

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

DISTRICT COURT DEPARTMENT
WOBURN DIVISION
DOCKET No. 2253IN0001

REPORT ON THE INQUEST INTO THE DEATH OF PAUL COURTEMANCHE
IN BURLINGTON, MASSACHUSETTS ON JANUARY 23, 2022

On January 23, 2022, Paul Courtemanche, age 42, was shot by Officer Aurise Miedico of the Burlington Police Department and died as a result of gunshot wounds to his leg and eye. The circumstances of his death are the subject of this inquest. Mr. Courtemanche's death was the subject of a State Police investigation. His death was classified as an on-duty police shooting. The Middlesex District Attorney, Marian T. Ryan, chose not to make a charging decision. On March 2, 2022, the District Attorney requested that the District Court, Woburn Division, conduct an inquest into the death under the provisions of G.L. c. 38, § 8. The Chief Justice of the District Court, Hon. Paul C. Dawley, by order dated March 11, 2022, assigned Hon. Shelby M. Smith (the court) for purposes of conducting an inquest.

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

The unique character of the inquest procedure focuses on the investigatory role of the judge. Inquests are not adversarial, and it is the judge who must control the procedure and

ensure that all relevant information is produced. There are no procedural rules of court applicable to the conduct of inquests; the rules of criminal and civil procedure do not apply.

To conduct a thorough investigation and properly serve the lawful investigative purpose of this inquest, the court permitted the presentation of some evidence that would not be admissible in a criminal trial. In its findings, however, the court considered only evidence that it determined to be substantially reliable. Following the guidance of Standard 4.00, the court applied a preponderance of the credible evidence standard to determine where, when and by what means Mr. Courtemanche died. In determining whether an unlawful act appeared to contribute to his death, the Court uses the probable cause standard. Shepard v. Attorney General, 409 Mass. 398, 403 (1991).

The court was assisted by Deputy Legal Counsel Hadler E. Charles from the Administrative Office of the District Court, and Aisling Morrissey, Assistant Clerk Magistrate of the Woburn District Court. The court conducted an initial preliminary hearing (by Zoom on the record) on September 27, 2022, with Assistant District Attorney Daniel Harren, who appeared for the Commonwealth, Attorney Kenneth H. Anderson, who appeared for Officer Aurise Miedico and Attorney Robert F. Kelley, who appeared for the Courtemanche family. On November 5, 2022, Attorney Kelley filed a motion to withdraw his appearance on behalf of the Courtemanche family due to health concerns. A second preliminary hearing (by Zoom on the record) was held on December 6, 2022. Present for this hearing were Assistant District Attorney Harren, Attorney Kenneth Anderson, and Nancy Trainor, the mother of Mr. Courtemanche. The purpose of these preliminary hearings was to discuss the procedures to be followed at the inquest, potential issues, scheduling, and arranging for a view. All attorneys were given access to view all impounded materials.

THE HEARING

In accordance with the statutory mandate, the court conducted a hearing to determine the circumstances surrounding the death of Mr. Courtemanche and whether an unlawful act caused Mr. Courtemanche's death. The hearing commenced on January 11, 2023 and concluded on January 13, 2023. The court heard from ten witnesses and sixty exhibits were admitted into evidence. The court followed the procedures set forth in G.L. c. 38, §§ 8 and 12, and in Kennedy v. Justices of District Court of Dukes County, 356 Mass. 367, 378 (1969). The court also utilized the Standards as a guide. Under the Kennedy procedures, the public was excluded from the hearing. The family of Courtemanche was permitted to attend the hearing, as well as Officer Miedico's peer support officer Detective Brittany Zaccagnini. Witnesses were sequestered. Officer Miedico was present in court for all testimony.

Findings of Fact

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

The View

On January 11, 2023, the court conducted a view at the Lord Baron Apartments on Baron Park Lane, Burlington, Massachusetts. Lord Baron Apartments is a small apartment community located less than one mile from the Burlington Mall.

The view began on the corner of One Baron Park Lane near the entrance to the first parking lot of the apartment building (One Baron Park Lane) where Mr. Courtemanche lived at

the time of the incident. There was a fire hydrant at the corner approximately 15 feet from the building. The court viewed the location where the shell casings were recovered after the shooting and where the responding officers' cruisers were parked at the time of the shooting.

ADA Harren demonstrated a 24-second reenactment of the time it took for Mr. Courtemanche to leave the vestibule of his apartment building (the door facing Baron Park Lane) until he reached the location of the responding officers. After the reenactment, ADA Harren ended at the grass area in front of the building, 15 feet from the speed bump in the roadway and 25 feet from the hydrant at the street corner.

Testimony regarding events of January 23, 2022

On January 23, 2022, shortly after 12:00 p.m., Burlington Firefighter Kurt Dupres, assigned to the back of Engine 2, was dispatched to the Lord Baron Apartments for the report of an individual who stated he was going to commit suicide. Approximately one minute after the dispatch was received, the truck with two other firefighters left for the apartment complex. As the fire truck turned onto Baron Park Lane, Dupres saw a male, later identified as Paul Courtemanche, wielding a very large knife (approximately 8-10 inches long) over his head and moving toward a Burlington police officer holding a shield. That officer, later identified as Officer Aurise Miedico, was moving backwards from Mr. Courtemanche in an effort to distance herself from him. From Dupres' vantage point, he believed that Mr. Courtemanche was "going to kill her" and that Mr. Courtemanche was "running" toward Officer Miedico. In his observation, the distance between Officer Miedico and Mr. Courtemanche was approximately 5-6 feet. He observed Officer Miedico fall backwards and Mr. Courtemanche continued forward toward her. Dupres jumped out of the fire truck and briefly lost sight of them. He then heard a "pop". He could not see where the noise came from. Dupres first checked on Officer Miedico who

appeared in shock. He then ran over to Mr. Courtemanche who was lying on the ground a short distance away. Mr. Courtemanche had facial injuries and blood loss from his eye. He had agonal breathing and CPR was administered.

Burlington Firefighter Nicholas Menkello was assigned to Engine 2 along with Dupres as the driver of the engine. He also received information on the same date and time that a male at Lord Baron Apartments was making suicidal statements. He planned to park his engine away from the location of the call so the fire engine's presence would not agitate the caller. However, when he arrived at the scene, he saw Mr. Courtemanche with a blanket on his shoulder running with a knife in his hand, with his right hand raised over his head. Menkello then heard an officer on scene shout to Mr. Courtemanche, "Stop, drop the knife!" Mr. Courtemanche, despite the command, continued to aggressively approach one officer at the scene. Menkello heard a gunshot but was unclear as to who fired the weapon. He then heard two more gunshots and saw a second officer (Officer Miedico) who was falling backwards onto the ground. Mr. Courtemanche and Officer Miedico were within inches of each other as they both fell to the ground. Menkello exited his truck within seconds of this. He first approached Officer Miedico to check her condition. He then administered first aid to Mr. Courtemanche. He viewed a knife to the right of Mr. Courtemanche's body which had fallen to the ground.

Lt. Todd Ficoceillo was in the front seat of Engine 2 when he saw Mr. Courtemanche on the front lawn of One Baron Park Lane with a blanket over him running toward police officers. He then turned his attention to Dupres who was still driving the engine, but looked back and Mr. Courtemanche was on the ground. He said that he heard a gunshot but could not recall when, in the continuum of events, he heard the shot.

In January 2022, Captain Hanafin was a lieutenant with the Burlington Police Department. His responsibilities included overseeing all patrol operations, traffic enforcement, and training. His training included regional SWAT training with the Northeast Massachusetts Law Enforcement Council¹ and has been a regional SWAT unit and team leader. On January 23, 2022, he was assigned to the day shift, 8:00 a.m. to 4:00 p.m., as the day shift patrol division lieutenant. At roll call, he held a training with officers on that shift (which included Officer Miedico) about a recent police involved shooting in Springfield, MA. The video depicted a subject who had a knife, assaulted an officer, and the subject was ultimately shot by the officer. Hanafin followed up the discussion by ensuring that officers had the appropriate equipment with them, and verbally stressing the importance of being attentive to these types of situations and responding accordingly.

Officer Reyes and Officer Miedico were dispatched to a possible Q5² call at approximately 12:00 p.m.. While still at the station, Officer Miedico called Hanafin on his cell to ask if he had a 40mm launcher in his vehicle so that she could bring it to the scene. Hanafin advised her to also bring an acrylic shield. Hanafin returned to the dispatch room to listen to the 911 call, in an effort to gather more information about the 911 caller. As police and fire began to arrive at the scene, he advised the fire department to park away from the building and go to a staging area when they arrived in an effort to deescalate the situation.

¹ NEMLEC is a consortium of 63 police departments in Middlesex, Essex, and Suffolk County and two County Sheriff's Departments. Members of NEMLEC share resources and personnel to provide supplemental services and mutual aid when special circumstances arise.

² A Q5 code indicates that a subject is making threats or attempts at suicide.

While listening to the 911 call, Hanafin could hear Mr. Courtemanche tell the 911 dispatcher that he would not put the knife down he was carrying. This was concerning to Hanafin and as a result he left the station to go to the scene. On his way, via radio transmissions, he heard “151³ shots fired.” Once on the scene, after shots had been fired, Hanafin immediately spoke to Officer Miedico who stated that Mr. Courtemanche had exited the front door of the apartment complex, came towards herself and Officer Reyes without stopping and with a knife in his hand. She told him that she fell back and thought she was dead. She had blood splatter on her face close to her nose and mouth. Officer Reyes told Hanafin that he had used a less lethal weapon against Mr. Courtemanche when he first came towards them but that the less lethal shot did not deter Mr. Courtemanche.

Interviews of Officer Reyes and Officer Miedico

On January 26, 2022, Sgt. Anthony DeLucia of the Massachusetts State Police conducted audio recorded interviews with both Officer Reyes and Officer Miedico. Below are summaries of their interviews:

Officer Reyes Recorded Interview

At the time of the incident, Officer Robert Reyes had been a police officer for 25 years, 18 years with the Burlington Police Department. During his career, he had received what he described as “less lethal training”, referring to the use of a 40mm non-lethal weapon when subduing an individual.

³ Officer Miedico’s call number.

On the date of the incident, Officer Reyes was assigned to sector three. He arrived at work at approximately 8:00 a.m. and attended roll call with the other officers on duty. At roll call, Hanafin discussed an incident in Springfield where an officer had been slashed in the face and the officer fatally shot the suspect. The officers attending the roll call reviewed the video of the Springfield incident and had an open discussion about how the officers might handle this same situation.

After roll call, Officer Reyes left the station and went out on patrol. He first responded to a medical aid call, at which he received a radio transmission. Dispatch called out the number "151" (Officer Miedico's call number), and the report was of a Q5 male feeling suicidal and holding a knife. Officer Reyes began driving to that location. On the way to Barron Park Lane, he learned from dispatch that the male was in possession of a knife, didn't want to put it down, and was unsure if he wanted to hurt the police.

Normally, Officer Reyes' cruiser had a less lethal weapon, but the cruiser he was using that particular day did not. He sent a radio transmission to Officer Miedico (who was still at the police station) to grab a less lethal weapon to bring to the call. He arrived at Barron Park Lane at the same time as Officer Miedico. Officer Reyes pulled in first and parked. Officer Miedico parked behind him. He was mindful of not parking directly in front of the building. They both got out of their cruiser and Officer Miedico said she had the less lethal weapon but that she was not certified in using it. As a result, Officer Reyes took the less lethal weapon and Officer Miedico took a plastic shield. They both were aware that Hanafin was on his way to the scene, so they decided to wait for him and fire department personnel.

As they stood speaking to each other on the lawn in front of the building close to their cruiser, they suddenly saw Mr. Courtemanche about 12-15 feet away from them. It appeared to

Officer Reyes that he was running towards them, with a knife in his right hand, over his head, as well as a blanket covering his head. The blade to the knife was pointed downward and it appeared to Officer Reyes that Mr. Courtemanche intended to use the knife (that resembled a kitchen knife) to stab someone.

Immediately, Officer Reyes yelled to Mr. Courtemanche to drop the knife at least two times. He had his less lethal weapon in his hand as he commanded Mr. Courtemanche to drop the knife. Mr. Courtemanche did not respond to the commands. Officer Reyes began to walk backwards towards Barron Park Lane in an effort to create space. He knew that Officer Miedico was standing to his right and he was trying to move away from her. As Mr. Courtemanche walked towards Officer Miedico and Officer Reyes, he had a blank stare in his eyes. Officer Reyes yelled to Mr. Courtemanche to put the knife down to which he did not comply, and he continued to move toward the officers. Officer Reyes then yelled, "Less lethal, less lethal." Officer Reyes yelled this so that Officer Miedico knew of his intention to use the weapon.

Officer Reyes discharged the less lethal weapon and hit Courtemanche on his left lower quad. Instead of being disabled by the less lethal shot, Courtemanche appeared unaffected, and continued toward Officer Miedico with the knife still in his hand. At that point, Officer Reyes dropped his less lethal weapon and transitioned to his firearm but by the time he made the transition, Courtemanche was already on top of Officer Miedico. Specifically, Officer Miedico was shuffling backwards, and Mr. Courtemanche was directly in front of her, knife in hand. Officer Reyes then heard two shots come from the direction of Mr, Courtemanche and Officer Miedico when Officer Miedico stumbled backwards and fell to the ground onto her back. Mr. Courtemanche dropped the knife, fell to the ground, and landed on his back.

Officer Reyes checked Mr. Courtemanche who was on the ground with the knife next to him. He checked to see if Officer Miedico was conscious which she was. He described the knife as having a brown handle, eight inches in length with a fixed blade. He kicked the knife away from Mr. Courtemanche's body.

Officer Miedico Recorded Interview

Officer Miedico was hired by the Burlington Police Department upon her completion of the Lowell Police Academy in December 2020. She is approximately 5'3 or 5' 4" and on the day in question weighed 150lbs. In January 2021, she had just completed her probationary term with the department. On the day in question, her shift began at 8:00 a.m.. Hanafin led roll call and they watched the body camera video from the police-involved shooting in Springfield that had been uploaded to YouTube. During roll call, the officers on duty discussed what they might do if faced with the same situation while on shift.

While on break, a call came in with her call number (151) regarding a suicidal male with a knife who was unclear as to whether he may hurt himself or responding officers. This alerted her that she had been assigned to respond to this call. She received a further communication from Officer Reyes who asked her to grab him the less lethal weapon. She went to the deployment room and located a less lethal weapon, but it did not have a bag. She went to her cruiser where she located another less lethal and grabbed a shield. She checked back in with dispatch for any updates on the call. She then called Hanafin to verify that she had a shield and that she was on her way to the call. Hanafin was also on his way to the call.

She and Officer Reyes arrived at the apartment complex at Barron Park Lane at the same time. Officer Reyes pulled in first and she pulled up behind him. Officer Reyes got out of his

cruiser and grabbed the less lethal weapon from her cruiser. She grabbed her shield from the passenger seat of her cruiser.

Officer Miedico described that the apartment building (that she had been to on previous occasions) had two entrance / exit doors. She discussed with Officer Reyes that they should be mindful of the doors as it was unclear where Mr. Courtemanche may be exiting from. They were having this conversation by the rear of her cruiser. They were looking at each other and not at either of the exit / entrances to the building.

Officer Miedico turned and saw Mr. Courtemanche with both arms in the air, holding a blanket and knife in his right hand. She could tell it was a knife because she could see a metallic blade. Mr. Courtemanche was not speaking. He accelerated toward the both of them in what was described as a fast and staggered walk. She described his expression as zombie-like, that his eyes were sunken, and it looked as though Mr. Courtemanche was “looking through” them. She then heard someone yell “Drop the knife!” (presumably Officer Reyes) and Mr. Courtemanche did not drop the knife. Officer Miedico said that it appeared the Mr. Courtemanche did not hear the command as the verbal command did not deter him from continuing toward them at a fast pace.

Officer Reyes started to walk backwards onto Barron Park Lane and Officer Miedico backed up into the parking lot. As she was walking backwards, she was trying to keep a triangular shape between herself, Mr. Courtemanche, and Officer Reyes per her training. She backed up onto the parking lot driveway and onto the pavement holding the shield in her left hand. As she walked backwards, she heard the discharge of the less lethal weapon but did not see Officer Reyes shoot it. At that point, she was unsure whether Mr. Courtemanche had been struck. Mr. Courtemanche continued to charge at her without saying a word. She continued to

walk backwards as he came toward her and fired her firearm. This shot did not disable Mr. Courtemanche. Mr. Courtemanche who was now within 6-10 feet from Officer Miedico. She continued to walk backwards in an effort to create distance, but then she tripped and fell backwards hitting her head on the ground. While she was on the ground, she said to herself, “I am dead. He’s going to kill me, I am dead!” She then fired her gun again which struck Mr. Courtemanche in the face. She does not remember anything else until she recalls getting up off the ground to get a medical bag to render aid to Mr. Courtemanche. According to Officer Miedico, when she fired the first shot, Mr. Courtemanche was about 6 feet away from her. When she fired the second shot, he was much closer to her in that her arm was not fully extended when she fired the shot.

Medical and Forensic Testimony

Dr. Abedola Yakubu-Owolwea of the Office of the Chief Medical Examiner testified that she conducted an autopsy of Mr. Courtemanche on January 24, 2022. She testified that at the time of her autopsy, Mr. Courtemanche was 5’ 10” tall and weighed 228 lbs. Her opinion, after a visual external and internal examination of Mr. Courtemanche and a review of the medical records, was that the cause of death was a gunshot wound to the head and flank, and the manner of death was homicide. The medical examiner was unable to opine which gunshot came first or its sequence. However, the gunshot that struck the eye and entered the brain was the more catastrophic injury to Mr. Courtemanche than the wound to the flank.

Edelyn Akcer, a Criminalist with the Massachusetts State Police Crime Laboratory testified that based on her testing of the Mr. Courtemanche’s sweatshirt and the firearm used by

Officer Miedico, the person wearing the sweatshirt tested was at most 84 inches (or 7 feet) from the end of the muzzle of the firearm when at least one of the shots were discharged.⁴

Use of Force Expert Testimony

Officer Charles DiChara of the Waltham Police Department is currently the state-wide coordinator for training on Use of Force and Defensive Tactics, as well as a 32-year member of NEMLEC. He has extensive experience in training police officers throughout the Commonwealth on defensive tactics, less lethal tactics, and de-escalation techniques. He conducts trainings through the Massachusetts Police Training Committee and at various local police academies.

When teaching use of force and deescalating techniques he uses what is called the Use of Force Model⁵. It is a tool to be used by police officers to assess risk and threat so that the officer may make good and conscious decisions as to what level of force should be used. This is a visual learning tool that all departments in Massachusetts train from. In fact, Officer Dichara trained both Officer Reyes and Officer Miedico on this model.

Officer Dichara describes that there are five levels of perceived subject actions. They are leveled by color. At the blue level the officer, when engaged with a possible volatile subject, is to engage in strategic thinking. Specifically, using verbal skills to keep the subject compliant. At

⁴ When the Court originally filed its report on May 1, 2023, it stated that Ms. Acker opined that Mr. Courtemanche was at least 84 inches from the end of the muzzle arm when the shots were fired by Officer Miedico. ADA Harren subsequently filed “Commonwealth’s Suggested Correction to Inquest Report” citing the testimony of Ms. Acker in the transcript. Attorney Anderson (counsel for Officer Miedico) did not oppose the proposed correction. The Court has reviewed the transcript agrees that the original submission was not accurate related to this opinion testimony of Ms. Acker. The corrected testimony is now included in this report.

⁵ See Exhibit #59

the green level the threat level to the officer has increased, and the officer should use light contact control like a light touch against the subject, creating distance with the subject, and calling for backup. At level yellow, the threat level is increased. The subject continues to be non-compliant and the officer must move to more active resistance against the subject with the use of items like pepper spray, or use of a taser at a less harsh level. At the orange level, the subject has become assaultive. The officer is to employ higher levels of force like less lethal weapons such as a baton, taser with impact, 40mm less lethal weapon or bean bags. Finally, at level red, the officers or others are at risk of serious bodily injury or death, and the officer may need to deploy a lethal weapon option. Officer Dichara also explained what is known as the 21-foot rule, which is a concept of distance space and reaction time. The 21-foot rule applies to a subject with edged weapons. A person within 21 feet who possesses knives would be able to attack a police officer with a knife before the police officer would have time to draw his gun.

His testimony was consistent with the Burlington Police Department Use of Force Policy (Policy) dated July 1, 2021 (Exhibit #60). The purpose of that policy is to establish uniform guidelines for the lawful use of force by officers when necessary. The policy defines levels of force available and provides officers with a model of force describing possible responses to different situations. According to the policy, an officer is authorized to use deadly force “only when the officer reasonably believes that the action is in defense of human life (including the officer’s own life) in defense of any person in imminent danger of serious physical injury, or to prevent the escape and effect the arrest of a fleeing felon who the officer has probable cause to believe will pose a significant threat to human life should escape occur.” *Id.* at 2.

Legal Conclusions

The purpose of this inquest was to determine if the fatal shooting of Mr. Courtemanche was the result of an unlawful act or legally justified. Specifically, whether a reasonable prudent person would believe that Mr. Courtemanche's death was the result of a criminal act by Officer Miedico, given all the circumstances confronting her and Officer Reyes, and considering the applicable case law on the use of force by law enforcement.

It is not the purpose of the inquest to resolve or facilitate a determination of civil negligence or a civil suit for monetary damages.⁶ The court makes no recommendations as to possible prosecution. Ultimately, the decision whether to prosecute lies exclusively with the Middlesex County District Attorney (Standard 5:00). The District Attorney may make an independent decision to initiate a criminal prosecution by way of grand jury indictment or complaint.

To be a lawful or justified use of deadly force, the actions of the officer must be objectively reasonable, given all the circumstances confronting the officer at the scene. As the United States Supreme Court has observed, "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham v. Connor, 490 U.S. 386, 396-397 (1989).

⁶The inquest and report should not address the issue of civil negligence per se.

Applying the credible evidence to the applicable case law pertaining to the use of deadly force in defense of oneself or others, the court finds that the decision of Officer Reyes to engage with the less-than-lethal shotgun was objectively reasonable upon Mr. Courtemanche's initial approach, within the meaning of Graham v. Connor. Officer Miedico fired her weapon after Mr. Courtemanche was not subdued by the less lethal shot and continued toward her at a quick pace, armed with a knife. Any reasonable law enforcement officer in the same position would reasonably believe that she was in imminent danger of being seriously injured or killed. At that moment no reasonable alternative existed, except for the use of deadly force.

The court finds that a reasonable prudent person would not find that the actions of Officer Miedico make her criminally responsible for the tragic death of Mr. Courtemanche, or that she is otherwise criminally responsible.

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

/s/ Shelby M. Smith
Shelby M. Smith, Justice

Dated: 5/16/2023