

COPY

Commonwealth of Massachusetts

MIDDLESEX, SS.

DISTRICT COURT DEPARTMENT
CONCORD DIVISION
DOCKET NO.: 2227IN0001

2381IN67

INQUEST INTO THE DEATH OF
BRENDAN REILLY

FORMAL WRITTEN REPORT

Upon consideration of the evidence presented during an inquest into the events resulting in the tragic death of Brendan Reilly on February 12, 2022, the Court finds that the use of less-lethal and lethal force by police officers was justified in light of all of the circumstances and do not constitute any unlawful acts.

A. Inquest Procedure and Background

Brendan Reilly (“Reilly”) was pronounced dead on February 12, 2022, at approximately 1:40 p.m. at the age of thirty-seven (37) in Lexington, Massachusetts. The circumstances of his death are the subject of this inquest. An inquest is a quasi-judicial proceeding whose purpose is to establish how a person died¹ or “when, where, and by what means” a person died and “all material circumstances attending the death.” G.L. c. 38, §10. Reilly’s death was the subject of Massachusetts State Police and Lexington Police Department investigations. These investigations

¹ *Kennedy v. Justice of Dist. Court of Dukes County*, 356 Mass. 367, 371-373 & n.4 (1969); see also *The Inquest and the Virtues of Soft Adjudication*, Paul MacMahon, Yale Law and Policy Review, 2014.

classified the death as the result of an on-duty police shooting. On March 2, 2022, the District Attorney for Middlesex County, Marian T. Ryan, requested the District Court, Concord Division, to conduct an inquest into the death under the provisions of G.L. c. 38, § 8. The Chief Justice of the District Court, Hon. Paul Dawley, by order dated April 25, 2022, assigned Hon. Michael D. Brennan (“the Court”) for purposes of conducting an inquest to determine if the on-duty police shooting involved an unlawful act or instead was justified.

The unique character of the inquest procedure focuses on the investigatory role of the judge. Inquests are not adversarial, and it is the judge who must control the procedure and ensure that all relevant information is produced. There are no procedural rules of court applicable to the conduct of inquests; the rules of criminal and civil procedure do not apply. To conduct a thorough investigation and properly serve the lawful investigative purpose of the inquest, the Court permitted the presentation of some evidence that would not be admissible in a criminal trial. In its findings, however, the Court considered only evidence that it determined to be substantially reliable. Following the guidance of Standard 4.00 of the Standards of Judicial Practice, Inquest Proceedings (1990 Standards), the Court applied a preponderance of the credible evidence standard on the issues of where, when and by what means Mr. Reilly died. To determine whether any unlawful act appears to have contributed to Mr. Reilly’s death, the Court utilized a probable cause standard. *Shepard v Attorney General*, 409 Mass. 398, 403 (1991). “Probable cause requires facts sufficient to warrant a person of reasonable caution in believing that an offense has been committed.” *Commonwealth v. Catalina*, 407 Mass. 779, 790 (1990).

The Court was assisted by Deputy Legal Counsel Shara Benedetti from the Administrative Office of the District Court and Carlos Rojas, Assistant Clerk Magistrate of the Concord District

Court. The Court conducted a preliminary hearing (by Zoom on the record) on July 26, 2022, with Assistant District Attorney Graham Van Epps and Assistant District Attorney Caitlin Gemmill, who appeared for the Commonwealth. The purpose of this hearing was to establish rules related to the inquest and to set out basic discovery procedures and protocols for further conferences.

On October 11, 2022, November 22, 2022, and February 3, 2023, the Court conducted scheduling and status conferences (by Zoom and on the record) at which Assistant District Attorney Graham Van Epps and Assistant District Attorney Caitlin Gemmill appeared for the Commonwealth, Attorney Alan McDonald appeared on behalf of the involved Lexington police officers and Attorney Michael Heineman appeared on behalf of the Reilly family. The purpose of the first two preliminary hearings was to discuss the procedures to be followed at the inquest, any potential issues, and scheduling, as well as to arrange for a view in advance of hearing evidence. The February conference was to discuss evidentiary issues, the Court's request for certain information, and scheduling.

On December 14, 2022, the Court commenced the inquest by conducting a view and hearing testimony of witnesses. Present at the view were the Court, Attorney Shara Benedetti from the Administrative Office of the Trial Court, Assistant Clerk Magistrate Carlos Rojas, Assistant District Attorneys Van Epps and Gemmill, Attorney McDonald on behalf of the Lexington Police officers, and Attorneys Heineman and Jason Kent on behalf of the Reilly family. Also present were members of the Reilly family - Mr. Reilly's mother Carol, father, Kenneth and sister, Katelyn Reilly.

Following the view, the parties reconvened at the Concord District Court where the Court began to hear testimony. Present for the hearing were Assistant District Attorneys Graham Van

Epps and Caitlin Gemmill, Attorney Alan McDonald, representing the Lexington Police Officers, Officers John Frisori, Joseph Carruthers, Sean Sullivan, and Steven Papia of the Lexington Police Department. Attorney Michael Heineman and Attorney Jason Kent, who represent the Reilly family, Carol Reilly, Kenneth Reilly and Katelyn Reilly also attended the hearing. The Court heard witness testimony and received evidence on the following days: December 14 – 16, 2022; February 10, 2023; and March 16, 2023.² In accordance with the statutory mandate, the Court conducted a hearing to determine the circumstances surrounding the death of Brendan Reilly and whether an unlawful act caused Reilly’s death. The hearing commenced on December 14, 2022 and concluded on March 16, 2023. Thirty-six (36) witnesses testified. More than one hundred-nine (109) 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 hearings and witnesses were sequestered. From the testimony the Court heard and exhibits submitted during the inquest, and pursuant to G.L. c. 38, § 10, the Court issues the following report of its findings:

B. The View

On Monday, December 14, 2022, the Court conducted a view of the area around 98 Hancock Street, Lexington, Massachusetts, where the deceased lived and where the incident occurred, including the surrounding roads and streets relevant to this inquest and a traffic circle

² Due to a technical issue, approximately forty-five minutes of audio is missing from March 16, 2023

("the Rotary") where these roads and streets connect. The purpose of the view was to assist the Court in understanding the evidence to be presented.

The area of Hancock Street is a residential neighborhood. Hancock Street, itself, is a busy secondary road divided by either single or double yellow lines, depending on the location. 98 Hancock Street ("98 Hancock") is a single-family home operated by Eliot Community Health Services ("Eliot") as a group home for adults with persistent serious mental illness and substance use disorders. Facing the structure, the driveway is on the right and the property is surrounded (except the front) by a five-foot stockade fence. There is a small yard in the rear and a wooden staircase that leads from the house to the rear of the property. 100 Hancock Street is located on the corner of Hancock Street and Hamilton Road and is owned and occupied by the Collazzo family. Directly in front of 100 Hancock Street is the Rotary. Using 100 Hancock as a starting point, facing the street and moving clockwise, directly in front is Hancock Street. To the immediate left is Hamilton Road, followed by North Hancock Street, Burlington Street (Blake Road is off Burlington Street), Diamond Middle School Access Road ("Diamond Way"), and back to Hancock Street. Directly across the street from 98 Hancock is a 6 Victory Garden Way where James Lane lives. 9 Burlington Street is diagonally across the Rotary from 98 Hancock Street. It abuts the access road to Diamond Middle School. It is also known as the Chabad Center – an Orthodox Jewish Synagogue. On the property there are three structures – the home of Rabbi Alter Bukiet and his family, a pre-school, Jewish day school and the synagogue. Directly in front of the Chabad Center, on Burlington Street, is a cross walk. These locations surround the Rotary which is a traffic circle measuring approximately fifty feet across, with a cement boundary, grass, a small tree and bushes planted within.

C. Findings of Fact

The Court's findings are taken from the testimony of witnesses this Court found credible, the marked exhibits, and in consideration of the view taken.

1. Prior Relevant Events Involving Reilly

Brendan Reilly had been living at 98 Hancock Street for at least two years. Lexington Police Officer Steven Papia ("Papia") had responded to a number of calls for service at 98 Hancock in the past. One of these occasions was on December 28, 2020, when Papia responded along with several other police officers to the address to assist when Reilly was being hospitalized pursuant to G.L. c. 123, § 12(a). Reilly was agitated, volatile, and uncooperative. He ran from police through the neighborhood and was eventually found approximately a mile away near the on-ramp to Route 128/I-95. He continued to threaten police and emergency personnel until Papia approached holding a Remington 870 less-lethal shotgun in the "low-ready." This is a position where the shotgun is held with both hands, one hand by the trigger guard and one hand on the fore end with the barrel of the shotgun pointed at the ground. As soon as Papia approached with the shotgun, Reilly immediately became cooperative and walked into the rear of the ambulance without further incident and was transported to the hospital.

Lexington Police Officer John Frissori ("Frissori") had also responded to previous calls for service at 98 Hancock. On January 1, 2021, several police officers, including Frissori, responded to 98 Hancock to assist with a § 12 that had been filed on Reilly's behalf. Frissori was one of those officers. When the fire department arrived to transport Reilly, he became combative, refused to go to the hospital, and fled from the police. When officers caught up to him, Reilly took a fighting stance until Lexington Police Officer Christopher Ducharme deployed his police issued

baton and ordered Reilly to get on the ground. Reilly complied and Frissori assisted in handcuffing him and transporting him to the hospital.

Prior to February 12, 2022, Reilly had a number of issues in the house, including an incident where he destroyed another resident's property. Angela Schmidt ("Schmidt") is a registered nurse who is employed by Comfort Home Care. Comfort Home Care has a contract to service clients of Eliot. She was one of two nurses who came to 98 Hancock every Monday through Friday to provide medication to Reilly. Schmidt provided medications in the morning and another nurse came to provide the medications in the evening.

On February 9, 2022, Schmidt picked up Reilly's medications from the pharmacy in preparation for her visit with him at the residence. She received a text message from Reilly's mother, Carol Reilly, informing her that Reilly had attempted to break into the "megasaft" that had been installed at the residence to secure Reilly's anti-psychotic and non-antipsychotic medications. The safe was installed because Reilly had a history of breaking into less secure safe boxes and "hoarding" certain medications. Reilly was most interested in obtaining Abilify and Wellbutrin. When Schmidt arrived at the residence, she saw the safe on the dining room floor. Someone had clearly attempted to break into the safe. It was dented, damaged, and had bloody fingerprints all over it, but the safe door remained unopened. After unsuccessfully attempting to open the safe door, Schmidt called her supervisor to advise her of the situation. They discussed the need to seek involuntary commitment and she then went upstairs to speak with Reilly. Reilly was anxious and agitated but alert and oriented. He initially denied any knowledge about the damage to the safe, but eventually admitted that he had attempted to break into the safe. Schmidt told Reilly that she wanted to get him help in a more secure setting and wanted him to go to a hospital

emergency room for evaluation. His response was, "I don't want to go." Lexington Police were called as was an acute care psychiatric service. Three officers arrived and evaluated the scene and Reilly as did the psychiatric service. Reilly was neither voicing suicidal ideation nor homicidal ideation and it was determined that Reilly did not meet commitment criteria because he was not "an immediate risk of harm." Schmidt informed her supervisor of this and was told that Comfort Home Care had terminated services with Eliot. She was also told that someone from Eliot would take over Reilly's care and that the worker had gone to see Reilly, who "seemed fine."

Reilly was also very aggressive toward housemate John Chang ("Chang"), who was very intimidated by him. On several occasions prior to the day of Reilly's death, Reilly threatened Chang, who generally thought Reilly wanted to hurt him. The day before Reilly's death, Reilly asked Chang "if I kill a cop would you tell on me?"

Reilly had a better relationship with his other housemate, James Hannify ("Hannify"). Hannify believed that he and Reilly got along because they were about the same age and were both infatuated with "the gangster lifestyle." According to Hannify, on February 11, 2022, Reilly "seemed riled up" and very agitated. He had been up all day and night playing music. This was unusual behavior. Hannify noted that Reilly looked messy, untidy and disheveled. Reilly was complaining and very angry about his medications and had been "up all night doing cocaine."

2. Initial Events involving Reilly on February 12, 2022

Saturday, February 12, 2022, was an unseasonably warm day. As a result, at the times relevant to this hearing, a significant number of people were outside walking, running, cycling, or heading to Diamond Middle School. Reilly was still living in the group home operated by Eliot, at 98 Hancock Street, in Lexington, MA. At approximately 12:30 p.m., as Hannify headed down the

stars inside 98 Hancock, he passed Reilly who was headed up the stairs. Reilly went to Chang's room and began banging on the door yelling "let me in." Reilly was speaking very aggressively. Because this was not unusual, Chang did not think it was "a big deal." Chang opened the door and Reilly entered Chang's room. Chang immediately thought Reilly seemed "out of it." He was sweating and yelling at Chang to "give me back my medications." Hannify could hear Reilly yelling at Chang demanding, at least twice, "where's my pills?" Chang thought Reilly seemed like he might "he was having psychosis or he was in trouble or, like, because he had been talking about his friends and even trying to borrow money, I think..." Chang told Reilly he did not have the medications, but Reilly persisted and repeatedly said, "I know you took them..." and made a number of threatening statements. Reilly refused to leave Chang's room and Chang became increasingly fearful of the situation because of Reilly's behavior. Chang believed he needed to trick Reilly to get him out of the room and walked out into the hallway saying that he would look for the medications. Reilly responded, "We're not looking for them, give it to me or I'll stab you...kill you." Reilly followed Chang out of the room and Chang was able to double back, get into his room, slam the door shut, locking Reilly out of the room. Chang then began barricading the door with furniture. This further enraged Reilly, who repeatedly stated that he was going to kill Chang. Reilly also began to demand that Hannify give him the lock code to Chang's door. Hannify could hear Chang saying, "he's going to kill me!"

Around this time, Hannify went outside and began smoking a cigarette. Chang heard Reilly go downstairs to the kitchen and knew he "was rummaging for a knife." The previous night, Reilly told Chang he wanted to "stab and kill the police." Afraid that Reilly was going to kill him, Chang went to his bedroom window which faces out to Hancock Street. He opened the window and started

yelling, “Help! He’s trying to kill me!” Chang saw a jogger passing the house. The jogger was Scott Mattoun (“Mattoun”) and Chang yelled directly to Mattoun to help him. He pleaded with Mattoun to call the police and told him that [Reilly] was trying to kill him. Mattoun called 911 and, while speaking to a Lexington Police dispatcher, engaged in a back and forth with Chang about what was going on at 98 Hancock. Lexington police dispatched police officers to 98 Hancock as a result of Mattoun’s call (Exhibit 11 A & B).

While Mattoun was on the phone, a car pulled into the driveway of 98 Hancock. The woman driving the car asked Mattoun what was going on. As they spoke, Reilly approached the car with his finger to his lips and “shushed” the woman, who backed out of the driveway and drove away upon seeing him. Reilly then turned toward Mattoun, saw that he was on the phone, and began to walk toward him. Mattoun wanted to get away from Reilly. He turned and walked away causing Reilly to turn back toward 98 Hancock. Around this time, Charlotte Newman was walking across the rotary onto Hamilton Road headed toward Ledgelawn Avenue with her dog. While walking on Hamilton Road, she saw a man “tip-toeing” on the side of 100 Hancock Street looking like he did not want to be seen or followed.

3. Lexington Police Response on February 12, 2022

As a result of the 911 call from Mattoun, officers were dispatched to 98 Hancock. Officer Steven Papia was the first to arrive and parked on the access road to Diamond Middle School. He got out of his cruiser and walked across the street toward 98 Hancock Street. Meanwhile, Officer John Frissori arrived and parked on Hamilton Road. When Frissori got out of his cruiser, Paul Collazzo (“Collazzo”), who lives at 100 Hancock Street, called to him and said, “The guy’s in the backyard of 98...he’s got a knife.” Frissori told Papia what Collazzo said and told Papia to “get

the less-lethal.” When Frissori first saw Reilly, he was yelling “I’ll kill you...get the fuck out of here.” Frissori did not have a less-lethal shotgun and instead deployed his collapsible baton, thinking it would have the same impact on Reilly as it had in the past. Papia went back across the street to his patrol car and retrieved a less-lethal shotgun and called dispatch requesting that they contact Eliot for mental health assistance and requested that fire and ambulance respond in case Reilly needed to go to the hospital. He also radioed Officer Joseph Carruthers (“Carruthers”) and requested that Carruthers bring a less-lethal shotgun to the location because “the guy has a knife.” When Papia returned to 98 Hancock, he and Frissori repeatedly told Reilly that “they wanted to help him...that an ambulance was on the way...please drop the knife.” Reilly told the officers he was not going to go to the hospital. At some point, Reilly was able to run from the right rear corner of the house to the left rear corner of the house. Frissori was very concerned that Reilly was going to go back inside the house and “go after the guy inside.” Around this time, Carruthers arrived and retrieved a less-lethal shotgun from his trunk. Within minutes, Officers Sean Sullivan and McAleer arrived. Sullivan parked his cruiser on Burlington Street past the Chabad Center and McAleer parked behind Carruthers on Diamond Way. As Frissori and Papia attempted to contain Reilly in the backyard of 98 Hancock, Reilly ran from the yard, up the driveway, across Hancock Street and through the rotary. Several witnesses, including Tal Dinnar, Samuel Dinnar, and Patricia Jenness, saw Reilly running across the rotary and either stumble or trip and fall to the ground. Reilly fell in front of the area where Carruthers was standing, but he was able to get off the ground and continued moving away from police. Reilly again fell to the ground in the area of Burlington Street and the crosswalk near the Chabad Center. Several witnesses heard and saw officers firing “bean bag” rounds at Reilly and also saw Reilly fall to the ground. The Court finds

from the credible evidence that Reilly was struck by one or more “bean bag” rounds fired from a Remington 870 shotgun and causing him to fall or be knocked to the ground.

Papia, Frissori, and Carruthers formed a rough semi-circle around Reilly. Carruthers realized that no officer was providing “lethal cover.” He handed Frissori his less-lethal shotgun and drew his department issued firearm providing lethal cover for Frissori and Papia. During the entire incident, officers continued to plead with Reilly to “stay down” and “drop the knife.” Numerous civilian witnesses testified to hearing officers telling Reilly that no one wanted to hurt him, that they wanted to get him to his family, and that there was an ambulance to take him to the hospital. Witnesses heard Reilly yelling at officers. Officers recounted that Reilly repeatedly stated “I’ll kill you...I’m Irish mafia...stay away...I’ll kill you.” James Lane, who was standing in his backyard, could see Reilly holding a knife and yelling at police that he was “going to fucking kill everyone here” and heard officer repeatedly say, “We’re here to help...we want to get you back you your family.” As tensions rose, Lane walked back to the rear of his house and continued to watch the events with his daughter Maddie. Rabbi Alter Bukiet, Eli Olidort, Israel New, and the police officers all observed that Reilly appeared disheveled and seemed in acute distress.

After he fell, Reilly repeatedly attempted to get off the ground and stand up. When he did, Frissori and Papia fired less-lethal bean bag rounds at him to keep him on the ground. This was confirmed by a number of witnesses who could hear soft pops. From the credible evidence, the Court cannot determine how many less-lethal rounds impacted Reilly either in the initial period when he first fell to the ground or as police attempted to keep him on the ground and contained near the crosswalk at 9 Burlington Street. However, it is clear from the credible testimony and the

forensic/medical evidence that Reilly was struck several times with less-lethal munitions prior to the time the lethal rounds 9mm rounds fired by police.

While on the ground, Reilly would “crab walk” toward the officers and brandish the knife, sometimes waving the knife at the officers and threatening to kill them. This behavior caused the officers to retreat. When Reilly would scuttle back, the officers would re-close the distance remaining in a rough semi-circle around Reilly attempting to contain the situation. During one of these engagements, Papia lost his footing, either misstepping on a curb or slipping on ice on the roadway and went to the ground hard. Ryan Hutchinson, who was in a car driven by his mother toward Diamond Middle School described Papia falling “like a cartoon character slipping on a banana peel.”

When Papia fell, he was lying on his back. Reilly got off the ground, regained his footing, and quickly moved toward Papia with his knife raised and held in a different grip. To this point, Reilly had been holding the knife with the blade coming from his thumb and index finger. As he charged at Papia, the knife blade was held in an over-hand grip, up by his shoulder, and with the blade protruding from the heel of the hand. Watching this scene unfold, James Lane told his daughter, “Oh my gosh, he’s down...he’s going to kill him.” Carruthers believed that Papia’s life was in danger and fired his department issued firearm four (4) times striking Reilly four times. Ryan Hutchinson heard the shots and said to his mother, “I heard shots...but the dude had a knife and he was chasing the cop.” (Exhibit 48). Several other witnesses provided similar accounts of these events, which testimony this Court credits.

Witnesses in the area heard one to two soft pops followed by three to four louder pops. The Court finds that the soft pop sounds were consistent with bean bag rounds. One of those shots

likely causing penetrating wound #5. The soft pops were followed immediately by four gunshots resulting in penetrating wounds 1 through 4. From the credible evidence, the Court cannot find who fired penetrating wound #5, nor can it determine the order in which the four gunshot wounds occurred.

A short video was also taken through an open window inside the Dinnar house at 95 Simmonds Road. Although the events cannot be seen due to tree and brush cover, the video has clear audio of two soft “puff” shots fired approximately three to four seconds apart followed approximately four seconds later by four loud shots fired in rapid succession. This Court finds that the first two shots were fired by the Remington 870 less-lethal shotgun and the second set of four shots were fired by Carruthers from his department issued Glock 17 firearm. Although not marked as an exhibit, this video was played for the Court and is a part of the evidence that all parties asked this Court to consider.

Despite being shot, Reilly did not immediately let go of the knife. Officers ordered Reilly to drop the knife. Frissori approached Reilly and was able to kick the knife away after which officers immediately rendered aid. These events can be seen on a cellphone video shot by Kimberly Hine, who was stopped on the far side of the rotary by 100 Hancock Street. (Exhibit 12A). After hearing the shots fired by Carruthers, Hine rolled down her window and took a short cellphone video of the scene showing Reilly on the ground as a grey or silver SUV entered the rotary from Diamond Way momentarily obscuring the view. The Court believes this is the Hutchinson’s SUV from which Ryan saw Papia fall. The SUV then moves out of the frame in the direction of North Hancock of Hamilton Streets, at which point Reilly can be seen on the ground lying on his back with four officers around him and Sullivan’s cruiser parked in the roadway behind. Officer Frissori

was holding a long gun, which he handed to the officer behind him. Frissori approached Reilly while two other officers with handguns covered him. Officer Sean Sullivan was near his cruiser with a trauma bag, which he placed on the ground and waited to begin first aid. Almost immediately after officers began first aid, an ambulance arrived. EMS personnel performed CPR on Reilly. The entire video is 41 seconds in length. (Exhibit 12A). After being placed on a backboard and gurney, Reilly was transported to Beth Israel Hospital in Burlington where medical staff treated him upon his arrival. Reilly succumbed to his wounds and was pronounced dead at the hospital.

4. Medical Evidence

a. Christopher L. Myers, MD

Dr. Christopher Myers is a board-certified psychiatrist and Medical Executive Director of Bridgewater State Hospital with extensive experience in treating people with mental illness and co-occurring substance use disorders. He provided relevant testimony on the issue of mental illness, medications and mixing of prescribed and illicit drugs (Exhibit 89). He has never treated Reilly but knows from a review of relevant records that he was diagnosed with Bi-Polar I disorder (“BPD”) with psychotic features and cannabis use disorder. A person with BPD may have episodes of mania and frequent episodes of psychosis. Symptoms of BPD include disheveled appearance; decreased need for sleep; engaging in risky behavior; pressured speech; disorganized thinking; odd, unusual, or unrealistic behavior and thoughts; thoughts of persecution, paranoia, irritability; mood lability; delusional thoughts; auditory hallucinations; self-dialoguing or responding to internal stimuli; feelings of euphoria; aggression; and increased violence.

Reilly was prescribed several medications to treat his mental illness. The medications included two anti-psychotics, Abilify and Zyprexa, which are used to treat delusions, hallucinations, disorganized speech, and behavior. His medications also included Wellbutrin, Gabapentin, and Lamotrigine. (Exhibits 19, 67, and 72). Using cocaine by itself or in conjunction with mental health medications may cause mania, psychosis, feelings of euphoria, aggression, and violent behavior. A person experiencing a psychotic episode may exhibit symptoms of auditory hallucinations, self-dialoguing, persecution, unrealistic beliefs, as well as unusual and unrealistic thoughts. Dr. Myers was unable to offer an opinion as to whether medications or any alleged illicit substance, e.g., cocaine, played any role in the events of February 12, 2022.

b. Findings of Dr. Maria Capo Martinez - Medical Examiner's Office

Dr. Maria Capo Martinez from the Office of the Chief Medical Examiner performed the autopsy. She ruled the manner of death to be a homicide. The cause of death was multiple gunshot wounds. (Exhibits 18 & 19). There were a total of five (5) penetrating wounds – four (4) gunshots and one (1) less-lethal round. (Exhibits 18, 19, 20, & 23). Gunshot wound (“GSW”) #1 is to the anterior upper chest. It entered Reilly’s right center chest and passed through the second rib, entering the chest cavity and into the heart and both lobes of the left lung. The projectile then continued through the fifth intercostal space or back ribs and came to rest in the left scapula. GSW #2 is to the anterior upper chest, medial. It entered the center chest and struck the second anterior right rib, fracturing the rib and sternum continuing through the aorta and perforating the diaphragm, liver, pancreas, and left femoral artery within the pelvic cavity. GSW #3 entered the lower abdomen right below the belly button. This wound is beveled, i.e., it entered at an angle, continuing left into the left leg and stopping in the left hip. GSW #4 entered the right upper leg.

(Exhibit 20). It continued through the right thigh muscle and hip and fracturing the femur bone. This projectile was recovered on the right femoral head. Penetrating wound #5 was a “beanbag” or less-lethal round fired by a Remington 870 shotgun and recovered from the back of the left leg where the knee flexes. (Exhibit 23). An examination of the Reilly’s body revealed no evidence of soot (burnt gunpowder), stippling, or dirt around the wound. (Exhibit 54). This indicates that none of the wounds were contact wounds or that the firearm was not fired close enough to Reilly that powder burns were present.

Dr. Capo Martinez also noted several blunt force injuries that were consistent with impact wounds likely caused by the less-lethal rounds fired by Papia and/or Frissori from a Remington 870 less-lethal shotgun. (Exhibit 22). Specifically, there were injuries to the (1) upper left chest; (2) left anterior upper torso; (3) lower right abdomen; (4) posterior lower left torso above the buttocks; (5) left anterior upper leg (thigh); (6) left anterior upper leg (thigh); (7) medial left leg (knee); and (8) medial anterior left leg (knee) (Exhibits 18, 19, 20, 21, 22, 23, 86, 87, and 88).

As part of the autopsy process, toxicology was performed on Reilly’s blood. Testing was Both heart blood and femoral blood were tested. Results indicated the presence of Gabapentin, Lamotrigine, Bupropion (Wellbutrin) and Hydroxybupropion, a metabolite of Wellbutrin. Additionally, a metabolite of cocaine was detected in the heart blood sample but was not found in a test of the sample of femoral blood (Exhibit 74).

5. State Police Scene Investigation

The Massachusetts State Police homicide unit attached to the Middlesex County District Attorney’s Office responded along with Massachusetts State Police Crime Scene Services to process and photograph the scene in and around the area of 98 Hancock, the Rotary, and the area

around Hancock Street and Burlington Street where the interactions between Reilly and police occurred along with the location of any items taken as evidence. (Exhibits 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 61). Carruthers' service weapon was collected and ballistics information was processed linking that firearm to the fatal injuries sustained by Reilly. (Exhibit 62). No such determination was made with respect to the less-lethal rounds recovered from the scene or from Reilly's body. Several witnesses were interviewed by both Lexington Police and Massachusetts State Police officers, including all the officers involved in the incident. Each officer provided an interview after being advised of their rights under *Miranda*. None of the officers asserted their Fifth Amendment Rights.

6. Use of Force

Charles DiChiara ("DiChiara"), has been a Waltham Police officer for 25 years. He was a long-time member of NEMLEC SWAT team and is currently the training officer for Waltham Police Department. He has an extensive record of training and instructing and is a qualified expert in the use of force by police officers. He testified as an expert in this case without offering an opinion on the particular facts or circumstances of Reilly's death. There was no testimony to indicate that he knows any of the Lexington officers personally. Some of DiChiara's relevant testimony included the following:

1. Police officers are trained to fire/aim a firearm at center mass (chest/torso). The police are not trained to aim at arms or legs because these areas are harder to hit, easier to miss, and more likely to potentially cause injury to a bystander.
2. Police officers are trained to shoot until the threat is ended. Officers are not trained to count rounds but to fire until the threat is stopped.

3. Police officers typically wear “soft body armor” or “bullet proof vests” which are ineffective against edged weapons. A knife will penetrate a soft armor.
4. “The 21-foot rule” is not a rule but is widely known to police and refers to a study involving the general principle that, given the manner in which people process information and react to a threat, a person armed with a knife within 21 feet of an officer would be able to attack the officer before the officer would have time to draw his firearm from a holster and fire at the approaching person.
5. The goal in use of force is to get the person to stop the violent behavior and to gain control of the situation.
6. Use of intermediate weapons (e.g., a baton, TASER, or Remington 870 less-lethal shotgun) are used only when a person is violent and combative.
7. If officers are using an intermediate or less-lethal weapon, another officer should provide lethal cover with a firearm to the officer(s) using a less-lethal weapon.

DiChara's testimony was consistent with the Lexington Police Department Use of Force Policy (Policy) dated September 20, 2021. (Exhibit 64). The purpose of the 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. An officer is required to continually evaluate the perceived circumstances/threat and adjust his/her response accordingly. (Exhibit 75).

From DiChiara's testimony, this Court finds that officers are taught to constantly evaluate and re-evaluate the circumstances facing them in an encounter and the goal is to stop potentially violent behavior with the lowest amount of force necessary to accomplish that goal. This includes

analyzing the perceived risk of the circumstances facing the officer(s), how the person involved with the police is reacting, the level of the person's resistance, and the reasonable officer's response.

There are five (5) levels within the use of force continuum: **Level 1** describes a compliant person who is following an officer's instructions and is not offering resistance to the officer's requests. The appropriate response of the reasonable officer is to act professionally and use verbal skills to address the situation. **Level 2** describes a person who is offering passive compliance. This person is offering a low level of verbal resistance, is refusing to comply with the officer's verbal request or instructions but is not offering physical resistance. The appropriate response by a reasonable officer to this person might include methods of contact control or light touch to help guide or escort the person. **Level 3** is a person offering active resistance. This person is both verbally and physically resistant to the officer and the situation is becoming increasingly volatile. Appropriate responses might include orders to stop resisting, the use of joint manipulations, taking the person to the ground and/or pepper spray. **Level 4** is a person who is actually assaultive. This person is actually being violent, combative, and assaultive and there is a risk that the person might harm either the officer or someone else. An officer facing this situation would be authorized to use "personal weapons" (which include hands, elbows, knees, and feet), a TASER, less-lethal munitions, or use of an expandable baton, "takedowns" or bringing the person to the ground, and use of restraints. **Level 5** is an assaultive person engaged in behavior where serious injury or death to the officer or another person is likely to occur. In this circumstance, the officer perceives that if the behavior is allowed to continue, that the officer or another is likely to be seriously injured or

killed. In this circumstance, the officer is authorized to use deadly force including the use of a firearm.

1. Applying the Use of Force factors to the events of February 12, 2022

When Frissori and Papia first arrived on scene, their perceived circumstances involved a 911 call that someone was trying to kill a resident at 98 Hancock. Upon arrival, they both saw Reilly and recognized him from past calls for service to 98 Hancock. The officers were told that Reilly was armed with a knife, and they confirmed this when they saw Reilly holding the knife. Reilly did not comply with either officer's verbal commands. Frissori had prior experience with Reilly where compliance was achieved when an officer displayed a baton. Papia had prior experience with Reilly where compliance was achieved when he deployed a less-lethal shotgun. Both officers attempted these tactics, but neither tactic had any discernible effect on Reilly.

The Court finds that when Reilly failed to comply with officers' commands, began threatening to kill officers while armed with a knife (at times swinging the knife in their direction), and ran into Hancock Street, he presented a Level 4 threat. A reasonable police officer would believe that their own safety as well as the safety of any member of the public who might be nearby was at risk. Officers were justified in deploying and using "stand-off" weapons, like the less-lethal Remington 870 to attempt to make Reilly comply with their orders and to protect themselves and the many members of public in the immediate area. A reasonable officer's perception of Reilly would be that his continued assaultive and threatening behavior was potentially harmful to the officers and others and that failure to stop or control Reilly placed the officers and others at substantial risk of bodily harm. The Court finds that the use of force policy and the totality of the

circumstances of February 12, 2022, support Frissori and Papia's use of less-lethal force to attempt to resolve an extremely volatile situation with the lowest amount of force necessary at the time.

When Papia slipped and fell, Reilly sprang to his feet and charged at Papia with his knife raised and with what a reasonable person would believe was an intention to stab and potentially kill Papia. The Court finds that, absent Officer Carruthers' use of lethal force, Papia was at grave risk of serious injury or death and that the use of lethal force was necessary to defend Officer Papia. At that point, Reilly presented a Level 5 threat to Officer Papia. Carruthers' use of his department issued firearm is a designated and appropriate response to such a threat. This Court finds that Carruthers fully complied with the use of force policy and the totality of the circumstances of February 12, 2022 support Carruthers' decision to use deadly force.

Conclusion

Brendan Reilly died from a gun-shot wounds caused by four 9mm projectiles fired from the department issued firearm of Lexington police officer Joseph Carruthers on February 12, 2022 in the area of Hancock and Burlington Streets, Lexington, Massachusetts. The circumstances of that shooting were the subject of State Police and Lexington Police investigations. The goal of this inquest was to determine whether the fatal shooting of Reilly by that on-duty Lexington police officer was the result of an unlawful act or legally justified. It was also the goal of this inquest to determine whether the use of less-lethal munitions and any non-lethal injuries sustained by Reilly by Officers Papia and Frissori were the result of unlawful acts or were legally justified. It is not the purpose of the inquest to resolve or facilitate a determination of civil negligence or a civil suit

for monetary damages.³ 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.

A determination as to whether the actions of the involved police officers might constitute a criminal act must be considered in light of the applicable case law on the use of force by law enforcement. To be a lawful or justified use of 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).

The death of Brendan Reilly was tragic for everyone involved and resulted from a lethal confluence of factors: Reilly’s longstanding mental illness, Reilly’s possession and threatened use of a dangerous weapon, and an unfortunate series of events leading to Officer Papia’s slip and fall. Applying the applicable case law pertaining to the use of deadly force in defense of oneself or others to the credible evidence adduced during the inquest, the Court finds that when Lexington Officers Steven Papia and John Frissori discharged their less-lethal shotguns, they did so to protect

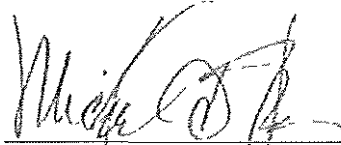
³ The inquest and report should not address the issue of civil negligence per se. (Standard 4 01)

themselves and others from a legitimate perceived threat from an actively assaultive person who was armed with a weapon capable of inflicting serious injury and/or death. At the times when Reilly was either running from police or on the ground and threatening police, the use of less-lethal weapons was legally authorized, but the use of lethal force was not appropriate. The Court further finds that when Lexington Police Officer Joseph Carruthers fired his weapon, the situation had escalated to the point where a reasonable law enforcement officer in the same position would reasonably believe that Papia, as well as his fellow officers and others in the area, were in imminent danger of being seriously injured or killed. No reasonable alternative existed except the use of deadly force.

Therefore, the Court finds that all uses of force by Lexington police, including the fatal shooting of Brendan Reilly on February 12, 2022, were justified and do not constitute any criminal acts.

Dated: August 2, 2023

BY THE COURT,



Michael D. Brennan
Associate Justice of the District Court