



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

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

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

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

**Summary of Findings**

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

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

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

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

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

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

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

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

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

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

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

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

## **Applicable law**

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

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."

## **Conclusion**

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

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

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