officer Suong acted reasonably and lawfully. Therefore, no criminal charges are warranted.

I. INTRODUCTION

The District Attorney's Office, by statute, has the duty and authority to direct and control all death investigations within Middlesex County. As such, the primary goal of the investigation was to determine if any person bears criminal responsibility in connection with Mr. Perez's death. I designated my Chief of Homicide, Adrienne Lynch, to direct the investigation.

During the course of our investigation, recordings of the 911 calls as well as police radio communications were gathered and reviewed. A canvas of the neighborhood was conducted and interviews were conducted with the family members of the deceased. The two officers who fired their department issued firearms wrote police reports and were interviewed, other responding officers wrote police reports which were also reviewed. Police reports concerning two prior encounters the Lowell police had with Jose Perez- one dated July 15, 2009 and the other dated February 17, 2012; were also reviewed. Additionally, ballistics tests were conducted, and results of those examinations were reviewed. Police reports, witness statements and the autopsy report were reviewed along with photographs of the scene and of the autopsy.

II. APPLICABLE LAW

My office's analysis of whether the actions of the involved police officers constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "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 — about the amount of force that is necessary in a particular situation."

The standard for use of deadly force in Massachusetts is that a person may use deadly force to defend him or herself or another if the person has reasonable ground to believe, and actually believes, that he or she is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm. The person using deadly force must actually believe that he or she or other persons are in imminent danger of death or serious bodily harm. In addition, the circumstances as perceived and understood by the person using deadly force must be such that a reasonable person would believe that he or she or another person was about to be attacked, and that he or she was in immediate danger of being killed or seriously injured.

Our review of the facts reveals that in the totality of the circumstances, Officer Rojas and Gang Officer Suong were justified in their use of deadly force. Both Officer Rojas and Gang Officer Suong fired their department issued firearms: Rojas six times, Suong twice. Officer Rojas was reasonable in his belief that he and Gang Officer Suong, and possibly others inside the dwelling at Cambridge Street who had called the police for help, were in imminent danger of being stabbed and suffering death or serious bodily injury at the hands of Jose Perez. Similarly, Gang Officer Suong was also reasonable in his belief that he and Officer Rojas, and possibly others inside the dwelling at Cambridge Street, were in imminent danger of being stabbed and suffering death or serious bodily injury at the hands of Jose Perez.

III. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Incidents at Cambridge Street

On Saturday, March 26, 2016, as a result of two 911 calls to the Essex Regional Emergency Communications Center, one from the deceased Jose Perez, and the other from his girlfriend's seventeen year old daughter, Lowell police officers were dispatched to 75 Cambridge Street in Lowell. The first call, which was from the deceased, demanded the dispatcher to send the police right now because he was "going to kill all everybody." The second call, from the seventeen year old female reported that there was a suicidal person in the house at 75 Cambridge Street, with two knives, who wants to kill himself. She described him and what he was wearing. This information was broadcast as it was being received to Lowell police officers including uniformed Officer Guillermo Rojas and plainclothes Gang Officer Chase Suong.

The first officers on the scene were Officer Guillermo Rojas and Officer Chase Suong, and each reported firing their department issued firearm during the incident. There were four civilian witnesses, the girlfriend of the deceased and her three daughters, ages 17 – 11 years, who were outside the house and down the block, when the shooting occurred, and two police officers on scene at the time of the shooting. Troopers from the Crime Scene Services Section responded and documented the scene. Troopers from the State Police Firearms Identification Section also responded and collected ballistics related evidence including the department issued firearms of the two officers who each discharged their firearm during the incident

b. 911 Calls

On Saturday, March 26, 2016, at 10:53:20 p.m., the Essex Regional Emergency Communications Center received the first of two 911 calls. The first call was from a person, later identified to be the deceased, Jose Perez, date of birth: 12/25/77. During that recorded call Perez told the dispatcher to "send the cops to 75 Cambridge Street," and "Send it right now 'cause I'm gonna kill all everybody." The Regional Dispatcher relayed the information to the Lowell police dispatcher at 10:53:50 p.m. This information was then, in turn, broadcast to patrol units by the Lowell dispatcher.

As this was occurring, the Essex Regional Emergency Communications Center dispatcher received a second 911 call concerning 75 Cambridge Street at 10:57:50. This call was from the 17 year old daughter of Perez's girlfriend, requesting "can we please get a cop or anybody, um, at 75 Cambridge Street. We - we have a suicidal" and "Please hurry up."

The call was immediately transferred to the Lowell dispatcher, who picked up the call at 10:58:40 p.m. During the call, it was reported to the Lowell dispatcher that "I have a suicidal at my house. He has two knives and he wants to kill himself." The female caller provided a description of him as a Hispanic male, with curly hair, wearing a white shirt and jeans. Simultaneously this information was being broadcast by another dispatcher to Lowell officers on the street, as the original dispatcher remained on the line with the female. One minute and thirty-four seconds into the conversation (11:00:14 p.m.) with the Lowell dispatcher, females can be heard to become hysterical. A younger female then got on the line and said "the police shot him coming out of the house."

c. Officer Guillermo Rojas

Officer Guillermo Rojas was working as a uniformed police officer assigned to marked cruiser B1 as a district response officer. He was parked on Appleton Street when he heard the radio transmission directed to area 10 cars concerning a 911 call from a man at 75 Cambridge Street saying he was going to kill everyone and to send the police. Officer Rojas' location was a short distance from 75 Cambridge Street so he decided to respond as a backup. He responded without use of blue lights or siren. As he approached Cambridge Street, he saw an unmarked cruiser, operated by Gang Officer Chase Suong from the Gang Unit turning on to Cambridge Street. Officer Rojas advised Lowell Dispatch that he was going off on Cambridge Street. Shortly after that a tone on the Lowell Police radio was issued followed by a dispatch stating that there was a man holding knives in the residence. At that time Officer Rojas unholstered his department issued firearm and held it straight down against the right side of his body as he continued walking towards 75 Cambridge Street, which is located in a thickly settled residential neighborhood. Rojas and Suong were now walking together and Rojas again advised Lowell dispatch that he and Suong were "going off."

Meanwhile, Lowell Dispatch had provided a description of the male as a male with curly hair, a white t-shirt and jeans. The officers continued walking towards the front doorway of 75 Cambridge Street which was wide open. The front doorway opens to a hallway with a staircase

going upstairs on the right and a hallway leading to the first floor apartment to the left. Officer Rojas walked up two of the cement steps leading up to the front door and stopped at the top step. As he looked through the open front door he saw the door to the first floor apartment was closed and the stairs to his right. Realizing this was a multi-family residence Officer Rojas advised dispatch of this and sought further information. As he was requesting additional information via radio, Gang Officer Suong told him the male was right there on the interior stairs. Officer Rojas looked to his right and saw a man in a white t-shirt and blue jeans coming down the stairs at a fast rate of speed with a look of "aggression" on his face. The man was closer to the top of the stairs leading to the second floor when he first saw him. The man had one hand above his body holding a large metallic steak knife. In the other hand he could see the man was holding something but Officer Rojas' attention was focused on the large steak knife.

Officer Rojas was in full police uniform, but, nevertheless, in a loud voice, identified himself as a Lowell police officer and yelled for the man to "drop the knife." Officer Rojas could also hear Gang Officer Suong give the man the same verbal commands. The man responded by saying that he wasn't dropping anything. As these verbal commands were being given and ignored, the man continued down the stairs towards the officers, refusing to drop the knife, holding it above his head in an assaultive manner towards the officers. Officer Rojas was on the top exterior step and took one step back, in an effort to create immediate distance between himself and the man, and briefly lost his balance as he missed the step behind him. As he was taking the step backwards the man continued to charge towards him and Gang Officer Suong, showing no sign of slowing down, stopping or lowering the knife. Officer Rojas aimed his firearm at the man and, as the man got closer, at the bottom of the interior stairway around five to seven feet from the officers, Rojas believed he was facing an imminent threat of serious bodily injury or death to himself and/or Gang Officer Suong, and discharged his firearm aimed at the man's center mass. Officer Rojas said he fired until he was able to identify that the serious assault had been neutralized. After being shot, the man fell face down on the landing in front of the officers.

Officer Rojas immediately notified the Lowell dispatcher that shots had been fired and requested paramedics. He could hear the man moaning and breathing heavily. The man still held a knife in his right hand. Rojas and Suong decided that Rojas would re-holster his firearm and pull the man towards them by the legs, while Gang Officer Suong provided cover, hoping that Perez would release the knife in his hand and be in a better position to receive emergency medical treatment.

As other officers began to arrive, Officer Rojas was able to see a second knife. As the responding officers took over medical treatment, Officer Rojas and Gang Officer Suong proceeded to the second floor (where the man had come from); in an effort to determine if there were any injured persons in the apartment. While clearing the apartment, Officer Rojas observed some disarray as if a struggle had taken place and there was blood in the kitchen and on a broken lamp on the floor in a bedroom. As they finished clearing the apartment, Officer Rojas noticed

that the back door to the apartment was wide open. Rojas and Suong exited the apartment through that door and met up with the other officers outside.

Officer Rojas turned over his department issued firearm at the scene.

d. Gang Officer Chase Suong

Gang Officer Suong was assigned to the Lowell Police Department Gang Unit in plainclothes with a police badge around his neck and operating an unmarked cruiser equipped with lights and siren. At approximately 10:55 p.m. he heard the radio transmission reporting that Lowell Dispatch was notified by Essex Dispatch that a male residing at 75 Cambridge Street is "going to kill everyone" and that he wants police there. At the time Gang Officer Suong believed there were possible victims at the house and it was also relayed that the man in the house had a knife.

Gang Officer Suong was nearby so he activated his blue lights and siren and headed toward Cambridge Street, given the serious nature of the call. Upon arrival, he waited several seconds for an additional unit to respond; that was Officer Rojas in a marked cruiser and in uniform. As they were approaching the front of the house together a "priority one tone" was given by dispatch regarding the address and added that the male caller is in the hallway armed with a knife. Gang Officer Suong drew his department issued firearm and held it to his side pointing down as he and Rojas proceeded to the main front entryway with Rojas to Suong's left.

There were several steps outside the building leading to the main door which was open. Gang Officer Suong could see there was a short hallway on the left which lead to the door to the first floor apartment and to the right a stairway leading to the second floor. Upon visually clearing the left first floor hallway, Gang Officer Suong took a couple of steps forward on the front steps when his attention was drawn to the top of the right interior stairway where he saw a man, later identified to be Jose Perez, walking down the stairs. Suong took a step back and notified Rojas. Perez quickly came down the stairs holding two knives: a butcher knife in his left hand and a common kitchen knife in his right hand. Perez had what appeared to be blood on his hands, which led Suong to believe there could be victims inside the apartment. Suong pointed his firearm at Perez and made loud, verbal commands for him to stop and drop the knives. Perez ignored these commands as he continued to walk down the stairs towards the officers and said "no, no, no." Suong continued to tell Perez to stop as he continued down the stairs while shaking his head and still saying no. Perez continued towards the officers at a faster pace and raised both his arms while still wielding both knives. Once Perez made it down to the bottom of the interior stairs, Suong was at the foot of the cement steps outside as Perez was at the bottom of the interior stairs and speeding up. The distance was now between and 6 and 8 feet between Perez and the officers. Gang Officer Suong feared for his life and the life of Officer Rojas and was also concerned that there were possibly other victims inside the house. Gang Officer Suong said that he could not have taken quick enough steps to his rear or to his right out of attacking range

without knowing Officer Rojas would do the same. He said, with no other options, he shot a round from his department issued firearm aiming at the center mass to stop Perez. As he did so, Suong heard simultaneous shots coming from Officer Rojas, who was directly to his left.

Despite being shot, Perez did not stop immediately and was still standing after several seconds. He then made a right hand turn as he was dropping to the floor, still holding onto both knives. Once Perez was on the ground in a prone position facing away from the officers, Suong saw Perez was still moving with his right hand holding the kitchen knife. Suong noticed that by this point Perez had let go of the butcher knife which had been in his left hand, although it was still within Perez's reach. Suong could see Perez moving his right hand and clenching and unclenching his grasp of the knife. Suong commanded Perez to let go of the knife and to show his hands free of any weapons. When Perez did not respond the officers grabbed Perez by the feet and pulled him away from the knives. As they did so, Perez released the knife in his right hand. At that point Suong grabbed the butcher knife and tossed it down the hall, away from Perez.

Other officers arrived on scene and took over medical treatment of Perez. At that time, Rojas and Suong proceeded to the second floor apartment in order to do a search for other potential victims. Walking up to the door, Gang Officer Suong observed blood in the doorway. After announcing "Lowell Police", Gang Officer Suong and Officer Rojas entered checked for other victims. They observed blood in the kitchen area and the rear door to the apartment open. After determining that there were no injured persons inside, he and Officer Rojas left the apartment.

Gang Officer Suong turned over his department issued firearm at the scene.

e. Police Radio Communications

Lowell police radio transmission recordings were also reviewed as part of this investigation. The transmissions confirm the sequence and timing of events as reported by the officers. Track 3 of the recording begins with the broadcast reporting Essex Communications report of a male caller who told them he was going to kill everyone and send the police. At fifty-two seconds into track 3, Officer Rojas transmits that he is "going off on Cambridge." At one minute and twenty-six seconds, the "tone" is transmitted. At one minute and fifty-two seconds, "B1 (Rojas) and G4 (Suong) off on Cambridge" is transmitted. At one minute and fifty-six seconds, a description is broadcast. At two minutes and five seconds, Officer Rojas radios, "it's a two level building, do we -" and the transmission stops. At two minutes and thirteen seconds the radio transmission of "shots fired, shots fired. Call an ambulance right now," is transmitted. Thus, from the time the officer radioed inquiring about which floor of the building to the time of "shots fired" being transmitted was 8 seconds.

IV. OFFICE OF THE CHIEF MEDICAL EXAMINER

Dr. Mindy Hull of the OCME performed an autopsy on March 27, 2016. Upon examination, Dr. Hull noted six penetrating gunshot wounds and three perforating gunshot wounds, although those three perforating wounds could have been the result of a single shot (e.g., entering, exiting and re-entering).

The penetrating wounds were described, as follows:

Wound A: entrance at the central upper chest and bullet recovered at the right armpit with a directionality to the right and slightly backwards;

Wound B: entrance in the lower chest and bullet recovered in the left pericardial sac with a directionality to the right and slightly backwards – injury to the heart;

Wound C: entrance in left lower chest, bullet recovered in the tight chest wall, posterior, with a directionality to the right and slightly backwards – injury to lungs and lower aorta;

Wound D: entrance in the left lateral lower chest bullet recovered in left musculature/peri-spinal (abdomen/lower back) with a directionality to the right, backwards and slightly downward, through soft tissue, near the kidney, ending in large muscle of the spine;

Wound E: entrance wound of the left abdomen, bullet recovered in the right (opposite) side of the abdominal wall/flank, directionality rightward and slightly back across the body – injury to intestines

Wound F: entrance wound of the left posterior shoulder, bullet recovered in the right chest near the clavicle, directionality rightward and slightly backwards.

There were three perforating injuries to the left upper arm, which by their appearance could have been caused by one or more than one shot.

The injuries observed were all consistent with the description provided by each officer about the shooting concerning where they were and where Perez was and what his movements were at the time of the shooting.

Jose Perez was described to be morbidly obese with a height of 5'8" and a weight of 281 lbs. recorded at autopsy.

Toxicology results showed positive results for recent cocaine use (Cocaine and metabolites) and a positive result for blood alcohol with a whole blood result in the comparable range of a .20 - .23 g. %. There were also positive results for levamisole (possibly used as cutting agent for cocaine), mirtazapine (an antidepressant) and possible chloroquine metabolite.

V. BALLISTICS EVIDENCE

At the scene troopers assigned to the Massachusetts State Police Firearms Identification Section recovered two spent projectiles, one spent projectile fragment and eight discharged cartridge casings. Six spent projectiles and one spent projectile fragment were recovered at the autopsy of Jose Perez. Additionally, both officers' .40 Smith & Wesson M & P40c semi-automatic pistols were submitted. Both firearms had one live round of ammunition in the chamber.

Test firings demonstrated that both of the officers' guns were working firearms. Lieutenant David Cahill of the Firearms Identification Section did a comparative analysis between test firings from each of the two firearms and evidence recovered at the scene and at autopsy. Based on his examination of the evidence as well as his education training and experience in the field, Lt. Cahill has rendered the following opinions:

- Six of the discharged cartridge cases were fired by the Rojas firearm
- Two of the discharged cartridge cases were fired by the Suong firearm
- Four of the six spent projectiles recovered at autopsy were fired by the Rojas firearm
- Two of the six spent projectiles recovered at autopsy were fired by the Suong firearm
- Two of the spent projectiles recovered at the scene had similar class characteristics and some similar individual markings to Rojas' firearm, however, due to damage to the bearing surfaces of the projectiles there was insufficient correlation of individual markings and thus his results are inconclusive
- The projectile fragments recovered at the scene and at autopsy possessed no markings of value

The ballistics evidence was consistent with the officers' descriptions of the shooting.

VI. SCENE EXAMINATION

State police personnel assigned to the Crime Scene Services Section responded and documented the scene and assisted in evidence collection. In addition to the ballistics evidence documented herein, investigators located two knives in the first floor common hallway area of 75 Cambridge Street, Lowell, MA. One was a black handled knife found at the base of the interior stairway leading up to the second floor and the other a meat cleaver/butcher knife with a black

handle. A broken cell phone was also located on the floor of the first floor hallway leading towards the first floor apartment door.

Examination of the second floor apartment revealed the presence of blood on the doorway and inside the apartment, as described by the officers and witnesses, as well as the broken floor lamp. A plastic baggie with residue was observed in the master bedroom where Perez had been seen with it by a witness.

VII. JOSE PEREZ'S PRIOR INVOLVEMENT WITH LOWELL POLICE AND THE COURT SYSTEM

Investigation revealed that the deceased had a previous criminal history and involvement with the Lowell Police Department. In 2009, Lowell Police received a phone call from Jose Perez and responded to Sixth Street, Lowell, where he was living. He told the police he was depressed and wanted to go to Saints Medical Center voluntarily. He was subsequently transported there by Trinity Ambulance. On a second occasion in 2012, Lowell police were dispatched to Cumberland Road in Lowell for a man who had just stabbed himself in the stomach. Upon arrival, Lowell police spoke with Jose Perez, the man who had stabbed himself. Perez was transported to Lowell General where he was scheduled to be med-flighted to Boston. A section 12 petition, i.e., involuntary commitment as a danger to himself or others, was filed.

A review of Perez's record reveals three closed restraining orders from 2001, 2008 and 2009 that had issued against Perez on application of three different women. His record consists of no convictions. In 1999, he received a continuance without a finding for a domestic assault and battery and malicious destruction of property less than \$250 and a 2004 continuance without a finding for leaving the scene of a property damage collision.

VIII. CONCLUSION

The totality of evidence reviewed showed that at the time of the shooting, Mr. Perez was under the influence of both alcohol and drugs, including cocaine. He also had a history of mental illness and had, in the past, attempted suicide by use of a knife. Perez was a large man and as he came down upon the officers from the second floor, armed with a substantial knife in each hand, which he wielded in a threatening, assaultive manner at the officers, he was an imposing figure. The officers repeatedly demanded that he drop the knives and he explicitly told them he would not. The officers tried to create distance between Perez and themselves, but their position on the exterior concrete stairs, and having to back up and away from him in the confines of that space was precarious for them. Perez himself called 911 to report that he intended to kill himself and everyone there and to ask that the police be sent. He also told witnesses that he intended to kill them, if they didn't leave, and kill himself. Taken together, these are all factors which substantiate the reasonableness of officers' belief that Perez intended to cause death or serious bodily injury. According to the radio transmission of shots fired, the time of the actual shooting, from the time that Officer Rojas first observed Perez on the interior stair way coming

towards him, to the time of the transmission of shots fired was no more than eight seconds. The officers both described that even after they had fired their weapons and Perez was shot and on the floor in the hallway, Perez still had one of the two knives in his hand and he was still moving. In all of these circumstances, the officers were reasonable in their belief of imminent death or serious bodily injury and they used no more force than was necessary to prevent that occurrence.

Therefore, based on the totality of the evidence reviewed, the use of lethal force by Officer Guillermo Rojas and Gang Officer Chase Suong was justified based on the need of each officer to protect himself, his fellow officer, and possible victims inside the apartment, from the immediate threat of death or serious bodily harm from Jose Perez. The use of lethal force by each of the officers was not excessive in the circumstances and, therefore, the shooting was justified in the reasonable exercise of self-defense, under Massachusetts law.

This matter is now referred to the Lowell Police Department for whatever internal review may be deemed appropriate.



Knife from Perez's right hand



Knife from Perez's left hand



View of the front of 75 Cambridge Street from the street

FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING THE
OFFICER INVOLVED FATAL SHOOTING OF MARIO MEJIA-MARTINEZ IN EVERETT
ON APRIL 21, 2016

The Middlesex County District Attorney's Office and the Massachusetts State Police assigned to the Middlesex County District Attorney's Office have concluded the investigation into the fatal shooting of Mario Mejia-Martinez, 48, of Everett, who was shot by an Everett Police Officer on the corner of Chelsea Street and Broadway in Everett on April 21, 2016.

A thorough investigation into the circumstances surrounding the fatal shooting of Mr. Mejia-Martinez has revealed that Officer Joseph Pepicelli made multiple efforts to maintain a distance between himself and the suspect, repeatedly ordering him to drop his knife and that Officer Pepicelli fired his weapon only after Mejia-Martinez offensively charged at the officer assaulting him with the knife and coming dangerously close to actually stabbing the officer. Under the circumstances, Officer Pepicelli acted reasonably and lawfully. Therefore, no criminal charges are warranted.

I. INTRODUCTION

The District Attorney's Office, by statute, has the duty and authority to direct and control all death investigations within Middlesex County. As such, the primary goal of the investigation was to determine if any person bears criminal responsibility in connection with Mr. Mejia-Martinez's death. I designated my Chief of Homicide, Adrienne Lynch, to direct the investigation.

During the course of our investigation, recordings of the 911 calls as well as police radio communications were gathered and reviewed. Surveillance camera video was retrieved from two private businesses as well as three cameras at the intersection which fed into the server located at the Everett Police Station.

The officer who fired his department issued firearm wrote a police report and was interviewed. Other responding officers wrote police reports which were also reviewed. Additionally, ballistics tests were conducted and the results of those examinations were reviewed. Police reports, witness statements and the autopsy report were reviewed along with photographs of the scene and the autopsy.

II. APPLICABLE LAW

My office's analysis of whether the actions of the involved police officer constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), “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 — about the amount of force that is necessary in a particular situation.”

The standard for use of deadly force in Massachusetts is that a person may use deadly force to defend him or herself or another if the person has reasonable ground to believe, and actually believes, that he or she is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm. The person using deadly force must actually believe that he or she is in imminent danger of death or serious bodily harm. In addition, the circumstances, as perceived and understood by the person using deadly force, must be such that a reasonable person would believe that he or she was about to be attacked, and that he or she was in immediate danger of being killed or seriously injured.

Our review of the facts reveals that, in the totality of the circumstances, Officer Pepicelli was justified in his use of deadly force. Officer Pepicelli’s use of force was not excessive in the circumstances and, therefore, the death of Mario Mejia-Martinez was a justified homicide in the reasonable exercise of self-defense, under Massachusetts law.

III. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Incidents at corner of Chelsea Street and Broadway in Everett, in front of the Cancun Restaurant:

On April 21, 2016, at approximately 4:33 p.m., Everett police dispatch received a 911 call from a woman motorist who reported there was a “guy” on the corner of Chelsea Street and Broadway in Everett, in front of the Cancun Restaurant. She reported that he had a knife sticking out of his pocket; was talking to himself; was angry; was acting “weird;” and that he was talking to everybody walking by. He was described as a Hispanic male, wearing a black shirt and jeans, maybe 40 -years -old. She told the dispatcher that she wanted to makes sure that the man was not ready to fight with someone.

As a result, Everett officers were dispatched to the area of Broadway and Norwood Street/Chelsea Street to investigate. This is a fairly busy intersection for vehicular and pedestrian traffic at that time of day. It was a sunny, warm, spring day. The first officer on scene was uniformed Officer Joseph Pepicelli who was alone when he encountered a man, later identified to be Mario Mejia-Martinez. During the course of that encounter, Mejia-Martinez, with knife in hand, assaulted Officer Pepicelli and Officer Pepicelli fired his department- issued firearm. There were numerous civilian witnesses in the area, on foot and in vehicles, who were interviewed during the course of the investigation. Officers who arrived on scene after the shooting were also interviewed. Troopers from the Crime Scene Services Section responded and documented

the scene. Troopers from the Firearms Identification Section also responded and collected ballistics related evidence, including the department issued firearm of Officer Pepicelli.

b. Police Radio Transmissions and 911 Calls

The Everett Police radio transmissions and the recorded 911 call were also reviewed. The recorded 911 call took 4 minutes and 46 seconds.

The radio transmissions revealed that on arrival at the call the officer asked for the description of the person with the knife to be transmitted again and it was repeated. Officer Pepicelli can next be heard yelling, "drop the knife, drop the knife." Thirteen seconds after Officer Pepicelli repeated, "drop the knife," another officer used his radio to report shots fired, and to request a supervisor and an ambulance.

c. Officer Joseph Pepicelli

Officer Joseph Pepicelli was working an evening shift on April 21, 2016, assigned to a one-person marked cruiser, designated the five car, which served as back-up to the units assigned to the four sectors on the city. He was in full police uniform. Officer Pepicelli has been an Everett police officer for ten years and prior to that had been a Boston municipal police officer for eleven years, for a total of twenty-one years' experience as a police officer

At 4:33 p.m. while still at the police station, Officer Pepicelli heard a radio call for Car 142, Officer Dusablon, for a man in front of the Cancun Restaurant who was very agitated with a knife in his back pocket. Officer Dusablon responded over the radio that he was leaving from the station. At that time, Officer Pepicelli saw a cruiser pull out and thought incorrectly that it was Officer Dusablon responding to the call. Because it was a knife call, Officer Pepicelli left the station and headed to back-up Officer Dusablon on the call. He drove from Elm Street to Ferry Street and then south on Broadway. When he arrived, he was the only officer there. He stopped the cruiser just before the Cancun Restaurant, parked his cruiser and walked towards an individual on the corner, who appeared to be the person described in the transmission, but he radioed for the description to be repeated just to be certain. The dispatcher provided the description which matched the man on the corner. As Officer Pepicelli approached, a bystander pointed towards the man saying, "that's him, that's him." The officer stood at the front of his cruiser and kept his distance, because of the report of a knife being involved.

Officer Pepicelli waved to the man to come over to him saying "Mira, mira" "Come here." The man said, "No." The officer repeated, "Mira. Come here, come here. Let me talk to you. Come here." At that point, the man reached towards his back pocket and the officer said, "No. No." The man then ran toward the edge of the sidewalk and the officer yelled, "no, no" and was reaching for his taser. All of a sudden the man snapped out his knife, so instead the officer took out his department issued firearm and held it "low ready." That was because the man was within 21 feet of him. The officer had been trained that was the danger zone for confronting someone with a knife. Officer Pepicelli keyed his radio and immediately began to yell, "Drop the knife. Drop the knife," so the other officers responding would know that a knife was being shown and that he was in imminent danger and needed help. The man charged at Officer

Pepicelli with the knife in hand swinging it at the officer, as the officer backed away and ran to the side. The officer thought, "Oh, God, it's happening." He became worried about using his gun because there were people standing on the sidewalk behind the man with the knife, so he held his gun at low ready. He was afraid that the man would run at him. As the man ran off the sidewalk he charged straight toward the officer in the street. The officer was moving backwards and away the whole time. As Mario Mejia-Martinez kept swinging the knife, the officer fired one shot low, figuring the man would stop and concerned that there would be "pass through" and he would hit one of the group of pedestrians who had gathered behind the suspect. However, the man did not stop and came straight at the officer, swinging the knife, forcing the officer to jump to the side and move back to avoid being struck. The officer fired upwards because he did not want to hit the concrete (which could cause a ricochet). The last shot struck the man and caused him to fall to the ground. Officer Pepicelli believed that the man would have stabbed him in the neck, head and face if he had not defended himself.

In the immediate aftermath, Officer Pepicelli could not hear, was experiencing tunnel vision and was looking out for a second threat. He saw a few Everett officers come upon the scene. One of them took the knife out of the man's hand and they started CPR. Witnesses approached Pepicelli as did his supervisor. He was then placed in an ambulance himself.

d. Officer Paul Dusablon

Officer Paul Dusablon was assigned to a marked cruiser and was in full uniform on the afternoon of April 21, 2016. He was at the Everett Police Station when he received a radio dispatch to respond to the Cancun Restaurant for a man talking to himself, acting strangely with a knife in his back pocket. He radioed that he would be out of the station in a minute. He got his keys, left the station and responded to the call via Elm Street to Ferry Street to Broadway. He could see Officer Poirier behind him as they headed south on Broadway toward the call. As he got close to the area of the Cancun Restaurant, he heard Officer Pepicelli over the radio saying, "drop the knife, drop the knife." As he pulled up he could see Officer Pepicelli backing up with his gun drawn as the man was going toward him. Officer Pepicelli twice yelled, "drop the knife." The man bent down a bit into a charging position and ran at Pepicelli. When the man was three to five feet away, Officer Pepicelli shot the man twice, but the man still kept charging toward him. Officer Pepicelli shot again and the man went down. Officer Dusablon observed all of this from inside his cruiser. The man was on the ground. At the time of the shooting, it was just Officer Pepicelli and the suspect, no other officers were outside.

Officer Dusablon exited his cruiser and ran over to the man on the ground. He then returned to his cruiser to get his medical equipment. When he got back to the man, other officers were there rendering medical attention. He then drove his cruiser to block off Norwood Street. Next he asked if anyone saw anything and witnesses came forward and he took names which he provided to the investigators. Officer Dusablon felt that Officer Pepicelli had no choice but to shoot to stop the threat.

e. Officer Joseph Poirier

Officer Joseph Poirier was assigned to a marked police cruiser and was in full uniform. At 4:20 – 4:25 p.m., roll call for his shift had just concluded and he was making his way outside

when he heard a radio transmission about a man outside of the Cancun Restaurant talking to himself, with a knife in his back pocket. Officer Pepicelli had already left for the call before Officer Poirier got outside the station. Officer Dusablon left and Officer Poirier followed him down Elm Street, right onto Ferry Street and then left onto Broadway. As he got closer to the location, he heard Officer Pepicelli radio for the description. When he was within a few blocks of the intersection, he heard Officer Pepicelli over the radio saying, “drop the knife, drop the knife.” Officer Poirier pulled in behind Officer Pepicelli’s cruiser near the corner of Broadway and Norwood Street in front of Dempsey’s Restaurant. Initially he could not see Officer Pepicelli or the man. Then he saw Pepicelli backing out quickly into on-coming traffic at the intersection of Broadway and Norwood Street/Chelsea Street followed closely by a Hispanic man charging at him with a knife. The man got within a few feet of Officer Pepicelli. Officer Poirier could see the glint of the knife in the man’s hand as the man advanced toward Officer Pepicelli who was backing away from the man with his firearm drawn. Officer Pepicelli fired his gun and the suspect went down. Officer Poirier exited his cruiser as other officers were arriving. Officer Poirier saw the man moving and saw the knife in his hand. Officer Poirier drew his firearm to provide cover as one of the other officers removed the knife from the man’s hand. Officer Poirier then re-holstered his weapon and immediately started first aid.

f. Officer James MacGregor

Officer James MacGregor was assigned to “old” marked cruiser 144 and was in full police uniform on the afternoon of April 21, 2016. When the radio dispatch concerning a man not acting quite right with a knife in his back pocket was broadcast, Officer MacGregor was still at the station. He headed to the call from the station traveling from Elm Street to Ferry Street to Chelsea Street. Over the radio he heard Officer Pepicelli saying, “drop the knife,” “he’s got a knife.” Officer MacGregor activated his siren and, as he pulled up, he saw the man lying in the middle of the intersection and he saw blood. He put on gloves and approached the man and observed that the knife was still in the man’s hand. The man was moving and still breathing. Officer MacGregor asked the other officers to cover him as he disarmed the man by grabbing his right wrist and removing the knife from his hand. Officer MacGregor then threw the knife five feet to the side and started first aid. Officer MacGregor did not witness the shooting.

g. Civilian Witnesses I

This 35 -year -old female was the 911 caller. She was driving a black Toyota Sienna. She had come out of Bread and Company on Norwood Street and was in the left lane to turn north on Broadway. She saw the man talking to himself and pacing on the corner. He was acting “weirdly” and “agitated like he was going to fight.” He was speaking Spanish, mumbling angrily. She saw the blade of a knife, 4 – 5 inches long, facing up, sticking out of his back pants pocket. She was scared and rolled up her window. She saw another man walk past this man and look back as if the man was talking to him. She called 911 and pulled over on Broadway. She could see the man pacing and walking in a circle. She was in a “no parking” zone, so she moved down the street to park and walked up on the same side of Broadway as the man. She saw the police officer step calmly out of his cruiser and approach the man. The man was angry about the police presence, flailing his arms and telling the police officer to go away. He made dismissive hand movements, brushing the officer off. The man, (later identified as Mario Mejia-Martinez), went towards the officer in front of the cruiser and she could not see them from her vantage

point. She heard the officer say, “put the knife down.” She heard him say, “drop the knife” at least two times. She saw the officer had his gun out. The man did not seem drunk, just nervous and angry. After the shooting, she heard a Spanish woman, who had just come out of a store and did not witness the shooting, say the man was shot because he was Spanish. The witness said that this was just not true.

h. Civilian Witness II

This, 36 -year -old male and his girlfriend, were walking on Norwood Street headed to the Family Dollar Store on Broadway. As they approached the intersection of Norwood Street and Broadway, the witness noticed a man (later identified to be Mario Mejia-Martinez) on the sidewalk talking to himself. He noticed that Mejia-Martinez had a knife in his back pocket. The witness and his girlfriend went into the Family Dollar store and left within five minutes. As they were walking on Broadway back towards Norwood Street, the witness noticed an Everett police cruiser coming down Broadway towards Norwood Street with its emergency lights activated. The cruiser came to a stop and the lone police officer, Officer Pepicelli, exited the driver’s side. Mejia-Martinez immediately took the knife from his back pocket and began screaming, “Get outta here, get outta here!” The witness observed Officer Pepicelli immediately back away and draw his firearm. Officer Pepicelli yelled to Mejia-Martinez to, “drop the knife” approximately five to seven times as he backed away. Mejia-Martinez continued to advance on Officer Pepicelli and ultimately lunged and stabbed at the officer who fired at the man until he collapsed to the ground. After the incident, he heard a woman saying that the police officer only shot Mejia-Martinez because he was of Spanish descent. The witness told Trooper James Connolly of the Massachusetts State Police that the officer had no choice but to defend himself.

i. Civilian Witness III

A 20 year old male was at the bus stop in front of Tres Gatos Lounge listening to music through headphones. His attention was drawn across Norwood Street because he heard the man (later identified to be Mejia-Martinez) screaming. The witness took his headphones out for a moment, but couldn’t understand what Mejia-Martinez was yelling. When the police officer arrived, Mejia-Martinez directed his yelling at the officer. Mejia-Martinez was brandishing a knife at the officer who was yelling, “drop the knife!” and, “put it on the ground!” The officer was backing away and Mejia-Martinez was holding the knife in front of him at about waist height and constantly advanced towards the officer. Mejia-Martinez was yelling but the witness (who speaks Portuguese) could not understand anything he was saying. The officer was “loud and clear” as he repeatedly told Mejia-Martinez to drop the knife. Mejia-Martinez brought the knife high and charged at the officer “like he was going to stab him.” The witness said the officer fired his pistol approximately four times until the man collapsed. The witness estimated that he was 15—20 feet from the incident.

j. Civilian Witness IV

This 42- year -old male was stopped in traffic in his Jeep Wrangler on Norwood Street waiting for a red light behind a green Suburban. The witness was in the left lane and was waiting to turn left on to Broadway. He observed a man standing on the sidewalk at the corner of Norwood Street and Broadway. The man appeared to be talking to the driver of the Suburban

and bothering pedestrians as they walked by. The witness then saw the police officer approach the male on foot from the crosswalk on Broadway. As the officer approached he addressed the man in a casual manner. The man raised his arms as the police officer was addressing him and replied to the officer. Although the witness could not hear what the man was saying in response to the officer's approach, he observed the man "shooing" the officer away with his arms. At this point, the witness could see the man's back and he saw the man reach into his right back pants pocket and pull out a knife. The witness then heard the officer tell the man to drop the knife. As the officer told him to drop the knife the officer was backing away from the man and drew his service weapon. The man continued to advance on him. The officer kept trying to create distance between himself and the man. The officer gave the man four or five verbal commands to drop the knife. The commands became more forceful as the incident continued. Initially, the man had his hands at waist level. As the male advanced on the officer, his hands went up to about shoulder level. The man moved toward the police officer in a rushing motion and the officer shot the man twice. After the man was shot, he continued to move toward the officer in a rushing motion and the officer shot the man four or five more times. He remembered two quick shots and then four or five more shots in quick succession. The witness observed the man fall to the ground very close to the officer.

k. Civilian Witness V

A 34-year-old male was stopped in traffic in his Audi in the right lane of Norwood Street and was the first car in line at Broadway waiting to turn right onto Broadway. He saw the police officer approach a man, later identified to be Mejia-Martinez, on the sidewalk at the corner of Broadway and Norwood Street. The man had his arms in the air and the witness heard the officer tell the male to calm down. The man was mumbling but the witness could not hear what he was saying. The witness then saw the male reach into his rear pocket. At that time the officer drew his service weapon and shouted at the male to "drop the knife." The man approached the officer as the officer backed up and away from the man. The man continued to move on the officer. The officer was retreating and shouting at the man to, "drop the knife." The officer shouted this at least three times. The witness estimated that the man held the knife for about thirty to forty seconds and then charged at the officer as if he was trying to stab the officer. The officer then shot the man five or six times and by the last shot the man was very close to the officer. The witness then saw other officers arrive on scene. The witness said that if the officer did not shoot the male, the man would have killed him.

l. Civilian Witness VI

This 38-year-old male was working as a bartender at the 8/10 Bar and Grille, at 8 Norwood Street, on April 21, 2016, and was outside smoking a cigarette. He looked at the corner of Norwood Street and Broadway and observed a uniformed police officer in the middle of Broadway. The police officer was speaking to a Hispanic male in his forties, who wearing jeans, boots, and a blue shirt. The male speaking to the police officer had a silver knife in his hand which was tucked behind his forearm. The police officer yelled at the male, "Put the knife down," approximately six to seven times. The police officer began to back up away from the man as he continued to yell, "Put the knife down!" The male then moved the knife so that the blade was now pointed outward instead of riding along his forearm. The male began walking towards the police officer and was yelling, "[Expletive] you; [expletive] you!" As the male was

yelling at and walking towards the police officer, the officer was backing up. The male reached the curb at the corner of the Cancun Restaurant and the police officer stopped in the middle of the street. The police officer yelled again, "Put the knife down!" The male then walked towards the police officer and swung the knife, which was in his right hand, at the police officer. The male swung the knife twice at the police officer, with the second swing appearing to be at the police officer's face. The witness thought that the male hit the police officer on the second swing. The witness saw the police officer duck as the knife was swung at him. The police officer then shot approximately five times and the male fell to the ground. The witness stated that when the male swung the knife at the police officer that he estimated him to be at arm's length from the officer.

m. Civilian Witness VII

This 44 -year -old male was on Broadway by the Tasty Garden on April 21, 2016. The witness had been in Santander Bank and had exited the bank at about 4:30 p.m. When he exited the bank, he saw the flashing lights from an Everett police cruiser that was stopped on Broadway. He saw a Hispanic male with a goatee "going toe to toe" with a police officer. The male was about ten feet away from the officer. The witness heard the officer warn the male to get down two or three times. The witness saw the Hispanic male holding something in his right hand and observed the male dip his shoulders and charge at the officer, closing the distance between them. He then heard four gun shots.

n. Civilian Witness VIII

A 26 year -old- female was walking on Norwood Street towards Broadway on the opposite side of Norwood Street from where the incident started. As she approached the corner near Tres Gatos Lounge, she was looking in her purse to get a cigarette. The first indication she had that there was a problem was when she heard the police officer shouting, "drop the weapon" three or four times. She observed a male running towards the officer with a knife. She also heard other bystanders asking the male what he was doing. She stated that she saw the male run at the police officer and she saw the officer shoot the male four or five times. The male fell to the ground in front of her.

The witness stated that she felt the police officer did the right thing and that he was defending himself.

o. Civilian Witness IX

This 47 -year old- male was inside the Regal Mexican Bar and Grill, located at 440 Broadway in Everett. The witness left the restaurant on foot to go and pick up something at a store down the street. When he left he saw a short Hispanic male, later identified to be Mario Mejia-Martinez, at the corner of Broadway and Norwood Street. The man was walking in circles and talking to himself.

When the witness returned from the market he walked inside the establishment and sat at a table near the front window overlooking Broadway and Norwood Street. He saw a uniformed police officer get out of the cruiser and speak to the Hispanic man he had observed earlier talking

to himself on the corner. The witness then saw the Hispanic man put his hands up in an offensive motion two times at the police officer. The witness noticed a knife in the man's right hand. When the police officer spoke to the man, the man walked towards the police officer with the knife in his hand. The police officer backed up twice to get away from the man with the knife. The witness saw the police officer raise his gun and then heard what he thought was four gunshots. Right after that more police officers arrived.

p. Events Within an Hour Prior to the Shooting

On the evening of April 21, 2016, Everett police received a call from a female, 53, of Everett. She said that she was on Norwood Street sometime after 3:45 p.m. stopped at the light at the intersection of Broadway. As she was stopped at the light, she had her window rolled down and she happened to observe a man who was yelling out loud. He made eye contact with her and started to walk towards her vehicle from the area of the Cancun Restaurant. She described the male to be approximately 5'6" – 5'7" wearing blue jeans and a black hat with writing on it. As the male got closer to her vehicle he took off the black shirt and had a button down shirt underneath. He was yelling in another language, but she did not recognize it to be Spanish. While this male was yelling at her, she noticed that he had a silver knife sticking out of the back of his right pocket. At this point she rolled up her window and drove away, nervous that this male was "acting crazy." When she heard about the incident on Broadway at Norwood Street, she thought it might be related.

On April 21, 2016, at approximately 4:06 p.m., a 48-year-old male was sitting on the front steps of the porch next to the driveway on Linden Street in Everett with another 53-year-old male. The 48-year-old male is the landlord at that address. At 4:09 p.m. they saw Mejia-Martinez stumble into the driveway next to them mumbling to himself and then sit on the retaining wall taking off his back pack. They said, "Hey, Bud, can I help you?" Mejia-Martinez then took trash out of his back pack and threw it on the front lawn. The male told him to, "get the [expletive] out of here" and came off the porch. The man was mumbling something, but they could not understand him. It was not Spanish, it was nonsense. The man, later identified to be Mejia-Martinez, then pulled out what appeared to be a pint of liquor, chugged it and smashed the glass bottle in the middle of Linden Street. The man kept looking back at them like he wanted to fight, but he didn't act on it. The man walked away, crossing Linden Street towards Church Street. At the first house on Church Street he walked up the steps and spoke to a female for a second and then continued down Church Street towards Broadway. The male called 911 and the Everett police responded to Linden Street at 4:12 p.m. on April 21, 2016. The man had left before the officer's arrival. The male's house is approximately two-tenths of a mile from the corner of 432 Broadway.

The female witness on Church Street was sitting on her front porch and a Hispanic man, later identified to be Mario Mejia-Martinez, walked by her house. The man seemed to be intoxicated as he walked by her house and pointed at her when he saw her. The man spoke to her, but she did not understand him. He walked around in the area in front of her house and broke a whiskey bottle, or what appeared to be some type of glass alcoholic container on the street in front of her house. He then walked down the hill towards Everett Square. She was alarmed by this, but did not call the police.

IV. SHOTSPOTTER

Everett utilizes a system known as ShotSpotter. At 4:33:34 p.m. on April 21, 2016, ShotSpotter detected a multiple gunshot incident at 2-8 Norwood Street. The system detected and located a six shot event. Those shots occurred between 4:33:34 p.m. – 4:33:36 p.m. A recording of the event as detected by ShotSpotter was provided to investigators and shows the six shots were fired in three seconds.

V. SCENE EXAMINATION

Specialized personnel from the Massachusetts State Police Firearms Identification Section, Crimes Scene Services Section and the Crime Laboratory responded to the scene. At the scene State Police took custody of Officer Pepicelli's firearm, a .45 AUTO caliber Glock model 21 semi-automatic pistol for further examination. Police recovered six discharged cartridge cases from the scene which is consistent with the number of gunshot wounds to the deceased. One spent projectile was recovered from Mejia-Martinez's clothing and three spent projectiles were recovered from the deceased at autopsy. Officer Pepicelli's firearm was tested fired and found to be in working order. A microscopic comparison was done of the test fired specimens with the discharged cartridge casings and spent projectiles recovered. Massachusetts State Police Lieutenant David Cahill formed the opinion that the six discharged cartridge casings and the four spent projectiles were all discharged by Officer Pepicelli's firearm. A knife was also collected at the scene and was taken to the crime laboratory for further examination. It is a "Crusader" knife with a blade length of approximately 4-1/2 inches. Photos of the knife are attached to this report.

On the corner of Norwood Street and Broadway, in front of the Cancun Restaurant, police recovered a backpack believed to belong to Mejia-Martinez. Mejia-Martinez did not have any identification on his person or in his backpack. Fingerprints were taken from the deceased and were a match to prints in the database maintained by United States Immigration and Naturalization Enforcement, Enforcement and Removal Operations of the United States Department of Homeland Security. Documentation provided to investigators indicates that on June 29, 2004, Mario Mejia-Martinez, date of birth 1/29/1968, was arrested near Douglas, AZ. He indicated his primary citizenship was Mexican and he was voluntarily returned to Mexico. To date, investigators have been unable to locate where Mejia-Martinez had been living at the time of his death. He had a family in El Salvador and a brother in Everett. The deceased's brother made the identification of him as Mario Mejia-Martinez.

VI. VIDEO CAMERA FOOTAGE

At the corner of Chelsea Street and Broadway in Everett, there are multiple cameras pointed at the area of the incident. The cameras were installed by LAN-TEL Communications, Inc. of Norwood, MA. The images captured by those cameras are transmitted to the server located at the Everett Police Station. On the evening of April 21, 2016, investigators located images from three cameras which covered the intersection where the shooting occurred. Although parts of the incident were recorded, there were times when the cameras froze and the data never made it to the server.

On April 26, 2016, LAN-TEL, at the request of investigators, examined the system to determine whether any of the data could be recovered. The technician informed investigators that he looked particularly at the video from the incident that occurred at that intersection at around 4:30 p.m. on April 21, 2016. He observed that there are significant gaps in the recordings. In his professional opinion, the gaps were caused by too much data trying to get through the wireless network link. These cameras at Everett Square are connected to the server at Everett Police Station by a point-to-point wireless network. The bandwidth on these links is limited and it is subject to environmental interference.

To make the cameras operate better prospectively, the technician reduced the frame rates on all four of these cameras to seven frames per second. Once this was done, the streaming from these cameras was greatly improved and the gaps in the recording were greatly reduced. The technician left the cameras at their highest resolution so that the frames that are recorded will be of maximum forensic value going forward.

In response to the question whether the missing frames could be recovered, the technician said, regrettably, the answer is no. These frames were lost in transit because of the network bandwidth issue and never made it to the server to be recorded.

A private business, located on Norwood Street in Everett, had a surveillance camera pointed at the intersection of Broadway and Norwood Street that captured the entire incident. The video shows that as soon as the officer approached Mejia-Martinez, Mejia-Martinez reached for and removed the knife from his right rear pants pocket. The officer immediately retreated backward into the southbound travel lane of Broadway. The officer is shown using his shoulder radio microphone and holding his gun at his side, in the "low ready" position, at 19 seconds into the encounter. The officer continued to back up south on Broadway, with his gun still down at his side, as he gestured with his left hand for the man to stay back. At 28 seconds into the encounter, Mejia-Martinez, with the knife held in his right hand begins to run towards the officer. As he does so, the officer brought his firearm up and pointed it at Mejia-Martinez. Nevertheless, Mejia-Martinez charged at the officer who continued to run backwards and then fired as Mejia-Martinez came within a few feet of the officer swinging the knife at him. Mejia-Martinez is seen falling to the ground at 32 seconds into the encounter just as a second cruiser pulls up to back-up Pepicelli.

Another private establishment, a business located on the corner of School Street and School Street Place in Everett, one block away from the intersection of Broadway and Norwood Street, also has a surveillance system which records in the direction of that intersection. Although it is a block away and the view of the intersection is obstructed on this video footage, the officer's retreat and the shooting can be seen.

VII. OFFICE OF THE CHIEF MEDICAL EXAMINER

On April 22, 2016, an autopsy was performed on the deceased by Dr. Henry Nields, the Chief Medical Examiner. There were six entrance gunshot wounds to the body, and three exit wounds. Three spent projectiles or fragments were recovered from the body.

The cause of death was determined to be gunshot wounds of the head and torso. Dr. Nields performed the autopsy and described the following penetrating wounds:

- (1) entered left eyebrow traveled rightwards, slightly downward and slightly backwards to just in front of the right ear;
- (2) entered the right upper axillary chest near the shoulder and traveled backwards, downward and slightly leftward;
- (3) entered the left chest just above the nipple and traveled backwards and downward to the abdomen;
- (4) entered the middle of the chest and traveled backward, rightward and downward;
- (5) entered mid abdomen above the umbilicus, traversed through the abdomen, small intestines, right pelvis and right lower back, traveling backward, rightward and downward; and
- (6) entered the lower abdomen traveled backward, downward and to the right, through bladder, underneath the bony pelvis and to the right.

Toxicology testing yielded positive findings for alcohol. The results were .13 g% from the pooled/cavity blood and .04 g% in the vitreous humor.

VIII. CONCLUSION

In the totality of the circumstances, Officer Joseph Pepicelli was in imminent danger and apprehension of being stabbed and killed by Mario Mejia-Martinez when he shot him. Despite repeated efforts by the officer to maintain a distance between himself and the suspect and his repeatedly ordering him to drop the knife, Mejia-Martinez offensively charged at the officer assaulting him with the knife and coming dangerously close to actually stabbing the officer before he was shot. Officer Pepicelli's use of force was not excessive in the circumstances and, therefore, the death of Mario Mejia-Martinez was a justified homicide in the reasonable exercise of self-defense under Massachusetts law.

On April 21, 2016, Mario Mejia-Martinez was acting in a manner that caused concern on the part of citizens sufficient that the Everett police were contacted by civilians reporting his behavior. One-half hour before the shooting police were called by a man on Linden Street who described a man, later identified to be Mario Mejia-Martinez, drinking from a whiskey bottle and then smashing it in the street. The second call, which brought Officer Pepicelli to the scene of the shooting, was from a motorist who saw Mejia-Martinez walking in circles, talking to himself, pacing, acting "weirdly" and "agitated like he was going to fight." The caller saw the blade of a knife, 4 – 5 inches long, facing up, protruding from his pants pocket. She was frightened by his actions and called the police reporting this to them.

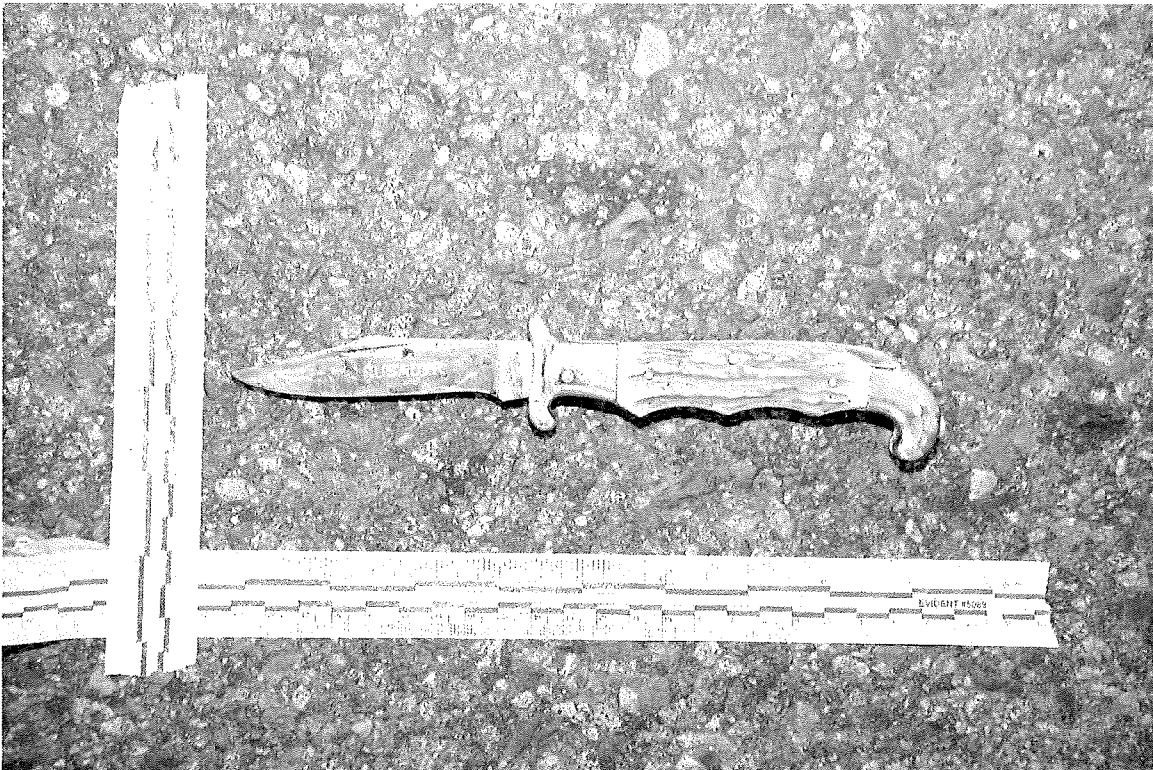
Officer Pepicelli's account of the encounter with Mejia-Martinez was corroborated in its entirety by the video police obtained from a private business on Norwood Street which captured the officer's arrival on the scene, the officer's approach to Mejia-Martinez, the officer's initial reaction to first reach for his taser until Mejia-Martinez began to respond in an agitated manner and to quickly reach for his firearm when Mejia-Martinez reached for, and removed, the knife from his back pocket. The video shows the officer's immediate retreat from the confrontation and his backing up quickly into the travel lane of Broadway southbound, as cars on Broadway

had the right of way and were traveling southbound. The video shows actions consistent with the officer's description of reaching for his shoulder radio microphone as he yelled for Mejia-Martinez to drop the knife on several occasions. The video depicts Officer Pepicelli's evasive movements on Broadway and Norwood Street to avoid a confrontation by all means possible as he waited for other officers to arrive. The video shows Mejia-Martinez charging at the officer with the knife in hand in an assaultive manner, placing Officer Pepicelli in imminent fear of death or serious bodily injury. Officer Pepicelli had avoided using deadly force until Mejia-Martinez came dangerously close to stabbing him and fired only to protect himself. Reasonable persons observing the incident unfold believed the officer was in imminent danger of death or serious bodily injury. Officer Pepicelli's account was corroborated by the numerous civilians to the broad daylight encounter at the busy intersection as well as by the location and directionality of the bullets as documented during autopsy by the Medical Examiner.

This matter is now referred to the Everett Police Department for whatever internal review may be deemed appropriate.



Knife found in possession of Mejia-Martinez.



FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING THE
OFFICER INVOLVED NON-FATAL SHOOTING OF MICHAEL
CLARK IN CHELMSFORD BY TYNGSBOROUGH POLICE OFFICER
DENNIS LEACH ON JULY 16, 2016

The Middlesex County District Attorney’s Office, the Massachusetts State Police assigned to the Middlesex County District Attorney’s Office and the Chelmsford Police with assistance from the Tyngsborough Police Department have concluded the investigation into the non-fatal shooting of Michael Clark, 27, of Tyngsborough, who was shot by a Tyngsborough Police Officer at Sully’s Ice Cream Stand on Graniteville Road in Chelmsford on July 16, 2016.

A thorough investigation into the circumstances surrounding the shooting of Mr. Clark has revealed that Officer Dennis Leach of the Tyngsborough Police Department fired two shots at Mr. Clark only after Mr. Clark assaulted uniformed Chelmsford Police Sergeant Stephen Fredericks by striking him with the car door of the vehicle Clark had stolen earlier in the evening and dragging Fredericks with the vehicle such that he was dragged while sandwiched between two vehicles. Officer Dennis Leach was reasonable in his belief that another officer was in imminent danger of being killed by Michael Clark, and that the erratic and assaultive manner in which Clark was operating his car placed Officer Leach, other responding officers and the many civilians at Sully’s Ice Cream Stand in imminent danger of death or serious bodily injury at the time the two shots were fired. Under the circumstances, Officer Leach acted reasonably and lawfully. Therefore, no criminal charges are warranted.

I. INTRODUCTION

The District Attorney’s Office, along with the Massachusetts State Police assigned to the Middlesex County District Attorney’s Office and the Chelmsford Police Department with the assistance of the Tyngsborough Police Department, conducted an investigation into the facts and circumstances of the non-fatal shooting by Officer Leach, while on duty with his department issued firearm. As such, the primary goal of the investigation was to determine if any person bears criminal responsibility in connection with the shooting of Michael Clark on July 16, 2016. I designated my Chief of Homicide, Adrienne Lynch, to direct the investigation.

During the course of our investigation, police radio transmissions of the Tyngsborough and Chelmsford Police Departments were secured and reviewed as were telephone communications between police departments and citizens, concerning events in Tyngsborough earlier that day involving Michael Clark and the Tyngsborough Police. Surveillance camera video was retrieved from multiple private businesses. A canvas of the Graniteville Road neighborhood and interviews with a neighbor who saw the event as well as customers and employees of Sully’s Ice Cream Stand were conducted that evening and the following day. A member of the State Police Collision and Accident

Reconstruction Section provided assistance in mapping the area where the shooting took place and preparing a scale diagram.

The officer who fired his department issued firearm was interviewed. Other responding officers were interviewed and wrote police reports which were also reviewed.

All vehicles involved in the incident were photographed and examined.

An examination of the firearms of officers present was made, and the results of those examinations were reviewed. A comparative examination of two cartridge casings from the scene and a test firing from the Leach firearm was performed.

Police radio transmissions and other digital evidence was gathered and reviewed.

Medical records for Sergeant Stephen Fredericks and Michael Clark were obtained and reviewed.

Video surveillance footage was sought and reviewed in connection with this investigation from a variety of private businesses.

II. APPLICABLE LAW

My office's analysis of whether the actions of the involved police officer constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "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 – about the amount of force that is necessary in a particular situation."

The standard for use of deadly force in Massachusetts is that a person may use deadly force to defend him or herself or another if the person has reasonable ground to believe, and actually believes, that he or she or the third person is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm. The person using deadly force must actually believe that he or she or the third person is in imminent danger of death or serious bodily harm. In addition, the circumstances, as perceived and understood by the person using deadly force, must be such that a reasonable person would believe that he or she or the other person was about to be attacked, and that he or she or the third person was in immediate danger of being killed or seriously injured.

Our review of the facts reveals that, in the totality of the circumstances, Officer Leach was justified in his use of deadly force. Officer Leach's use of force was not excessive in the circumstances and, therefore, the non-fatal shooting of Michael Clark was a reasonable exercise of self-defense under Massachusetts law.

III. SUMMARY OF THE FACTS:

On July 16, 2016, at approximately 8:36 p.m., Michael Clark was observed operating a vehicle, (which was later found to be stolen), with a broken headlight, by uniformed Tyngsborough Police Officer Dennis Leach. Officer Leach, who was operating a marked police cruiser, turned his cruiser around and began following the vehicle. At that time he observed the vehicle being operated by Clark crossing marked lanes. The officer attempted to stop the vehicle but Clark refused to stop. The officer continued to follow Clark onto Route 3 southbound and into the town of Chelmsford; Clark did not stop for Officer Leach. Once in Chelmsford, uniformed Chelmsford Police Sergeant Stephen Fredericks observed the Clark vehicle being followed by the Tyngsborough marked police cruiser and the uniformed sergeant in a marked Chelmsford police vehicle got between the Clark vehicle and the Tyngsborough cruiser and attempted to stop Clark. Clark did not stop and continued to lead the Chelmsford and Tyngsborough marked police cruisers through various residential and commercial areas of Chelmsford without stopping until he arrived at the parking lot of Sully's Ice Cream Stand on Graniteville Road, in Chelmsford. There, Clark pulled into the parking lot but became boxed in by the Chelmsford sergeant, the Tyngsborough officer and another Chelmsford officer who arrived from the other direction.

Rather than submit to the lawful authority of the uniformed police officers in marked police vehicles, Clark endeavored to flee and in doing so crashed into Sergeant Fredericks' cruiser which was on Graniteville Road, blocking an exit from the parking lot. After Clark struck the cruiser, Sergeant Fredericks, who was closest to Clark, approached the driver's door and opened it up, attempting to remove Clark from the car. Instead, Clark put the car into reverse and dragged Sergeant Fredericks who was being propelled backwards by the open driver's door. Clark accelerated in reverse with the sergeant being pulled along and went around the other Chelmsford cruiser, striking that cruiser with the back of his car and then scraping the side of that cruiser with the driver's side of the stolen car, with Sergeant Fredericks being dragged between the two cars.

Fearing that Sergeant Fredericks was being seriously injured or killed, Tyngsborough Officer Leach shot through the driver's side window as Clark had traveled approximately 270 degrees in reverse, traveling over mulch and through a fence separating the parking lot from Graniteville Road, when Leach was closest to the driver's side of the vehicle. He shot once and the car continued in reverse. He shot a second time and the car stopped.

Clark was shot twice. He was subsequently taken by med-flight helicopter to Boston Medical Center. He was shot in the head and the abdomen. He survived his injuries and is presently charged with assault with intent to murder, assault and battery by

means of a dangerous weapon, to wit: a motor vehicle, operating negligently so as to endanger, assault and battery on a police officer, resisting arrest, receiving a stolen motor vehicle, receiving stolen property over \$250, and failure to stop for a police officer.

IV. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Police interview: Officer Dennis Leach

On Saturday, July 16, 2016, Officer Dennis Leach, was working his scheduled 3:00 p.m. to 11:00 p.m. uniformed patrol shift, in a one-person marked cruiser, with the Tyngsborough Police Department.¹ While on patrol, he encountered the suspect vehicle as he (Leach) was traveling down Westford Road in the area of Potash Hill Road, heading in the direction of Middlesex Road. The suspect vehicle was traveling in the opposite direction from Middlesex Road onto Westford Road toward Officer Leach. One of the front headlights of the vehicle was out. Officer Leach pulled into the parking lot of Comet's Diner and turned around in his marked cruiser and got behind the car to pull it over. Once Officer Leach pulled behind the car, he observed the vehicle go over the double yellow lines into the opposite lane. At that time, Officer Leach attempted to initiate a motor vehicle stop by activating his marked cruiser's blue lights. The vehicle signaled left and turned onto Potash Hill Road, but did not stop. The vehicle then pulled into the parking lot for a business which was closed at that hour. At that time, the vehicle did not stop and instead picked up speed. Officer Leach then radioed dispatch that he had a car that was not stopping and to standby for a plate number. The vehicle circled around the parking lot and, just as the vehicle exited the business parking lot, Leach was able to get close enough to see the plate number and provide it to the dispatcher. Shortly after that, the dispatcher radioed back that the vehicle registration was active out of Fitchburg. As the vehicle continued without stopping for the officer, he activated his siren. The vehicle traveled out of the parking lot and took a left onto Westford Road and then onto Route 3 South. Officer Leach notified the dispatcher of his whereabouts. Additionally when the vehicles both entered Route 3 South, Leach requested that State Police, with patrol responsibilities for Route 3, be notified.

The vehicle driven by Clark entered Route 3 South at Exit 34, and was observed to be traveling at speeds estimated to be 95 – 100 miles per hour, moving from the breakdown lane, to the fast lane, to the middle lane, using multiple lanes. Officer Leach radioed his lieutenant of the conditions and asked whether he should continue his pursuit. The lieutenant radioed that he should “give him a safe distance” and “don't be right on him” because of the speed and erratic operation, but that he could follow at a safe distance to keep eyes on the vehicle.

¹ Officer Leach was sworn in as a Tyngsborough police officer on March 20, 2016 and had previously served as a reserve officer in Tyngsborough starting in September of 2014.

The vehicle driven by Clark got off of Route 3 at the next exit, Exit 33, in Chelmsford. Officer Leach radioed that he had continued following the vehicle into Chelmsford. Getting off the highway the car was traveling at about 65-70 miles per hour. Leach briefly lost sight of the car, however, when the vehicle Clark was driving had to drive around another car stopped on the road, the officer regained sight of the vehicle. Once off the exit, the vehicle went to the right traveling eastbound on Route 40, getting off and back on Route 40, going down residential side streets. Although he did not know the names of the streets, when he could see the street name Leach radioed his location to the dispatcher. At one point Leach followed the vehicle down what turned out to be the driveway to a home on Twiss Street in Chelmsford. Officer Leach thought Clark might have thought this driveway was a street. Clark did a U-turn in the yard and came directly at Officer Leach. Officer Leach had to swerve onto the home's lawn around an obstruction to avoid being hit by the vehicle. The Clark vehicle then proceeded to drive away from the residence.

Officer Leach continued to follow the vehicle for about five minutes before he saw a Chelmsford marked cruiser with its lights on up ahead. This was the cruiser occupied by Chelmsford Sergeant Stephen Fredericks. Sergeant Fredericks got behind the Clark vehicle and at that time Officer Leach radioed for permission to stay with the Chelmsford cruiser, because the Chelmsford officer was by himself. Permission was granted.

The vehicle operated by Clark made a turn and pulled in the parking lot of Sully's Ice Cream Stand on Graniteville Road. Leach followed the vehicle into the parking lot, and the Chelmsford cruiser, operated by Sergeant Fredericks, went straight on Graniteville Road to block the other exit/entrance opening, just as a second Chelmsford cruiser arrived and assisted in blocking the vehicle in inside the parking lot. The Clark vehicle then ended up ramming Sergeant Fredericks' cruiser stopped in the road. Sergeant Fredericks got out of his cruiser and went to the driver's side door, possibly to get the driver out of the car. It appeared to Officer Leach that Sergeant Fredericks' arm was in the car at the driver's door, as the driver began to operate the vehicle in reverse, dragging the sergeant in reverse, just as Officer Leach was exiting his own cruiser. The Chelmsford officers were telling the driver to stop while the vehicle was dragging the sergeant. Officer Leach un-holstered and drew his department issued firearm and approached. At that point Leach was positioned on the passenger side rear of the Clark vehicle. The Clark vehicle continued to drag the Chelmsford Sergeant while driving in reverse making a U-turn.² Officer Leach lost sight of the officer who was being dragged as that officer went to the ground. Because of the reverse U-turn maneuver, the driver's door of the vehicle came into Officer Leach's view. Officer Leach believed that the Chelmsford sergeant had possibly been run over and would be run over again by the vehicle and feared for the sergeant's life and the lives of the people in that area of the business, so he fired a round at the driver to get

² The vehicle was operated in reverse in a circular manner such that as Sergeant Fredericks was dragged he was on the driver side of the vehicle, the opposite side of the vehicle from Officer Leach. As the vehicle continued, once it made an almost 270 degree turn, the driver side of the Clark vehicle was closest to Officer Leach and, at that point, Sergeant Frederick was no longer visible.

him to stop. Officer Leach did not think he hit the operator with the first shot because the car did not stop. Officer Leach fired a second time and the car then stopped. Both shots were fired through the driver's side front window. Officer Leach did not recall if the driver's window was down or not, but he believed it was down. He did not see or hear glass break, but after the event he did see that the passenger's side window was cracked. It was only after the car came to a stop, after the second shot, that Officer Leach could see the Chelmsford sergeant, who was lying on the ground next to the fence which the car operated by Clark had driven through. Up until that time, Leach did not know whether the sergeant had been run over and killed or seriously injured. The sergeant was able to get up off the ground and the other Chelmsford officers on scene assisted by treating the driver of the car.

At the time Officer Leach fired his service firearm, the vehicle was partially on the street and partially on the Sully's Ice Cream Stand property. The vehicle had backed through and over a fence separating the parking lot from the roadway. At the time he fired his firearm, Officer Leach was concerned that both the driver would run over the Chelmsford sergeant again or might endanger the customers of Sully's Ice Cream Stand which included children, by trying to drive through the crowd, given the erratic manner of operation in the parking lot.

b. Police Interview: Sergeant Stephen Fredericks

On Saturday, July 16, 2016, Sergeant Stephen Fredericks of the Chelmsford Police Department was working in uniform, assigned to an 8:00 p.m. to midnight overtime detail at Varney Field for movie night. He heard over the radio that Tyngsborough had a pursuit coming down Route 40 from Route 3 in Chelmsford and that Chelmsford dispatch called for the area car. At that time Sergeant Fredericks could hear the sirens on Route 40 and then he could see the lights from the pursuit from his location. Knowing he was closer than the area car, he got into his marked cruiser, cruiser 8, and started to head out of the parking lot and drove on to Sherman Street. Sergeant Fredericks could see that the Tyngsborough cruiser was alone. The vehicle came down Sherman Street towards Sergeant Fredericks and apparently saw his cruiser because the vehicle then turned left onto Adams Street. The Tyngsborough car was back far enough so Sergeant Fredericks turned his overhead lights and siren joined in the pursuit, taking over as the lead police vehicle, and followed the Clark vehicle down Adams Street. The vehicle next turned onto Princeton Street and onto Vinal Square. Sergeant Fredericks recalled broadcasting over the radio that the vehicle was going about 50 miles per hour down Princeton Street. There was no heavy traffic at the time so he continued with it. The vehicle then turned onto Mount Pleasant Street and the vehicle started slowing down. Sergeant Fredericks thought the operator was going to stop and jump out of the car and run, but he did not. The vehicle then took a right onto Church Street, a left onto Princeton Street again, near Princeton Station, and within a quarter mile the vehicle turned onto Richardson Road, still traveling slowly. Fredericks recalled broadcasting that the vehicle was doing 30 miles per hour. From there, the vehicle turned on to Graniteville Road and into the parking lot of Sully's Ice Cream Stand, which was open and crowded.

Sergeant Fredericks turned on to Graniteville Road and continued straight on the road, not into the parking lot in order to get in front of the vehicle as it drove through the lot in a parallel direction, should the driver decide to pull out from the other entrance/exit to the Sully's Ice Cream Stand parking lot. The Tyngsborough cruiser was behind the vehicle in the parking lot and another Chelmsford cruiser was coming down Graniteville Road from the opposite direction towards them on Graniteville Road. Sergeant Fredericks radioed for the Chelmsford cruiser to block the vehicle off from continuing through the parking lot. That Chelmsford cruiser entered the parking lot headed towards the vehicle that was being followed by the Tyngsborough cruiser in the lot. The vehicle meanwhile went in the one entrance/exit to the lot and continued as if to exit the lot through the next entrance/exit to the lot where Fredericks had stopped his vehicle. As Sergeant Fredericks did so, the vehicle came out of the lot at him and Fredericks believed the vehicle struck the driver's side of the cruiser and then stopped. Sergeant Fredericks exited his cruiser and went towards the now stopped Clark vehicle. Sergeant Fredericks opened the vehicle's driver's door and grabbed hold of the driver, Michael Clark, in order to pull him out of the car. Sergeant Fredericks said he chose to open the door rather than draw his weapon and order the driver out of the car, because of the situation and the surroundings, given the crowded area and the background, he had no clear backdrop.

As Sergeant Fredericks grabbed the operator, Clark accelerated the vehicle in reverse, dragging Sergeant Fredericks backwards. As he was being dragged backwards he heard a shot going off, but he did not realize it was a shot at that moment. It wasn't loud; it sounded like a firecracker. He remembers being dragged towards the parked cruiser (Chelmsford Officer Brown's cruiser) and getting pinched between the driver's door and the cruiser and thinking "this is it." At that moment he was in fear for his life and thought he could be killed. He does not have a specific memory of being dragged into the parked Chelmsford cruiser in the parking lot. He "blacked out" for a few moments and next remembers getting up off the ground, being free of the vehicle and seeing that the vehicle was now on Graniteville Road. He looked over at the driver of the vehicle and saw that the driver had a gunshot wound to the head.

Sergeant Fredericks began to call on the radio for medical attention and for officers to respond to secure the scene. Sergeant Fredericks was subsequently transported to Lowell General Hospital where he was examined and treated for his injuries.

c. Police Interview: Officer Robert Brown

On July 16, 2016, Chelmsford Officer Robert Brown was working his regular 4:00 p.m. to midnight uniformed patrol shift, assigned to car 5 which is the "rover" patrol. At approximately 8:44 p.m., he was in the dispatch area of the Chelmsford police station having dinner when he heard that Tyngsborough had a pursuit going on to Route 40/Groton Road and he also heard Sergeant Fredericks' radio transmission that he was in close proximity to where the pursuit was occurring. Officer Brown left the

station, got into his marked cruiser and started toward the Drum Hill rotary to North Chelmsford to assist when he heard over the radio that the pursuit was heading on Richardson Road. Brown then turned around and took Old Westford Road to Graniteville Road to come at the pursuit from a different direction. As he turned onto Graniteville Road, Officer Brown heard Sergeant Fredericks broadcast over the radio that the pursuit was turning left onto Graniteville Road.

As Officer Brown was approaching Sully's Ice Cream Stand on Graniteville Road, he could see the pursuit coming towards him from the opposite direction. He saw the vehicle being pursued pull into Sully's Ice Cream Stand parking lot at a high rate of speed for the conditions. Sully's Ice Cream Stand was busy with customers, families and kids at the time. Brown estimated that there were over 100 customers in line and spread out through various parts of the parking lot which was completely full. The cruiser, which he believed to be Sergeant Fredericks' cruiser, did not pull into Sully's lot but instead stayed on Graniteville Road as another cruiser, the Tyngsborough cruiser, pulled into the lot behind the suspect vehicle. Officer Brown pulled into Sully's Ice Cream Stand parking lot via the closest driveway he could enter and headed towards the suspect vehicle. As this occurred, the suspect vehicle took a hard right turn in an attempt to exit the lot and get back on Graniteville Road heading in the opposite direction. The vehicle could not exit because it was blocked by the Fredericks' cruiser stopped on Graniteville and a rock, a sign and a tree. The suspect operator, Clark, crashed into the driver's side rear of Sergeant Fredericks' marked cruiser 8.

Sergeant Fredericks and Officer Brown exited their cruisers and approached the suspect and vehicle. Sergeant Fredericks, who was closer to the suspect, then grabbed onto the driver's door and opened it. Brown saw Sergeant Fredericks grab onto the suspect Clark and attempt to pull him from the vehicle. Brown saw Clark shift the car into reverse and accelerate at a high rate of speed. Officer Brown saw that the sergeant was in danger and grabbed onto the back of the sergeant's uniform flack vest, attempting to pull him backwards. Because the vehicle's door was open and the car was moving backwards quickly, Officer Brown tried, but was not able to free Sergeant Fredericks, who was caught in the door and sucked/dragged backwards by the car door. Sergeant Fredericks went over the hood of Brown's cruiser and was dragged all the way along the side of Brown's cruiser as the Clark vehicle travelled in reverse. The door narrowly missed hitting Officer Brown. The vehicle continued in reverse and hit Officer Brown's cruiser, resulting in damage to the passenger side of Brown's marked cruiser as the rear end of the suspect vehicle as well as the open door struck it while dragging Sergeant Fredericks. As it struck Brown's cruiser, he could no longer hold onto on Sergeant Fredericks' vest.

As Sergeant Fredericks was being pulled backwards by the vehicle Officer Brown's state of mind was that Sergeant Fredericks was going to be severely injured or killed by the moving car. It was around this this time that Sergeant Fredericks was no longer in the doorway but appeared to have been sucked down under the car in danger of being run over by the vehicle. As Sergeant Fredericks was on the ground, Brown heard the first shot. He did not know where the shot was coming from. He then heard a

second shot. When he heard the second shot, Sergeant Fredericks was still being dragged and pulled along under the car. The shots were one to two seconds apart. After the second shot, Officer Brown ran over to check on Sergeant Fredericks and the car was still moving backwards, traveling over the mound of mulch, through a wooden split rail fence and coming to a stop in the road. Officer Brown thought that Sergeant Fredericks had been run over by the car.

When he heard the second shot, Brown thought the suspect might have had a gun and might possibly have shot himself. Officer Brown only drew his weapon after the shots were fired and he was running over to the suspect vehicle. Brown did not get any response from the driver, who had an obvious gunshot wound to the head. It was Sergeant Fredericks who told him that it was the Tyngsborough officer who fired the shots. Chelmsford Officer Leary arrived and began attending to the suspect.

Officer Brown observed the suspect reaching for the steering wheel and trying to get out of the vehicle as they were trying to provide medical attention. Throughout, Clark was attempting to grab and rush at the first responders who were rendering medical treatment such that at one point he had to be restrained. He was transported by ambulance and then helicopter to Boston Medical Center.

Officer Brown checked at the residence across the street to make sure the bullet did not hit anyone in the house.

d. Police Interview: Officer Kristin Leary

On Saturday evening, July 16, 2016, Chelmsford Officer Kristin Leary was working a uniformed overtime shift from 4:00 p.m. to midnight. She was assigned to a marked cruiser covering the North Chelmsford area. Officer Leary was dispatched to the call that Tyngsborough was in a pursuit that had exited from Route 3 and Route 40. She was parked at the ball fields at Old Westford Road when the call came in. As a result of the call, she went down Graniteville Road to School to go to Route 40. Sergeant Fredericks became involved in the pursuit and was giving out each street the pursuit traveled. She tried to intercept the pursuit, leaving Graniteville and ending up on School Street. When she heard Sergeant Fredericks radio "shots fired" she turned from School Street back onto Graniteville Road and then to Sully's Ice Cream Stand. She did not witness the shooting.

When Officer Leary arrived at Sully's she saw the two Chelmsford cruisers and the brown sedan (suspect vehicle). Officer Brown was walking around, trying to keep the crowd back. She asked where the gun was and Officer Brown said that there was no gun; the suspect was shot when he was dragging the sergeant. Sergeant Fredericks was shaken up, holding his arm. The suspect vehicle was across both lanes of Graniteville Road at an angle with the nose facing toward Sully's Ice Cream Stand. The driver's door was wide open as she approached. Officer Leary went straight to the suspect's vehicle and began first aid on the suspect who was seated in the driver's seat. Initially his head was flopped forward and she moved his head back and applied pressure to stop

the bleeding. The suspect, who was mumbling, fought while in the car, grabbing Officer Leary's hands, wrists and vest. She and the fire department personnel moved the suspect outside the vehicle in order to treat him. While outside, Officer Leary had to put handcuffs on the suspect in order to keep him from interfering with his medical treatment. The front passenger window was broken and when the fire department opened the door the glass fell out. She did not notice if the car was in park or running, but it did not move.

e. Civilian Witness I

This 26-year-old woman was sitting in her living room on Graniteville Road and looked up when she heard sirens. She saw four police cruisers surround a car and an officer get out and try to remove the driver from the car. The driver swerved backwards around the other police cars, dragging the officer and smashing through the fence in front of Sully's Ice Cream Stand. From her vantage point she saw the officer being flung out of the car in the process. She heard two shots and saw the car come to a stop.

f. Civilian Witness II

This 39-year-old woman, a resident of Graniteville Road, saw the suspect car pull into the parking lot of Sully's Ice Cream Stand. There were two or three police cars around the suspect car, trapping it in. She saw the suspect car and the police car bump each other but she was not sure which car did the bumping. She figured the police had the suspect and the incident was over so she left the window. She then heard two gunshots. She went back to the window and saw that the suspect car was now in the street facing her house. There was a police officer or officers at the suspect's driver side door. The police secured the area very fast. She said she read more about the incident online and spoke to the media about the incident.

g. Civilian Witness III

This 44-year-old man is the husband of the previous witness. He did not see anything but only heard the sirens and two gunshots. He then told his wife to get away from the window and he ran upstairs to check on their daughter.

h. Civilian Witness IV

This 21-year-old man saw a man in a Buick drive into the parking lot where he was surrounded by three police cars. The Buick continued to try to get away and hit one police car and then he heard a gunshot as the suspect drove through the fence and the commotion stopped.

i. Civilian Witness V

This 78-year-old man and his wife were sitting on a bench beside Sully's Ice

Cream Stand when he saw a gray or blue car speeding very fast on Graniteville Road then enter the parking lot erratically. One Chelmsford police car, then another, followed close behind. They were then out of his line of sight, but he heard an auto collision and someone scream or shout, although he could not discern what was said. He then heard three or more gunshots and he and his wife ran for cover behind the building.

j. Civilian Witness VI

This 74-year-old woman and her husband were sitting on a bench to the left of Sully's Ice Cream Stand. She saw a gray or blue car speeding very fast. She thought it turned into Sully's Ice Cream Stand parking lot, but she lost sight of it in the confusion. She then heard three or more gunshots.

She saw the gray car race out of the parking lot, then another car went by and it was out of her line of vision. She heard an auto collision and someone screamed, but she couldn't figure out what was being said in the scream. When she heard the gunshots she looked around and her husband and she ran for cover behind the ice cream stand.

k. Civilian Witness VII

This 18-year-old woman was working at Sully's Ice Cream Stand when at approximately 8:45 she noticed two police cruisers pull in to the parking lot and trap a tan car towards the entrance. The car went into reverse and backed up through a fence at the entrance at a very fast speed. She then heard a couple of popping noises that she and her co-workers realized were gunshots. They then ran to the back of the stand and hid. She did not see any gun shots fired, but did hear about two or three gunshots.

l. Civilian Witness VIII

This 18-year-old employee of Sully's Ice Cream Stand looked out the window and saw three police cars surround a car. The car pulled forward hitting another car, and then rolled backwards. At that point, the teen saw an officer approach the driver side of the car and he heard a gunshot. After they heard the gunshot, all the employees went into the back and locked themselves inside.

m. Civilian Witness IX

This 25-year-old man was driving on Route 3 South with his girlfriend when they were passed by a car fleeing from a Tyngsborough police cruiser. They got off at the Route 40 exit and proceeded to go right towards North Chelmsford. They were passed by police cruisers. They proceeded past Princeton Station and then right to pass the highway department. As he was turning into Sully's, he could see the car and the pursuit car in his rear view mirror. He stopped his white SUV in the middle of the road forcing them to pull through Sully's parking lot. The car being followed was then cut off and tried to maneuver out. An officer had their door open and the driver of the car (Clark) slammed forward into the cruiser blocking him.

n. Civilian Witness X

This 20-year-old man was eating his ice cream at Sully's Ice Cream Stand. He heard a few sirens and then a car speeding into the parking lot. The cops surrounded the car, but the operator kept driving, hitting the police cars, then it backed into the road and he heard a gunshot and all the police surrounded the car.

o. Civilian Witness XI

This 19-year-old woman was standing in the parking lot of Sully's Ice Cream Stand when she saw police drive by. A few minutes later, a Buick came flying in with three police cars following. The police tried blocking him and he hit one of the police cars. He then put his car in reverse and flew through the fence into the road. She heard a gunshot so she ducked in front of the truck.

p. Civilian Witness XII

This 17-year-old woman was standing at her window when she saw a police car block the middle entrance of Sully's Ice Cream Stand and two other cars blocked the car from exiting. The car then suddenly began to back up and a few seconds later she heard two or three gunshots. This happened at approximately 8:45 p.m.

q. Civilian Witness XIII

This 18-year-old female employee of Sully's was by the window when she saw all the police cars, about two or three, pull in. She ran to the window to see what was happening. She saw a police officer running with his gun up and she then heard a gunshot. Customers were running and that is when one of the other employees pulled all the employees into the back room.

r. Civilian Witness XIV

This 18-year-old employee of Sully's was at the back freezer and heard sirens and saw blue lights so she ran to the windows. That is when she saw three police cars surround the car. Then the car they were surrounding tried to reverse out very fast to get away from the police. Just when he tried to reverse, she heard a gunshot.

s. Civilian Witness XV

At around 8:45 p.m., this 21-year-old woman looked up and saw a bunch of police cars and then a car moving fast in reverse and an officer pointing a gun at the car. She then heard a gunshot. She described the car as "moving in reverse in an aggressive manner."

t. Civilian Witness XVI

At approximately 8:45 p.m., at Sully's Ice Cream Stand, this 22-year-old woman saw three police cars pull in and surround the area near the fence. She then heard two gunshots.

u. Neighbors on Graniteville Road

During a canvas of Graniteville Road, several residents were interviewed, but none of them witnessed the encounter or had anything to add to the narrative of events leading up to the shooting.

v. Interview: Owner of the Buick LeSabre

This 25-year-old man was visiting a patient at the Lowell General Hospital on July 16, 2016. He parked his 2002 Buick LeSabre in the hospital parking garage. The doors were unlocked and there was a set of keys along with his wallet in the vehicle.

At approximately 7:19 p.m., he received a series of text messages from Citizens Bank alerting him to charges being attempted at Best Buy in Nashua, NH, but being refused by the bank.

As a result of these text alerts, he went to the parking garage and discovered that his car was no longer in the space he parked in. He had not given anyone permission to take it. The vehicle owner then went and spoke to hospital security to report his vehicle stolen. As a result, hospital security notified the Lowell Police Department who responded to the hospital and took the stolen car report there. A stolen motor vehicle was dated and timed July 16, 2016 at 7:51 p.m. Although the Lowell Police had taken the report as of 7:51 p.m., the report had not been entered into the National Crime Information Center (NCIC) system as of the time of Officer Leach's request at 8:36 p.m. for his dispatcher to query the plate.

Later that evening, after the shooting, police learned about the stolen car report. The owner of the stolen car provided investigators with a written consent to search the vehicle. The vehicle was towed to the Chelmsford police station where it was searched pursuant to this consent. The car owner also went through the vehicle with the police and identified items to them which were not his and were not in the vehicle when he last saw it earlier on July 16, 2016. There was a used Samsung cell phone in the passenger compartment of the vehicle, believed to possibly be Clark's phone. The vehicle owner also noted that there were some electronics devices that were not his. Those items were a Lenovo Ideapad computer, a MagSafe 2 power adapter and Iconia One 8 Acer computer. These items were in clear plastic Best Buy bags and still had the wrapping on them.

w. Activities of Operator Michael Clark Leading Up to the Shooting

Shortly after the shooting, police became aware that the operator of the vehicle

was not the registered owner of the vehicle. Rather the operator was identified to be Michael Clark, 27 years of age, of Tyngsborough, as shown by the identification on his person. Investigation revealed the following timeline of activities by Michael Clark starting at approximately 1:07 p.m. on July 16, 2016, less than eight hours earlier.

At 1:07 p.m., a man called 911 from Frost Road, Derry, NH where he reported he was following a brown Toyota which was all over the road and had almost hit four cars. The caller reported the vehicle was heading towards Hudson, NH, and was smashed in on the side and the windshield was cracked. The caller reported that he lost the vehicle just before Ayotte's Market in Hudson, NH. The dispatcher broadcast a radio communication about this call and Tyngsborough officers began to look for the vehicle in the area, and contacted Dracut and Hudson Police Departments, but the vehicle was not located at that point and no recent "hit and runs" had been reported to any department as of that time.

At 1:41 p.m., the mother of Michael Clark called the Tyngsborough police regarding her 27-year-old son who was locked in bathroom with agonal respiration. During the call Mrs. Clark told the dispatcher that her son was supposed to come over to go out to lunch with her, but when he arrived at her residence he told her he fell asleep at the wheel. She reported that his vehicle was "badly dented." As a result of the call, Tyngsborough police officers responded to her residence. On arrival the officers saw a car with damage consistent with that described in the earlier call. Officers radioed that Clark was awake but not responsive; he was conscious and breathing. The vehicle, a 2016 Toyota, was leased to Michael Clark but the registration for the vehicle was revoked for no insurance. At 1:54 p.m., Trinity Ambulance transported Michael Clark to Lowell General Hospital.

At or around 6:03 p.m.³, Lowell General Hospital reported that Clark had used the telephone at the courtesy desk in the hospital. After a short time he left the hospital and entered the parking lot. Video surveillance from the hospital was obtained and reviewed

At 6:42 p.m., the vehicle owner's debit card was used at the CVS on Middlesex Street, in Lowell to make a purchase in the pharmacy for \$3.07. This transaction was confirmed by surveillance video.

Between 7:09 p.m. – 7:30 p.m. Clark attempted to make multiple purchases at Best Buy with the stolen Citizens Bank card. These transactions were also confirmed by surveillance video. Two of the purchases were accepted while multiple other purchases were rejected. At 7:19 p.m., Citizens Bank texted the card holder an alert regarding these rejected transactions. That prompted the card holder to go out to the parking lot and check on his car where he had left his wallet with that bank card.

This charge was refused. Later two of the items purchased at Best Buy with the stolen bank card were recovered from the trunk of the stolen vehicle.

³ These times have been adjusted to approximate "real times" based on the recording counter being a few minutes slow.

Meanwhile, the vehicle owner, having found his car missing from the Lowell General Hospital parking garage, reported to hospital security that his car was stolen. The Lowell Police Department was notified and responded to the hospital to take a stolen car report. The stolen car report showed the report taken at 7:51 p.m. However, it had not been uploaded into NCIC as of the time of Officer Leach's original observation of the Buick LeSabre with the missing headlight and his request for a listing on the plate.

V. RADIO TRANSMISSIONS

a. Tyngsborough Police Radio Transmissions

A review of the recorded police radio transmissions for the Tyngsborough Police Department revealed the following:

At 8:36 p.m., Officer Leach radioed to dispatch to run the plate of a "vehicle that's not stopping." At 8:37 p.m., Officer Leach next radioed that his location was Potash Hill Road at a parking lot and that the vehicle was not stopping. The plate was given and the vehicle described as "a gray Pontiac." At that time Officer Leach was informed that the listing for the registration for that vehicle came back to a Fitchburg address. The officer reported that the car was going off on Route 3 South.

In the meantime, the Tyngsborough dispatcher called the State Police Andover Barracks, which is responsible for patrolling that area of Route 3 South. At 8:38 p.m., Officer Leach radioed that that the vehicle was travelling 95 and then 100 miles per hour on Route 3 South. Officer Leach radioed the lieutenant inquiring if he wanted him to continue to follow the vehicle. The lieutenant radioed Officer Leach to "shut it down," i.e., the pursuit, but that he could continue to follow. During this broadcast, Officer Leach reported the vehicle was all over the road.

At 8:39 p.m., Officer Leach radioed that the vehicle left Route 3 at Exit 33 in Chelmsford and then went onto Route 40, eastbound, in Chelmsford. The Tyngsborough dispatcher then called the Chelmsford Police dispatcher and reported the location of the vehicle and that it was being followed by a Tyngsborough cruiser. Officer Leach radioed his location as a residence on Twiss Road. He then said the car pulled in but was now backing down on Twiss Road, taking a right off Twiss Road to Route 40 East.

At 8:40 p.m., the Tyngsborough dispatcher radioed Officer Leach and asked for the reason for the original stop. Officer Leach responded that it was for a tail (-sic head) light and marked lanes. Meanwhile Officer Leach broadcast various streets on which his pursuit of the suspect vehicle continued, including Needham Street and First Avenue. State Police advised the Tyngsborough dispatcher that the State Police Airwing was up in the area and inquired if Tyngsborough was still behind the car.

At 8:43 p.m., Officer Leach broadcast that they took a right on Sherman Street and he saw a Chelmsford Police cruiser behind the vehicle, noted that the Chelmsford officer was alone and that he would follow. The lieutenant then requested an update.

At 8:47 p.m., Officer Leach next radioed his dispatcher: "There were shots fired. He did run over one of the Chelmsford officers."

b. Chelmsford Police Radio Transmissions

Chelmsford Police radio transmissions revealed that at 8:41:09 p.m., the Chelmsford dispatcher broadcast that Tyngsborough had a pursuit coming in on Route 4 from Route 3. At 8:41:47 p.m., the dispatcher broadcast the vehicle description as a Buick LeSabre and gave the plate number and the direction of travel. An officer responded asking, "Do you know why?" The dispatcher responded that they were trying to get that information from Tyngsborough. At 8:43:14 p.m., the dispatcher broadcast that they were in the area of First Street. An officer, believed to be Chelmsford Sergeant Fredericks, radioed that they are in the neighborhood of Sherman Street right now.

Chelmsford Sergeant Stephen Fredericks, on a detail nearby, heard the transmission and responded that he was in the area. At 8:43:52 p.m., Sergeant Fredericks began to broadcast the streets where the vehicle was traveling. At one point he radioed, "45 mph at Princeton Street." Meanwhile, at 8:44:08 p.m., the Chelmsford dispatcher broadcast that the reason for the original stop was marked lanes and tail light (-sic headlight). At 8:44:31 p.m. Sergeant Fredericks radioed that they were going right on Princeton by the Princeton Station (Restaurant). At 8:44, Sergeant Fredericks broadcast they were turning right onto Richardson and the speed was 30 mph. At 8:45:16 p.m., the Chelmsford dispatcher radioed to Sergeant Fredericks inquiring, "Is Tyngsborough still with you?" He replied, "Yep. He's by himself, I'm staying with him." Sergeant Fredericks then broadcast, "Approaching Graniteville." This was at 8:45:57 p.m. He next broadcast, "Block him in! Block him in!" at 8:46:05 p.m. At 8:46:19 p.m., a Chelmsford officer radioed, "Shots fired! Shots fired! Get the paramedics to Graniteville at Richardson. All units respond! All units respond!" Thus the entire encounter in the Sully's Ice Cream Stand parking lot, from the directive to block him in and the report of shots fired was no more than 14 seconds in total. At 8:47:32 p.m., the Chelmsford dispatcher inquired, "Are any of our officers hurt?" Sergeant Fredericks responded, "Just me." When asked "How bad?" he responded "don't worry about me now." At 8:48 p.m., a transmission was sent requesting that the paramedics "step it up."

VI. BALLISTICS EVIDENCE AND SCENE DOCUMENTATION

Members of the Massachusetts State Police Firearms Identification responded to

the Chelmsford scene. There they took custody of the Tyngsborough Police Department issued firearm used by Officer Leach that evening. Officer Leach's firearm was a .45 auto caliber Glock 21 Gen 4 semiautomatic pistol. There was one live cartridge in the chamber and the magazine contained eleven live cartridges. They also collected firearms-related evidence consisting of two discharged cartridge cases from the parking lot. A test firing of the Leach firearm was compared to the two discharged cartridge cases recovered from the scene and Lieutenant David Cahill, an expert in the field, opined that the two cartridge cases were fired from the Leach firearm. Firearms personnel also examined the Chelmsford officers' service firearms and determined that none of the three Chelmsford firearms had been recently fired.

Members of the Massachusetts State Police Crime Scene Services Section responded to the Chelmsford scene and took photographs of the scene and the three vehicles that were stuck during the event: Sergeant Fredericks' cruiser, Officer Brown's cruiser and the stolen Buick LeSabre.

A trooper assigned to the Collision and Accident Reconstruction Section responded and prepared a scale diagram of the scene using Leica Total Station equipment. A copy of that diagram is attached to this report and is incorporated herein.

Sully's Ice Cream Stand had video cameras; however, they only captured the entrance of the Buick into the parking lot. The other areas of the encounter were not within any of the cameras' fields of vision.

VII. MEDICAL EVIDENCE

a. Michael Clark

As set forth herein, Michael Clark was med-flighted to Boston Medical Center. When he arrived at the hospital he was reported to be in grave condition. He was reported to have three gunshot wounds to the head (consistent with two entrance wounds and one exit wound).

b. Sergeant Stephen Fredericks

Sergeant Stephen Fredericks was transported to Lowell General Hospital where he was examined and treated for his injuries. Those injuries were also documented by photography. Medical records were reviewed with Sergeant Fredericks' consent.

VIII. CONCLUSION

In the totality of the circumstances, Officer Dennis Leach was justified in his use of deadly force in defense of others, based on his reasonable belief that he and his fellow officers and citizens were in imminent danger of death or serious bodily injury. The investigation supports the finding that Officer Leach reasonably believed at the moment when he fired his weapon that Clark was actually running over Sergeant Fredericks and possibly would do so again and, in the process, potentially kill or seriously injure

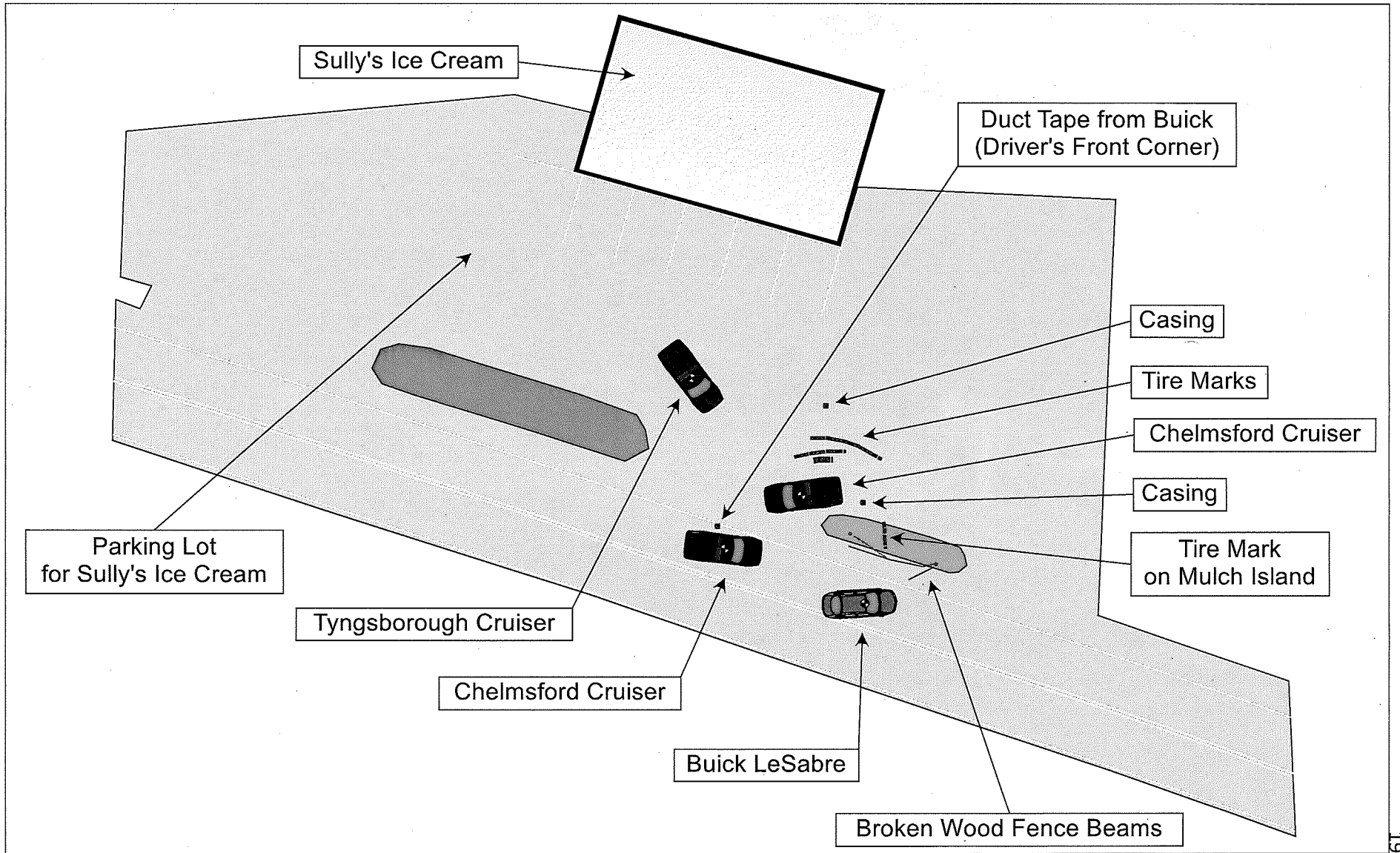
Sergeant Fredericks, the other Chelmsford officer in the parking lot, Officer Brown, himself, or one of the many civilians in the area of Sully's Ice Cream Stand on a warm summer Saturday evening.

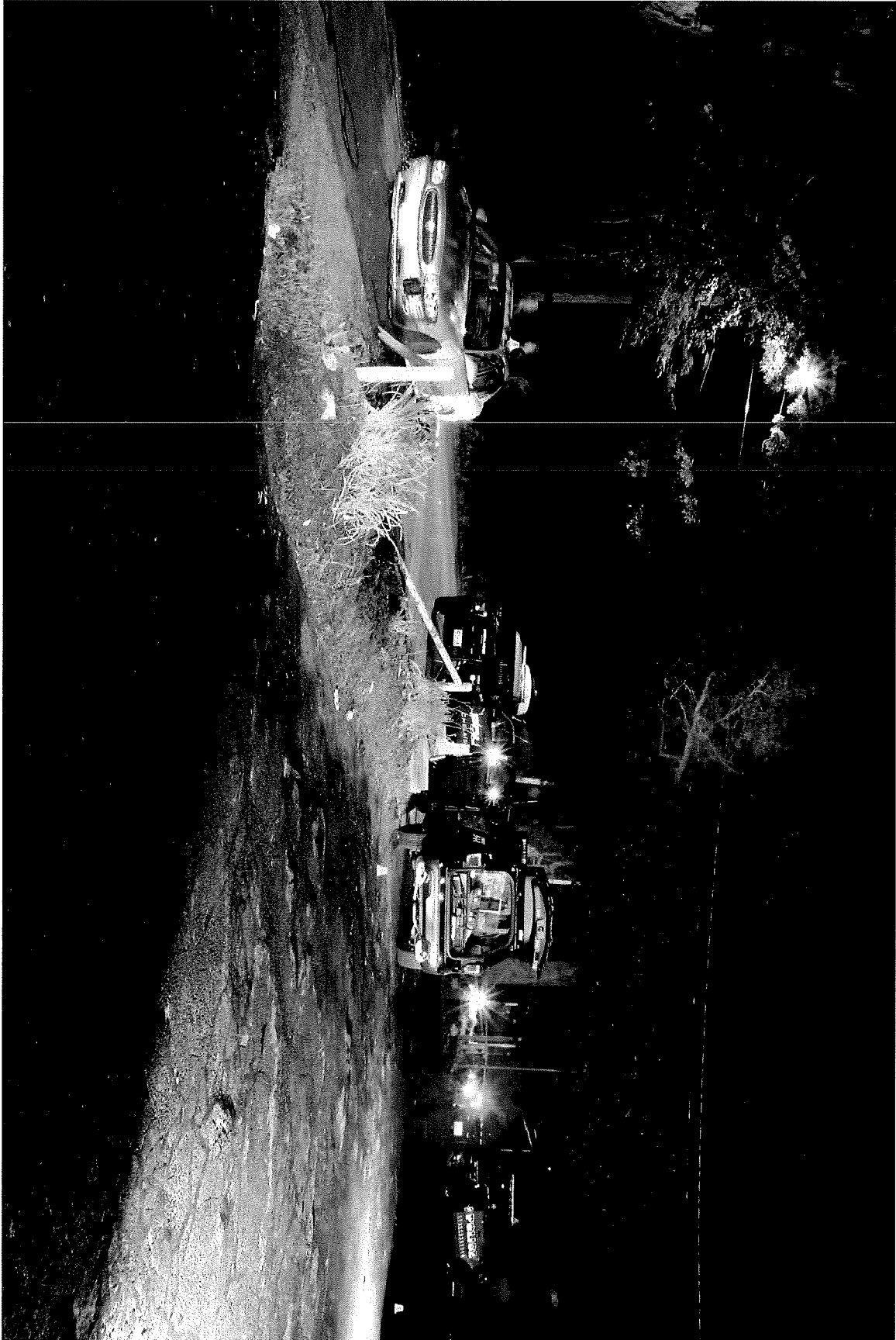
Officer Leach was reasonable in his belief that Sergeant Fredericks was in imminent danger of being killed by Michael Clark and that the erratic and assaultive manner in which Clark was operating the car placed Fredericks, Officer Brown, Officer Leach and the many civilians at Sully's Ice Cream Stand or arriving/departing Sully's in imminent danger of death or serious bodily injury at the time the shots were fired. The police officer's use of lethal force- firing two shots, was not excessive, (i.e., no more force than was reasonably necessary), in the circumstances and, therefore, the shooting was justified in the reasonable exercise of self-defense/defense of another, under Massachusetts law.

Under the circumstances, Officer Leach acted reasonably and lawfully. Therefore, no criminal charges are warranted. This investigation was limited to the issue as to whether any crime was committed by the police in connection with the shooting and not into whether any departmental rule and regulations of the Tyngsborough Police Department were violated.

This matter is now referred to the Tyngsborough Police Department for whatever internal review may be deemed appropriate.

Michael Clark has been charged with assault with intent to murder, assault and battery by means of a dangerous weapon, to wit: a motor vehicle, operating negligently so as to endanger, assault and battery on a police officer, resisting arrest, receiving a stolen motor vehicle, receiving stolen property over \$250 and failure to stop for a police officer. He was arraigned in his hospital bed at the Boston Medical Center on July 22, 2016. The Commonwealth filed a 58A dangerousness motion. No hearing has been held on the motion to date due to Clark's medical condition.





06

FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING THE
OFFICER INVOLVED NON-FATAL SHOOTING OF WILLIAM OMAR SANTIAGO
IN CHELMSFORD BY CHELMSFORD POLICE OFFICER KRISTIN LEARY ON
JULY 23, 2017

The Middlesex District Attorney's Office, the Massachusetts State Police assigned to the Middlesex District Attorney's Office and the Chelmsford Police Department have concluded the investigation into the non-fatal shooting of William Omar Santiago, 35, of Lowell, who was shot by a Chelmsford Police Officer on Clover Hill Drive in Chelmsford on July 23, 2017.

A thorough investigation into the circumstances surrounding the shooting of Mr. Santiago has revealed that Officer Kristin Leary of the Chelmsford Police Department fired two shots at Mr. Santiago after determining that she, her fellow officers and a female were in imminent danger of death or grievous bodily injury at the hands of William Santiago, and that there were no other means available to protect the lives and safety of herself and others other than by discharging two rounds from her department-issued service weapon. Under the circumstances, Officer Leary acted reasonably and lawfully. Therefore, no criminal charges are warranted.

* The following report is being released in redacted form according to the Rules of Professional Conduct Rule 3.4: Fairness to Opposing Party and Counsel to protect the integrity of an open criminal case currently pending against Mr. Santiago as well as to protect Mr. Santiago's right to a fair trial. Witness testimony and the names of victim and civilian witnesses have been redacted.

Upon the conclusion of the prosecution, the full unredacted report will be available.

I. INTRODUCTION

The District Attorney's Office, along with the Massachusetts State Police assigned to the Middlesex District Attorney's Office and the Chelmsford Police Department, conducted an investigation into the facts and circumstances of the non-fatal shooting by Officer Leary, while on duty with her department-issued firearm. As such, the primary goal of the investigation was to determine if any person bears criminal responsibility in connection with the shooting of William Omar Santiago on July 23, 2017. I designated my Chief of Homicide, Adrienne Lynch, to direct the investigation.

During the course of the investigation, recordings of the 911 call as well as police radio communications were gathered and reviewed.

No surveillance camera video was available.

Photos of injuries sustained by the female civilian victim were reviewed.

The four police officers who responded to the scene were all interviewed as were the two civilian witnesses who lived in the house.

An examination of the firearms of officers present was made the results of those examinations were reviewed.

II. APPLICABLE LAW

This office's analysis of whether the actions of the involved police officer constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "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 – about the amount of force that is necessary in a particular situation."

The standard for use of deadly force in Massachusetts is that a person may use deadly force to defend him or herself or another if the person has reasonable ground to believe, and actually believes, that he or she or another person is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm. The person using deadly force must actually believe that he or she or another person is in imminent danger of death or serious bodily harm. In addition, the circumstances, as perceived and understood by the person using deadly force, must be such that a reasonable person would believe that he or she or the other person was about to be attacked, and that he or she or the other person was in immediate danger of being killed or seriously injured.

Our review of the facts reveals that, in the totality of the circumstances, Officer Leary was justified in her use of deadly force. Officer Leary's use of force was not excessive in the circumstances and, therefore, the non-fatal shooting of William Omar Santiago was a reasonable exercise of self-defense, under Massachusetts law.

III. SUMMARY OF THE FACTS:

On July 23, 2017, Chelmsford Police received notification from the Essex Emergency Communications Center in Middleton of a possible domestic 911 hang-up call they received which was tracked to the address of 3 Clover Hill Drive in Chelmsford. As a result, at 7:39 a.m., uniformed Chelmsford Officer Brian Gervais was dispatched to respond. He was familiar with that address as a result of prior calls to that location. Uniformed Chelmsford Officer Christopher Mauti, who was also on patrol, radioed that he would respond as back-up. Gervais arrived first and approached the front door. He

was met by a male occupant of the residence who directed him to a bedroom down the hall to the left.

Gervais approached and knocked on the door announcing his presence as a police officer. The door was opened by William Omar Santiago who appeared to be in a rage and who immediately began punching and hitting Officer Gervais with closed fists about the head and face. The barrage of punches caused Officer Gervais to bleed from the face and he began to try to block blows defensively with his arms. Santiago returned back in to the room. After this initial assault by Santiago on the officer, there were a series of assaults that were committed by Santiago on Gervais and the three other officers who responded to assist in securing the safety of the female in the bedroom with Santiago. This woman was also physically assaulted by Santiago in the room as the police officers in the hallway were attempting to come to her aid. Santiago escalated his assaults on the officers. During the course of the ensuing events, Santiago would sporadically open the door and throw objects – first a hammer, “tomahawk-style” at Officers Gervais and Mauti, then large pieces as well as shards of heavy, broken glass, at the officers – Mead, Leary, Mauti and Gervais. The large pieces of glass were wielded like a spear and the smaller ones wielded like martial arts fighting stars, and a sharp, pointed piece of wood, all as the female was screaming and yelling for help.

The officers first attempted to quell Santiago’s violent rampage, without weapons, then by two of the officers deploying their department-issued tasers and then, when all available options were exhausted, Officer Kristin Leary fired two rounds from her department-issued firearm, which stopped Santiago’s assault and allowed for the female to be freed from the room and Santiago to be arrested.

Santiago was transported first to Lowell General Hospital and then by med-flight to Tufts New England Medical Center in Boston.

Massachusetts State Police Lieutenant Paul Bulman and Massachusetts State Police Trooper Anthony Delucia attempted to interview Mr. Santiago at the hospital, but he declined to speak to them, before attempting to escape from police custody at the hospital and assaulting the Chelmsford uniformed officer guarding him and Lieutenant Bulman and Trooper Delucia.

Mr. Santiago was treated and released from the hospital the following day, July 24, 2017.

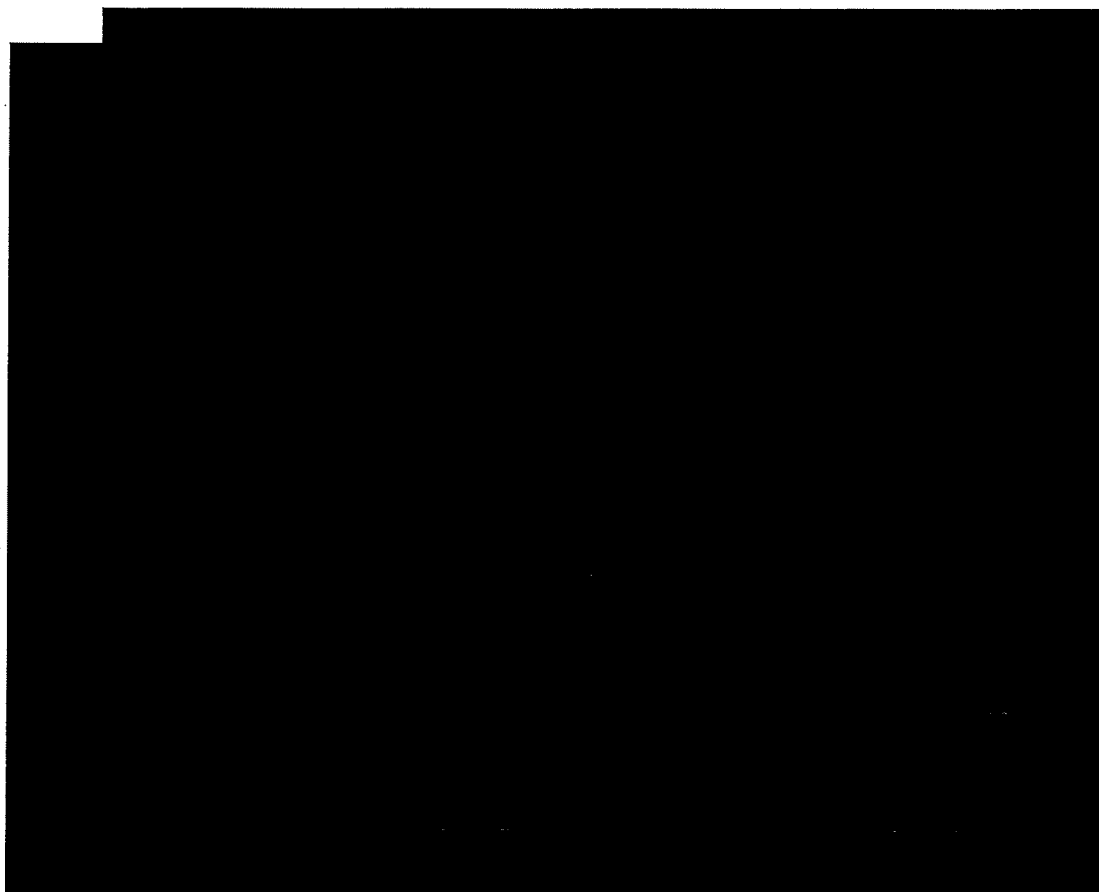
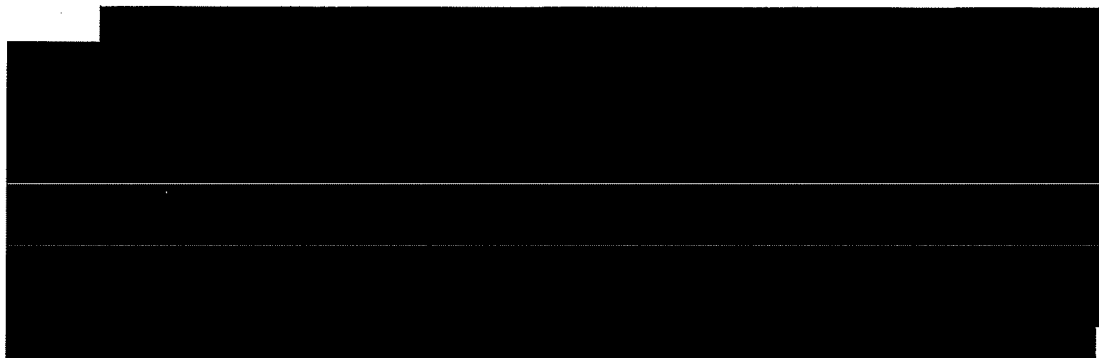
IV. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Police interview: Officer Brian Gervais

Officer Gervais was working the midnight shift on July 23, 2017, assigned to a one-person marked cruiser, designated Car Three. He was in full police uniform in a

marked police cruiser. Officer Gervais has been a Chelmsford police officer for nine months. He graduated from the Methuen Police NECC Academy in October of 2016. As of the date of this incident he had been a patrol officer for approximately nine months. At 7:40 a.m., Officer Gervais responded to a radio transmission reporting a 911 hang up call at 3 Clover Hill Drive. Dispatch reported that the call came in through Essex [Emergency Communications Center] and it was possibly domestic as arguing could be heard in the background. Officer Christopher Mauti, Car Two, advised via radio that he would respond too.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. Police interview: Officer Christopher Mauti

Officer Mauti was hired as a Chelmsford police officer in April of 2016 and, thereafter, attended a six month academy. After graduating from the academy in October of 2016, he began working for Chelmsford Police as a patrol officer. As of the time of this incident he had been an officer for nine months. During the course of the incident he did not discharge his department-issued firearm but he did discharge his department-issued taser.

On July 23, 2017, Officer Mauti worked the midnight shift in full police uniform and he was assigned to a marked patrol vehicle designated Car Two. At approximately 7:40 a.m., he heard a radio transmission dispatching Officer Gervais to 3 Clover Hill Drive for a possible domestic in progress. Officer Mauti recognized the address as one where there was prior police response and so Officer Mauti radioed that he would be heading to the call too. Dispatch advised that Essex Regional had received a 911 hang up

from a cell with loud screaming and arguing in the background. The call was dropped and there was no answer on call back. Essex Regional was able to ping the cell phone's location to the area of 3 Clover Hill Drive in Chelmsford.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. Police interview: Officer Craig Mead

Officer Mead has been a Chelmsford police officer since April of 2016. He has been a member of the National Guard since August of 2012. During the course of the incident he did not discharge his department-issued firearm but he did discharge his department-issued taser.

Officer Mead was working the midnight shift on July 23, 2017, assigned to a one-person marked cruiser, designated Car Four. He was in full police uniform. At 7:39 a.m., he was aware that Officer Gervais had been dispatched to 3 Clover Hill Drive for a possible domestic in progress. Officer Mead was familiar with this address through the multiple occasions the Chelmsford Police had been dispatched to the location for disturbances. At that time, Officer Mead began to head to that call.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

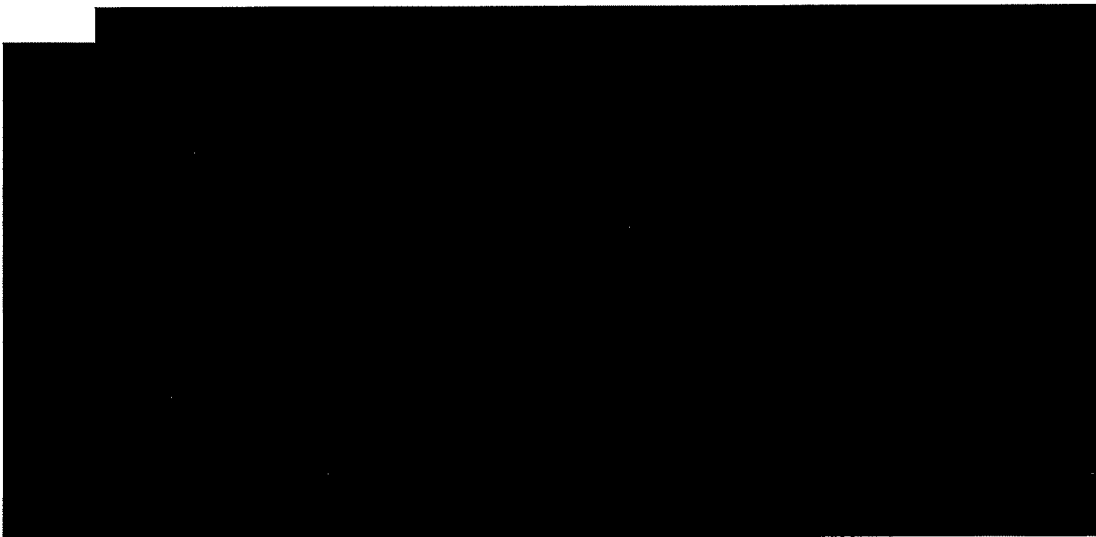
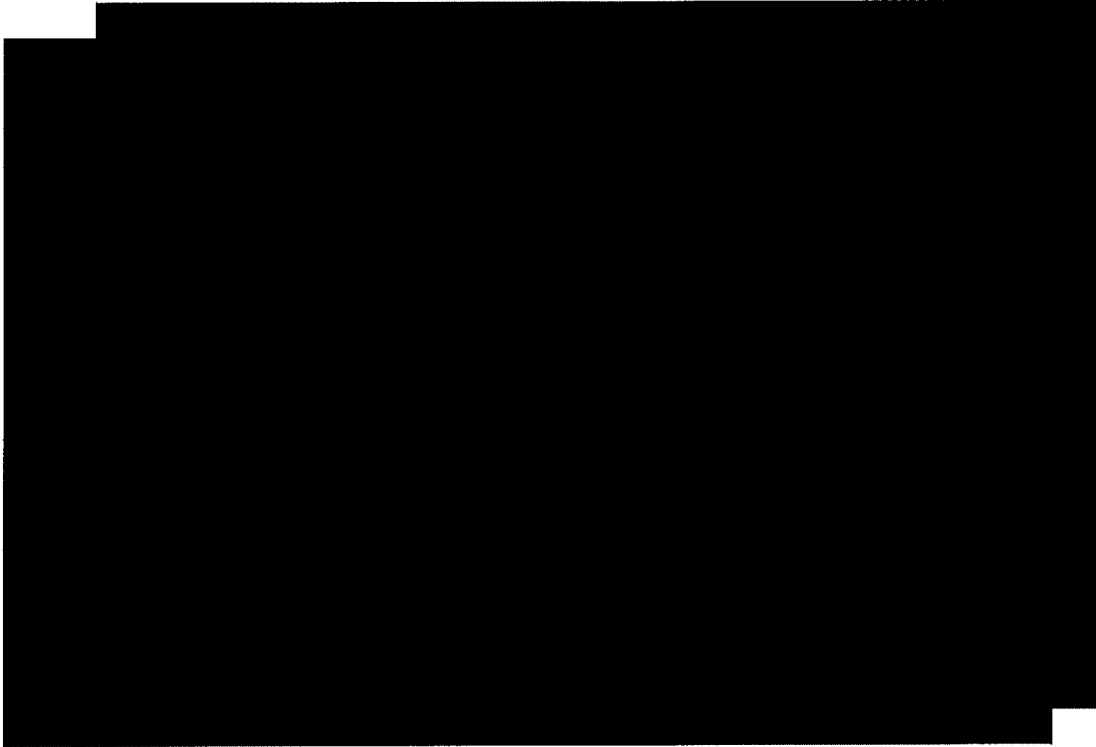
d. Police interview: Officer Kristin Leary

Officer Leary was the most experienced of all four officers who responded to the call. She has been a police officer in total for eighteen years. She was an officer in Westford, South Hadley and then Holyoke, before joining the Chelmsford Police Department in December of 2015. During the course of the incident, Officer Leary discharged her department-issued firearm twice and both shots struck Mr. Santiago.

On July 23, 2017, Officer Leary was working the midnight shift, assigned to marked police cruiser designated Car One, wearing a police uniform. She was approaching the end of her shift at 7:40 a.m. when Officer Gervais was dispatched to a disturbance at 3 Clover Hill Drive. Officer Leary was at the station monitoring radio transmissions for the call.

Officer Leary heard Officer Mauti radio that he was responding to the call. Just after Officer Gervais signed off at the call, he radioed again in a stressed tone of voice for more cruisers. Officer Mauti arrived at the call and, shortly after he did, Officer Mauti radioed for more cruisers and an ambulance. Officer Leary left the station and proceeded to 3 Clover Hill Drive.





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e. Civilian Witness I

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

f. Civilian Witness II

[REDACTED]

[REDACTED]

[REDACTED]

g. Summary of Events While Mr. Santiago Was in the Hospital

In the late afternoon of July 23, 2017, Massachusetts State Police Lieutenant Paul Bulman and Trooper Anthony Delucia, in connection with the investigation into the shooting by the police officer, attempted to interview Mr. Santiago at Tufts-New England. After he declined to speak to the police investigators, they were preparing to leave when Mr. Santiago suddenly jumped out of his hospital bed and assaulted the Chelmsford police officer who was guarding him and attempted to escape from the hospital. Mr. Santiago attempted to arm himself with a pair of surgical scissors as he fought with the three officers, two in plainclothes and one in uniform, but he was

ultimately subdued. Trooper Delucia sustained an injury to his knee which resulted in extensive swelling and bruising in the effort to subdue Mr. Santiago at the hospital.

The behavior exhibited at the hospital by Santiago was consistent in description with that described by the responding Chelmsford officers earlier that same day. It took three officers and medical personnel to subdue him and place him in four point restraints, despite injuries to his leg and head. He was violent, aggressive and extremely unpredictable in all his interactions with police that day.

V. RADIO TRANSMISSIONS

Chelmsford Police radio communications were obtained and reviewed as part of this investigation. Those records provide the following relevant timeline:

- 7:38:25 a.m. - 911 hang-up call received by the Essex Emergency Communications Center reporting a 911 hang-up call in from the area of 3 Clover Hill Drive – possible domestic – arguing commotion in background
 - ECC tried to call back the number no answer
 - call pinged by ECCC to 3 Clover Hill Drive
- 7:40:08 a.m. -Car 3, Officer Gervais, dispatched; it is reported as a 911 hang-up call. Sounded like arguing or dispute taking place; loud voices and arguing
 - Car 2, Officer Mauti, radios that he is heading that way
- 7:43:06 a.m. -Car 3, Officer Gervais, calls off at that location
- 7:43:37 a.m. -Dispatcher calls the number received from EECC and reaches the voicemail for the male resident of the home
- 7:43:54 a.m. -Car 2, Officer Mauti, calls off at that location
- 7:44:12 a.m. -Inaudible radio transmission [believed to be from Car 3]
- 7:44:37 a.m. -Radio transmission requesting, “other cars, please; send cars over here”
 - Car 1, Officer Leary, radios that she is en route
 - Radio transmission – Get Trinity (ambulance). He has a hammer
- 7:45:12 a.m. -Dispatcher calls Trinity and requests that they stage at 3 Clover Hill Drive

7:45:30 a.m. -Radio transmission, "he is throwing a hammer at us down here, send cars"

7:47:04 a.m. -Radio transmission requesting, "help"

7:48:36 a.m. -Car 1, Officer Leary, radios "shots fired" and requests a supervisor

From the radio transmissions it appears that the initial assault on Officer Gervais occurred in the time shortly after 7:43:06 a.m. and around 7:43:54 a.m. when Officer Mauti arrived outside the house. When Officer Mauti arrived, he observed Officer Gervais in the common area after the assault with fists had already occurred. He found Gervais ashen and pale and bleeding from a facial laceration. Between 7:44:37 a.m. (during which it was radioed that, "he has a hammer") and 7:45:30 a.m. (during which it was radioed "he is throwing a hammer at us.") Officers Gervais and Mauti later reported that they were attempting to get into the room to secure Mr. Santiago and assist the female. After the hammer was thrown by Mr. Santiago at Officers Gervais and Mauti, Officer Mead and then Officer Leary arrived. From the time the transmission at 7:45:30 a.m. ended and the transmission for "shots fired" at 7:48:36 a.m., a period of three minutes and six seconds – first Officer Mead arrived and then Officer Leary arrived, the four officers attempted to make entry, were assaulted with multiple shards of broken heavy glass mirror, some thrown as if they were spears and others as if they were martial arts stars, the officers deployed tasers and then two shots were fired.

Thus from the time of arrival of the first officer at 7:43:06 and the call of shots fired at 7:48:36 marking the end was a matter of five minutes and thirty seconds.

VI. BALLISTICS EVIDENCE AND SCENE DOCUMENTATION


Specialized personnel from the Massachusetts State Police Firearms Identification Section, Crime Scene Services Section and the Crime Laboratory responded to the scene. Ballistics personnel recovered one discharged round in a bedroom wall believed to be the round associated with Mr. Santiago's leg wound and two discharged cartridge casings.

Broken mirror glass was found on the floor in the bedroom, the hallway and the bathroom. The police also observed a wooden handle for a snow removal tool, with the end broken off and to a point.

VII. MEDICAL EVIDENCE

a. William Omar Santiago

Mr. Santiago was treated by Trinity EMS and Paramedics as well as Chelmsford Fire Department medics. He was transported to Lowell General Hospital where he was med-flighted to Tufts-New England Medical Center. Lieutenant Bulman spoke to the attending emergency room physician. He described two gunshot wounds to Mr. Santiago, one to the head, the other to the left leg below the knee. [REDACTED]



Santiago was discharged the following day, Monday, July 24, 2017.

VIII. CONCLUSION

In the totality of the circumstances, Officer Kristin Leary was reasonable in her belief that she, her fellow officers and citizens were in imminent danger of death or grievous bodily injury at the hands of William Omar Santiago, and that there were no other means available to protect the lives and safety of herself and others other than by discharging two rounds from her department-issued service weapon. Despite repeated efforts by all of the officers to order Mr. Santiago to submit to their lawful authority he chose instead to physically assault Officer Gervais with a flurry of punches that dazed and disoriented the officer and caused his facial injuries to bleed. Mr. Santiago escalated the encounter to one involving deadly force when he first armed himself with hammer and wielded it at the officers. Officer Gervais and Officer Mauti were next met with use of deadly force at the hands of Santiago when he threw, "tomahawk style," a hammer which narrowly missed the officers heads as it flew between them as they stood in the dark hall.

At that time the officers were joined by a third officer, Officer Mead and then a fourth officer, Officer Leary. Despite repeated demands that he come out of the room, stop and submit to their authority, Mr. Santiago remained in the room where he held the female and where he was assaulting her with his closed fists, in between his assaults on the officer. Mr. Santiago next began to throw large broken shards of a broken heavy plate glass mirror some six to eight inches in length as if they were spears, narrowly missing each of the officers they were directed towards. Officers Mead and Mauti attempted to use their department-issued tasers in an effort to stop Mr. Santiago's enraged assaults, but were unsuccessful in stopping him.

The officers were aware of the availability of a SWAT team being called, but given that the civilian witness was trapped in the room with Santiago and was pleading for help and telling Santiago to, "put that down," in the totality of the circumstances, the officers did not have the luxury of time to retreat and await the deployment of a SWAT team, fearing for the female's life and safety. Thus they had no choice but to deploy deadly force, at great risk to the officers. The investigation supports the finding that Officer Leary's discharge of her firearm two times, striking Santiago in the leg and grazing his head, was reasonable in all the circumstances and was not excessive. She used no more force than was necessary to stop Mr. Santiago and free the female from the room where he had her confined.

Under the circumstances, Officer Leary acted reasonably and lawfully. Therefore, no criminal charges are warranted. This investigation was limited to the issue as to

whether any crime was committed by the police in connection with the shooting and not into whether any departmental rule and regulations of the Chelmsford Police Department were violated.

This matter is now referred to the Chelmsford Police Department for whatever internal review may be deemed appropriate.

Mr. Santiago has been charged with four counts of armed assault to murder, six counts of assault with a dangerous weapon, kidnapping, assault and battery on a police officer and two counts of domestic assault and battery.

