

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.



