

October 28, 2022

**REPORT ON JULY 5, 2022, OFFICER INVOLVED SHOOTING**

This public report de-identifies all participants involved in this shooting so that it comports with Rule 3.6 of the Virginia Rules of Professional Conduct. The two non-officer individuals involved in this incident face pending felony charges related to this incident and Rule 3.6 prohibits attorneys in a criminal matter that may be tried in front of a jury from "making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that the lawyer knows, or should know, will have a substantial likelihood of interfering with the fairness of the trial by a jury." Although this information would arguably not reach the "substantial likelihood" standard or even interfere with the fairness of future jury trials, proceeding with an abundance of caution is prudent. De-identifying all the participants makes it less likely that future potential jurors will connect this shooting incident to future criminal trials. Taking these and other steps accords with the Comment to Rule 3.6's recognition of the need to balance protecting the right to a fair trial with "vital social interests served by the free dissemination of information about events having legal consequences" and the public's "right to know . . . about measures aimed at assuring its security." Informing the public that an officer did not commit a criminal act related to an on-duty shooting and why falls squarely within this type of public interest.

The incident that ended in a Herndon Police Department (HPD) officer ("Shooting Officer") shooting an individual suspected of car theft began at approximately 1229 hours on July 5, 2022, when a HPD officer ("Investigating Officer") observed a reported stolen vehicle stopped at 1110 Elden Street. Investigating Officer exited his patrol vehicle with the intent to make contact with the driver. As he approached the vehicle, Investigating Officer recognized the driver ("Driver") and one passenger ("Passenger") from prior interactions. As documented by Investigating Officer's body camera footage, Driver and Passenger exited the vehicle and ran north towards Alabama Drive. As Investigating Officer began to pursue Driver and Passenger on foot, he placed a call over police radio identifying both Driver and Passenger by name and giving his current location. Investigating Officer was unable to continue the foot chase, so he returned to the vehicle where a remaining passenger was seated.

As documented by video surveillance from surrounding stores and buildings, Driver and Passenger ran through 1060 Alabama Drive, climbing over the fence at Alabama Drive Park and continued towards Treeside Lane, running along a fence line.

Upon hearing this radio traffic, three HPD officer ("Shooting Officer," "Witness Officer," and "Motor Officer")—all in separate vehicles—responded to the area.<sup>1,2</sup> Shooting Officer observed Driver and Passenger running along the fence of Alabama Drive Park. He followed them, with his emergency equipment activated, driving on the grass field of Alabama Drive Park. Witness Officer also spotted Driver and Passenger and, with his emergency equipment activated, pursued them by driving on the side of the fence opposite from Shooting Officer. Witness Officer's dashcam shows Driver and Passenger running along the fence line and Driver using a cut through to move from the

<sup>1</sup> Shooting Officer was not wearing a body camera during this incident, nor was his vehicle equipped with a dashboard camera.

<sup>2</sup> Motor Officer did not arrive on scene until after the shooting.



side of the fence on which Shooting Officer was driving to the side of the fence on which Witness Officer was driving. This side of the fence, which is the side of the fence Driver was on when he was shot, ends in a right angle as it meets the fence at the end of the property. Beyond that fence is a brick wall past which are single-family homes on Treese Lane. Driver ultimately ran into that fenced-in right angle.<sup>3</sup>

According to Shooting Officer's statement, as soon as Shooting Officer activated his emergency equipment, Driver turned his upper body towards Shooting Officer and pointed a handgun towards Shooting Officer. According to Shooting Officer, Driver "brandished a pistol at [Shooting Officer]" and this action made Shooting Officer fear for his own personal safety. In his statement, Witness Officer indicated that he saw Driver turn his body to look at Shooting Officer's car at approximately this point in time, and that while still in his cruiser, Witness Officer also observed a handgun in Driver's hand. Seconds later, as Driver and Witness Officer converge upon the fenced-in right angle, Witness Officer began exiting his vehicle and while doing so yelled warnings to Shooting Officer, who had exited his vehicle on the other side of the fence, that "he's got a gun." Witness Officer began issuing commands to Driver to drop the gun. Witness Officer's warning and commands are captured on Witness Officer's dashboard camera and body camera. Witness Officer's body camera also captured Shooting Officer issuing commands to Driver to drop his weapon. Driver ignored both Witness Officer's and Shooting Officer's commands to drop the handgun. According to Witness Officer's on-scene statements in the immediate aftermath of the shooting, as Driver was cornered between the two fences creating the right angle, Driver's "gun was out" and he was "waving the gun around." According to Shooting Officer, he believed that in the instant before the shooting, Driver was an immediate threat to himself and Witness Officer. It was at this moment—with Driver cornered after a chase, armed with a handgun which he was "waving . . . around" and had previously "brandished at" Shooting Officer, and refusing repeated commands to drop the weapon—that Shooting Officer fired five rounds, striking Driver three times.

Officers approached Driver and began rendering first aid. Driver was placed in an ambulance and taken to the hospital. Driver was treated, and he survived. The firearm Driver displayed was recovered.

My investigation of this incident included a review of dispatch records, radio communications, reports, interviews, body-worn camera and dashboard camera footage, and physical evidence. This investigation leads me to conclude that Shooting Officer was reasonable in fearing that Driver intended to either kill him or Witness Officer or cause him or Witness Officer serious bodily injury. It was therefore legally permissible for Shooting Officer to use the level of force he deployed. Accordingly, I find no violations of criminal law on the part of Shooting Officer and decline to bring any criminal charge against him.



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Steve T. Descano  
Commonwealth's Attorney  
Fairfax County, Virginia

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<sup>3</sup> Passenger did not change sides of the fence. She was able to climb the brick wall separating Alabama Drive Park from Treese Lane but was apprehended after she climbed back over the brick wall to check on Driver after he had been shot.