REPORT OF INVESTIGATION

POLICE INVOLVED SHOOTING OF TAFT SELLERS

(FEBRUARY 18, 2013, CASE # 13106342)

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I. Preface:

In the early afternoon of February 18, 2013, Taft Sellers, 30 years of age, was visiting his grandmother who lived in the 3400 block of Duke Street in Alexandria. While there, he became involved in an argument with his younger sister, who was staying with his grandmother. His sister called for police assistance and informed police that her brother had a gun in his possession, but had not threatened to use it. Responding officers met Sellers on an open-air stairwell leading to a parking lot adjacent to Duke Street. In the ensuing encounter, Sellers acknowledged he had a gun and officers made numerous attempts to convince Sellers to show his hands and attempted to engage him in conversation to resolve the matter. Sellers ignored these entreaties and was shot when he pointed his weapon at officers. Seven of the officers present fired a combined total of thirty-seven shots. Sellers was hit five times, and he was pronounced dead at the scene. Of course his death is an immeasurable loss for his family and his many friends.

The sole purpose of this report is to determine whether or not the conduct of the officers who shot Sellers constitutes a crime under Virginia law. This report does not examine such issues as whether departmental disciplinary action or additional training is required for any officer involved in the shooting. That determination will be made by the Police Department.

The evidence in this case establishes that Mr. Sellers pointed a firearm at police. The gun was fully loaded but Sellers did not fire it; and he was shot by officers who feared Sellers was going to shoot at them. Under these circumstances, the law clearly supports the conclusion that the officers were entitled to use deadly force in response and that they fired in self-defense. Criminal charges against the officers are not appropriate. This report sets forth the basis for these conclusions.

Much, but certainly not all, of the investigation into this case was completed by detectives

in the Criminal Investigation Section of the Alexandria Police Department. Invariably, public scrutiny of any police shooting raises the question of whether any police department can conduct an objective investigation into the conduct of its own officers. I have revisited the police inquiry independently, and tested it by consultation with independent experts and by re-interviewing some witnesses myself.[1] The most important responsibility of a prosecutor is to serve the law, not factional purpose. I reject the suggestion that because of "rumors...circulating in the community" (*Our View*, *Alexandria Times*, March 28, 2013) it is necessary or appropriate to request another law enforcement agency or prosecutor's office to investigate this case. The integrity of the criminal justice system is not judged by rumor or beholden to innuendo. As the elected prosecutor for the City of Alexandria, it is my responsibility to address this case fairly and impartially.

II. Overview of the Investigation:

The Criminal Investigations Section of the Alexandria Police Department took control of the scene of the shooting shortly after it took place. Detectives from the homicide section were assigned as the primary investigators in the case. Protocol applied to all fatal police shootings in Alexandria requires a criminal investigation. I was notified of the incident and drove directly to the scene, where I remained during the initial phase of the investigation and where I was able to observe the scene carefully. The scene was processed by members of the Alexandria Police Department's Crime Scene Investigation Unit. Numerous photographs were taken, and evidence, including Sellers' weapon and the weapons fired by various officers, was collected and the scene

[1] A Commonwealth's Attorney may ask a Court to empanel a special grand jury with subpoena power for investigative purposes. While such a procedure might be of benefit to the fact finding process in cases in which witnesses are reluctant to come forward, that was not the case here.

was diagramed. Evidence collected at the scene was submitted to the Department of Forensic Science and the results of that analysis have been reported in writing.

An autopsy examination was conducted on the body of Mr. Sellers on the morning of February 19, 2013, by Shane Chittenden, M.D., at the Northern Virginia office of the Chief Medical Examiner. Detectives were present at the autopsy. The results of the examination were submitted by written report dated June 19, 2013.

Members of the Criminal Investigations Section of the Alexandria Police Department conducted numerous interviews with witnesses. Because of the location and time of the incident, there were a number of civilian witnesses who observed some portion of the confrontation between Mr. Sellers and the officers. These interviews were recorded. All of the officers who were involved in the confrontation were interviewed separately at police headquarters shortly after the incident and these statements were recorded. The officers were not permitted to confer with one another before they were interviewed. The file of the Alexandria police investigation was received in the Commonwealth's Attorney's Office on March 26, 2013. This file contained witness interview recordings and detailed reports from the officers and detectives involved in the investigation. Also included in the file were video recordings of portions of the incident, which were made by witnesses using cell phone cameras from a location across the street.

After reviewing the recordings of these interviews, I re-interviewed a number or witnesses and met with members Mr. Sellers' family. Some of these interviews were conducted at the scene in order to offer the witnesses the opportunity to specifically identify where they believed certain activity occurred.

In reviewing the evidence in this case, I consulted with experts in the fields of firearms training and the use of force by law enforcement officers, and reviewed extensive literature related

to use of force and shooting reaction time.

III. Officer and Witness Accounts:

The following sequential summaries of the actions of individual officers are based on the officers' individual recollections of the incident. They should not be construed as indicating the order in which shots were fired. It is impossible to determine the sequence of firing in this case. The attached diagram shows the positions of various officers when they first arrived on the call.

Officer Dunn: Officer Dunn was the first officer to arrive in response to the call. The call was originally dispatched as a domestic dispute and warned responding officers that the subject of the call had a gun in his possession. As Dunn waited at the light at Wheeler and Duke to cross Duke Street, he saw Sellers standing in the stairway across the street. When the light turned green Dunn pulled into the parking lot adjacent to the stairway, and as he exited his marked police vehicle in uniform, he could see Sellers still standing on the stairway. Both of Sellers' hands were visible and he was not holding a weapon in either hand. Dunn approached Sellers, made eye contact with him, and asked him if he had a gun. Sellers nodded affirmatively. Sellers then placed one of his hands behind his back. Although he did not display his weapon at that moment, Sellers assumed a position which Dunn characterized as a shooting stance. Dunn then retreated and took cover behind his vehicle. He initially drew his hand gun. After Officers Panesar and Hancq arrived and took cover behind Dunn's vehicle, Dunn removed his shotgun from his car, racked a round into the chamber, rested it on the light bar on the roof of his car and aimed it at Sellers. Dunn was the only officer at the scene who utilized a shotgun. Sellers ducked down behind the wall of the stairwell. Dunn recalled that for some time Officer Panesar made multiple attempts to engage Sellers in conversation, asking him to show his hands and come out. Sellers did not comply with these requests and said nothing in response. Dunn then saw Sellers come up

from behind the wall, grip a firearm with both hands, and aim it in the direction of Panesar who was to his left. Dunn immediately fired one round from his shotgun at Sellers.

Officer Panesar: Officer Panesar and Officer Hancq were riding together and arrived at the scene after two other units. Panesar had heard the original call go out as a domestic disturbance involving a man with a gun. Before he arrived at the scene, Panesar heard additional radio transmissions indicating that the subject was refusing to comply with orders from other officers already on the scene. He made a decision at that time to deploy his M-4 rifle at the scene. Upon arrival, Panesar took cover behind the engine of Dunn's cruiser. He made repeated attempts to engage Sellers in conversation, asking him to show his hands and offering to talk to him. Sellers did not respond, and remained with his hands concealed behind his back. Panesar heard another officer say "he has a gun." Panesar continued to try to defuse the situation by exhorting Sellers to put the gun down and talk. Panesar observed Sellers lean forward, bring both of his hands up and point what looked like a Glock handgun in his direction. Panesar stated he knew Sellers had a gun in his hand and it was pointed in his direction. He heard a shot fired and thought that Sellers had fired at him. He then heard what he thought was a shotgun being fired. Panesar then fired his rifle at Sellers, moved from behind Dunn's vehicle, and fired additional shots at Sellers and then called "cease fire" and put his hand in the air. While he was firing at Sellers, Panesar said he observed Sellers moving right and left. As he approached Sellers he saw his gun had fallen from his hands but was still within reach. Panesar moved the gun out of reach.

Officer Hancq: Officer Hancq followed Officer Panesar and also took cover behind Dunn's vehicle, between Panesar and Dunn. Hancq observed that Sellers had his right hand behind his back, and heard another officer say "he's got a gun, it's behind his back." Hancq also confirmed Panesar's repeated attempts to engage Sellers in conversation. Hancq momentarily ran down to

where Officer Evans had restrained Sellers' mother and returned to a location near Dunn's vehicle shortly after the shooting started. Hearing additional shots, Hancq feared that Sellers was firing his weapon at the officers and he fired several rounds at Sellers.

Officer Stowe: Officer Stowe arrived at the scene and took a position from which he could see Sellers with his right hand behind his back. He also heard Officer Panesar attempt to converse with Sellers. At one point Sellers turned and Stowe saw the gun inSellers' hand behind his back. Stowe yelled out a warning to other officers about what he had seen. Stowe then observed Sellers bring the gun up into a two handed grip and point it at other officers. From his vantage point Stowe recognized the weapon Sellers held as a black semi-automatic handgun. Stowe heard a shot fired, and then he fired one round at Sellers. Attempting to reposition himself, Stowe lost his footing. He then heard multiple shots being fired, and did not fire any additional rounds as he saw Officer Panesar moving into what would have been his line of fire.

Officer Richmann: Officer Richmann arrived on the scene after Dunn and Panesar. She was riding with Officer Ashman and they exited their vehicle and took up positions to the west of Sellers. She could see Sellers with at least one of his hands concealed behind his back. She also heard Panesar repeatedly try to engage Sellers, asking him to show his hands, and offering to talk to him. She heard a shot and believed it had come from Sellers' gun, and Richmann thought that the officers in the parking lot (Panesar, Dunn and others) returned fire. From her position, Richmann fired her handgun at Sellers and thought that Sellers continued to fire his weapon at officers. She believed that Sellers fell after being hit by rounds fired by Panesar and Dunn, as they were in a better position to return fire.

Officer Ashman: Arriving with Officer Richmann, Officer Ashman took up a position to the west of Sellers. He heard a warning from another officer that Sellers had a gun behind his back.

He also heard Panesar repeatedly try to engage Sellers in conversation in an attempt to defuse the situation. From his position, Ashman clearly saw Sellers bring his right hand up from behind his back. Sellers was holding a black handgun and Ashman saw his hand move as if he was pulling the trigger. Ashman heard a gunshot from Seller's direction, but could not say with certainty whether Sellers had fired his weapon or the shot had been fired by another officer. When he saw Sellers point his weapon at other officers he feared Sellers was about to shoot an officer. He saw Sellers lunge forward, which gave him a clear view, at which point he fired several shots at Sellers.

Officer Riley: Officer Riley arrived riding with Officer Maynard. He had heard the call dispatched as a domestic disturbance involving a man armed with a gun. He took a position behind a car parked in the parking lot to the east of Sellers. He remained in that position with his handgun drawn and pointed at Sellers while Panesar attempted to engage Sellers. He then heard a shot fired, but was unable to determine who had fired. Believing that Sellers was armed and firing at officers, Riley fired his weapon at Sellers.

Other Officers: There were other officers present at the scene who did not fire their weapons at Sellers. Officer Maynard stated that he refrained from firing because he did not have a clear view of Sellers. Officer McGrigg and Sgt. Jones deployed to the rear of the housing complex in an effort to keep other residents out of danger. McGrigg could not see Sellers from his post; and, although Jones could see Sellers, his vantage point did not afford him a clear view of what Sellers was doing. Officer Gorham arrived after other officers had already positioned themselves. He is a former firearms instructor, and Gorham refrained from firing at Sellers because he did not feel he was in a position to take a clear and safe shot, and he assessed that other officers deployed closer to Sellers had the situation adequately covered. Officer Evans was occupied with restraining a family member of Mr. Sellers who had arrived at the scene and was attempting to approach Sellers.

He did not see the shooting. Sgt. Barnes heard Dunn's original radio transmissions that Sellers was not complying with his commands and that he had affirmed he had a gun. Barnes responded from police headquarters nearby and initially engaged in stopping traffic on Duke Street, and then took a ballistic shield up to Dunn's vehicle, knelt down, and was conversing with Officer Maynard and could not see Sellers when the shooting started. She remained in that position until the shooting stopped.

Civilian Witnesses: Civilian witnesses who observed portions of the incident corroborate the accounts of the incident given by the officers. A witness who observed the incident from across the street watched the initial arrival of police on the scene, and the witness confirmed that the officers attempted to negotiate with Sellers for "quite a long time." This witness stated that, although she could not hear what was being said, she was confident that the officers were attempting to negotiate with Sellers because they did not simply "get out of their cars and start shooting." The witness said that only when Sellers raised his arm holding a dark object, then the officers fired at him.

A resident of the housing complex directly adjacent to the scene of the incident was able to observe Sellers from the window of her residence. She stated that she saw Sellers manipulating a gun behind his back, and was able to hear officers speaking to Sellers, asking him to surrender his weapon and talk to the police. She did not hear Sellers respond. She dropped to the floor when shooting commenced and did not see Sellers get shot.

A witness who was a passenger in a vehicle parked at the City gas pumps across Duke Street stated that although he could not hear what was being said, it appeared to him that officers were giving Sellers commands and trying to negotiate with him for some period of time. He said Sellers hands were not visible and appeared to be behind his back or to his sides. He said that

officers did not fire their weapons until Sellers raised his right hand holding an object. From the distance at which he observed the incident, the witness could not tell what Sellers had in his hand.

Video Recordings: Two individuals who were across Duke Street were able to record portions of the incident on cell phone cameras. Because of the distance from which these recordings were made, a detective with expertise in computer forensics invested considerable time and effort in attempts to enhance these recordings. The first of these recordings is of some value in documenting the positions of officers on the scene but it was recorded from a position in which the view of Sellers was obscured by a tree on the south side of Duke Street. The second recording substantially corroborates the recollections of the officers on the scene in documenting their respective positions and actions. It also shows Sellers making movements with his hands behind his back, and then bringing an object from behind his back, gripping it with both hands, and beginning to aim it at officers. It is not possible to discern what this object is from viewing this particular video. Neither of the video recordings are clear enough or made from a close enough distance such that either one definitively depicts what the object held by Sellers is. The second recording shows that coincident with Sellers aiming motion, officers begin firing at Sellers and continue to do so until it appears he has been killed. Even at that point, the officers approach Sellers with caution and with guns drawn, quickly move his gun out of his reach, and place him in handcuffs. These video recordings were also valuable in establishing an audible record of the shots fired by Officer Panesar with the M4 rifle. The recording shows that Panesar fired his rounds in a period of approximately three (3) seconds.

Police Radio Transmissions: A review of radio transmissions during the incident assisted in establishing the timing of events described by the officers and witnesses. These transmissions indicate that a period of over eight minutes elapsed between Officer Dunn first

speaking with Sellers and shots being fired.

IV. Physical Evidence

Autopsy Report: An autopsy examination was conducted on the body of Mr. Sellers on February 19, 2013, at the office of the Chief Medical Examiner. Results of the examination were reported in writing to the Commonwealth's Attorney's Office by report of autopsy, dated June 19, 2013, and received in the Commonwealth's Attorney's Office on June 21, 2013. Alexandria homicide detectives and a crime scene investigator were present at the autopsy for the purpose of recovering physical evidence. The medical examiner concluded that Sellers died as a result of multiple gunshot wounds. One wound to the head was a perforating wound (in which the bullet enters and exits); the other wounds were penetrating wounds (in which the bullet enters but does not exit). The sequence of the wounds could not be determined. Five wounds were noted and are described as follows:

1. A perforating gunshot wound to the back of the head traveled left to right, slightly front to back and slightly upward with the body in the standard anatomic position. The bullet penetrated the scalp and entered through the left side of the occipital bone, grazed the back of the occipital lobe of the brain, and exited through the right side of the occipital bone. No bullet or bullet fragments were recovered. Although it is not noted in the autopsy report, in a follow up conversation with the medical examiner, he opined that the characteristics of the wound are more consistent with a .223 caliber round, and noted that another medical examiner concurred in that opinion. The location and characteristics of this wound do not support the conclusion that Sellers was shot from behind. Only one .223 caliber weapon was deployed at the scene, held by Officer Panesar who was in a position in front of Sellers. (See attached diagram.) While it is

impossible to conclusively determine the sequence of shots, it is most likely that this wound was sustained when Panesar fired after Sellers had been hit by the round fired by Dunn. Consistent with what is depicted on the video recording, it appears that the round fired by Dunn caused Sellers' body to move in a manner which could account for the location and trajectory of the head wound.

2. A penetrating shotgun wound to the chest entered the upper aspect of the left side of the chest overlying the left clavicle, and traveled front to back, left to right and upward within the body in the standard anatomic position, perforating the lung and left carotid artery. The slug was recovered.

3. Three additional wounds to the abdomen from .223 caliber rounds entered (two) in the right upper quadrant of the abdomen between 23 and 24 inches below the top of the head and between 2 and 3 inches to the right of the midline, and (one) in the left lower quadrant 24 inches below the top of the head and 4 ½ inches to the left of the midline. All three of these wounds followed a pathway front to back, left to right and upward within the body in the standard anatomic position. Fragments of bullets from both upper quadrant wounds were recovered, and the deformed bullet from the lower quadrant wound was also recovered.

Toxicology Report: Blood samples taken at the autopsy were submitted to the Department of Forensic Science for analysis. Toxicology analysis is a standard procedure in all homicide cases. A certificate of analysis dated May 22, 2013 indicated the presence of phenytoin, consistent with medication prescribed to Sellers. The results of this test ruled out the presence of alcohol or other drugs in Sellers' system. There is no indication that Sellers' prescribed medication affected his motor skills or perception.

Evidence from the Shooting Scene: On the day of the incident, the scene of the shooting was preserved, documented and photographed by crime scene investigators from the Alexandria Police Department. The locations of objects were carefully measured from a reference point so that a scale drawing of the area could be prepared. A copy of that diagram is attached, with a key identifying the items recovered, and explanatory notes.

Firearm Analysis: Both Sellers and the officers who responded to this call were carrying Glock semi-automatic pistols. The capacity of these weapons depends upon the magazine size and the procedure used to load the weapon. Sellers' weapon had a 15 round magazine; the officers are issued weapons with magazines holding 13 rounds. The standard procedure for loading such a weapon dictates that an officer will insert a fully loaded magazine in the weapon, retract the slide to insert one round in the chamber, then remove the magazine and replace the chambered round by "topping off" the magazine, so the weapon is then capable of firing 14 rounds. This case indicates this practice is not always followed, leaving some magazines short of a full load.

At the time of this incident, Sellers was carrying a Glock model 19 semi-automatic pistol. The Glock 19 uses a magazine with a standard capacity of 15 rounds of 9mm caliber. With a chambered round and a topped off magazine, the weapon could fire 16 rounds. According to accounts from friends and family members, Sellers had owned this gun for some time and carried it frequently. There is no evidence that Sellers fired this weapon during the confrontation. When recovered, the weapon was loaded with 15 rounds of live ammunition, with one round in the chamber and 14 additional rounds in the magazine. While this number of recovered live rounds does not rule out the possibility of one round having been fired, no evidence supports this conclusion. No found cartridge casings were determined to have been ejected from Sellers' weapon and the barrel of his weapon was found to contain dust and lint particles which would not

have been present if the weapon had been recently fired.

Of the seven officers that fired weapons at Sellers, five were firing Glock model 23 semi-automatic pistols. These pistols are loaded with 13 round magazines holding police issued .40 caliber Smith and Wesson ammunition. These weapons will not fire until a round is in the firing chamber. To chamber a round, the officer must retract the slide. Because chambering a round can delay firing, officers are trained to carry their weapon with a round already in the chamber.

When a Glock 23 is fired, the cartridge case from the fired round is ejected from the weapon. Crime scene investigators recovered twenty-five (25) .40 caliber Smith and Wesson cartridge cases at the scene of this shooting. (See attached diagram.) The location of these cases is not an exact indication of the position of the officers who fired these weapons. Once ejected from a weapon, a case can travel in different directions depending on the position in which the weapon is held, the strength of the grip, and the surface upon which the case lands.

It is impossible to determine the exact number of rounds that were fired from the Glock 23 pistols. Examination of each of the weapons taken from the officers accounted for a total of 39 unfired rounds. One additional unfired round was found on the ground at the scene. Given its location, it most likely was ejected from Riley's weapon by retraction of the slide before he began firing. Taken with the fired cases recovered at the scene, these numbers account for 65 rounds, 25 of which were fired. In theory, had all five of these Glock 23 weapons been fully loaded to capacity, 70 rounds should be accounted for. This discrepancy could be due to one or more officers carrying a short magazine (not fully loaded) or one or more ejected cartridge cases not being found, or a combination of both.

The 25 recovered cases were submitted to the Department of Forensic Science for

examination, along with the weapons the officers had fired during the incident. These items were examined by forensic scientist Julian J. Mason, the supervisor of the firearms and tool mark unit at the laboratory. After test firing rounds from each of the weapons, Mason conducted a microscopic examination to make comparisons between test fired cases and the cases recovered at the scene. As a result of his comparisons, he was able to identify the particular weapon from which each of these cases had been ejected. The results of his analysis are shown in the table which follows.

Of the rounds fired, none of the Glock .40 caliber rounds hit Sellers. Numerous shots which missed Sellers appear to have hit railings along the wall, the stair railing, concrete and brick areas of the stairs and wall, and a residence. A total of 21 bullet fragments were located and collected. Mason was able to discern that of these, 13 fragments possessed markings consistent with having been fired from a Glock 23, but none possessed sufficient microscopic markings to enable any determination that they had been fired from a particular weapon.

Officer	Weapon Type	Capacity	Unfired Rounds From Weapons	Recovered Casings Matched to Weapon (shots fired)	Location on Diagram	Possible # of Rounds short or unrecovered
Richmann	Glock 23	14	7	4	X,Y,Z,18	3
Ashman	Glock 23	14	8	5	TA1-TA5	1
Hancq	Glock 23	14	7	7	M,N,O,P,Q,R, T	0
Stowe	Glock 23	14	13	1	W	0
Riley	Glock 23	14	5 (4 in weapon, 1 from ground)	8	20-25, 27 (20=2 casings)	1
TOTAL		70	40	25	25	5

In addition to the Glock 23 handguns, two other types of weapons were utilized by officers in this incident: a Bushmaster M4 rifle and a Remington Model 870 shotgun. One round was fired from the shotgun deployed by Officer Dunn. (One additional round was ejected from this weapon as Dunn activated the slide when he approached Sellers location after the shooting has stopped.) Eleven rounds were fired from the M4 rifle deployed by Officer Panesar. This rifle is equipped with a thirty round magazine. Nineteen unfired rounds were found in the rifle after the shooting, and eleven cases were recovered at the scene, accounting for all thirty rounds.

In total, seven officers fired thirty-seven shots at Mr. Sellers: twenty five from hand guns, eleven from a rifle, and one from a shotgun. As indicated by the results of the autopsy, Sellers was struck by four rifle rounds and one shotgun round.

V. The Law Applicable to the Case

The law of self-defense provides that if a person reasonably feared, under the circumstances as they appeared to him, that he was in danger of being killed or that he was in danger of great bodily harm, then a person may use deadly force in self-defense. There is no general rule concerning what constitutes reasonable belief of imminent harm. The question is determined by the facts and circumstances of each particular case.

The law of self-defense allows the use of deadly force when a person perceives an *imminent* threat of death or serious bodily injury. The law of self-defense is the law of necessity. *McGhee v. Commonwealth,* 219 Va. 560, 562, 248 S.E.2d 808, 810 (1978); *Green v. Commonwealth,* 122 Va. 862, 871, 94 S.E. 940, 942 (1918). A person only has the privilege to exercise reasonable force to repel an assault.

An imminent threat of death or serious bodily injury from deadly force may be met with deadly force. Less than deadly force must be met with a proportionally reduced response. *Cook v. Commonwealth*, 219 Va. 769. 250 S.E.2d 361 (1979). There is no requirement that law enforcement officers use all feasible alternatives to avoid a situation where deadly force may be required. *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7th Cir. 1994). Finally, the law imposes no duty to attempt the use of lethal force in a less than lethal manner. Once a person is entitled to use deadly force in self-defense or in defense of others, there exists no obligation to wound, disable, or disarm one's adversary short of killing him.

The test of reasonableness is based on the circumstances as they reasonably appeared to the person in danger. See, *Fortune v. Commonwealth*, 133 Va. 669, 112 S. E. 861 (1922). The issue is whether the actual belief of the person in danger was reasonable in light of the circumstances as he perceived them. *Harper v. Commonwealth*, 196 Va. 723 (1955). In *Graham v. Conner,* 490 U.S. 386, (1989), the Supreme Court of the United States was careful to point out that an officer's actions must be evaluated from the perspective of the officer's perception of the circumstances, rather than with detached hindsight. "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. Conner,* 490 U.S. 386, (1989).

These principles apply equally in situations in which a person reasonably perceives a risk of serious harm to others. The law in Virginia clearly establishes that when one has probable cause to believe that a suspect poses a threat of serious physical harm, either to one's self or others, it is

legally permissible to use deadly force to prevent harm to one's self or others and to prevent escape. *Couture v. Commonwealth,* 51 Va. App. 239, 244, 656 S.E.2d 425, 427 (2008).

VI. Case Analysis:

Was the use of deadly force in this case legally permissible based on what the officers encountered? Analysis of this issue requires an examination of the level and amount of force actually used, and a determination as to whether there was a reasonable alternative means to resolve the situation. In assessing the appropriateness of an officer's actions in any such encounter, studies on attentional narrowing and human reaction time in high stress confrontations are informative.

There is overwhelming evidence that the shooting of Mr. Sellers was in response to his aiming a firearm at officers. Unlike many cases in which it is unclear whether a person confronted by police is armed, in this instance police had certain knowledge that Sellers was armed with a gun. The initial call, based on information relayed by Sellers' sister, indicated he had a weapon; and, Sellers himself confirmed this in his initial contact with Officer Dunn. Before any shots were fired, at least two other officers (Ashman and Stowe) could see Sellers manipulating his weapon. At the moment they fired, Officers Panesar, Dunn, Ashman, Richmann, and Stowe all were clearly able to see a weapon in Sellers' hands and able to observe him aim it. (Standing where the officers stood at the time of the shooting, it is clear that they were all close enough to Sellers to see that he held a gun.) The video recording of the incident and the recovery of a gun from Sellers following the shooting corroborate these observations. Given these circumstances and the failure of Sellers to respond for several minutes to repeated requests to discard his weapon and surrender peacefully, by any objective standard the officers acted in reasonable apprehension of being shot by Sellers when he pointed his weapon at them.

The total number of rounds fired (thirty-seven) by all the officers in this incident cannot in and of itself be used as a meaningful measure of whether or not the police response was excessive. All of these shots were fired within a very short span of time. The video of the incident recorded by a witness did not record the sound of all the shots fired, but by viewing the actions and movements of the officers as depicted in the video, it is reasonable to conclude that shooting lasted about ten seconds before Officer Panesar signaled for a cease fire. One or two additional rounds may have been fired in a three second period after Panesar gave this signal to cease fire. To focus on the collective number of shots fired as a measure of reasonable force would require erroneously attributing to each officer knowledge of the activity of other officers and presume that each officer was able to assess whether the actions of his colleagues were effective in eliminating the threat that Sellers presented. Studies show such attribution is inappropriate.

In an analysis conducted of multiple officer responses to high stress situations involving an armed suspect, (*The Attention Study: A Study on the Presence of Selective Attention in Firearms Officers*, Lewinski, William, PhD, Force Science Institute), the author notes that "attention, particularly under high stress, has a single, undifferentiated, limited capacity and reduces our ability to process information. This is termed selective attention." Lewinski goes on to note a significant "perceptual narrowing that occurs under these conditions," which results in "attentional blindness" or "attentional narrowing", is sometimes referred to as tunnel vision. Reviewing the accounts of this incident given by the officers who fired at Sellers, it is apparent that their attention was focused primarily on Sellers and not on what other officers were doing. As Lewinski notes, "it would be extremely rare, if not impossible, for an officer involved in a fluid, complex, dynamic and life-threatening encounter to remember peripheral details beyond that on which he or she was focused." Thus the actions of each officer must be assessed individually.

Analysis of this case is also informed by appreciation of the limits of human reaction time. To make judgments of an officer's behavior based on what he did or did not do in a very short period of time, it is critical to understand the limits of human reaction-response time and decision making time in shooting situations as it affects an officer's ability to stop shooting in a deadly force encounter. Extensive and careful research has been conducted into the practical aspects of police use of force by Lewinski[2], a specialist in law enforcement behavioral psychology. Lewinski has spent more than twenty years identifying and scientifically measuring and documenting the mental and physical aspects of life-threatening encounters. His research has focused on such areas as action/reaction times and movements, and is critical to an understanding of the realities of these kinds of encounters.

Under controlled circumstances in which officers are directed to fire as many shots as they can until signaled to stop, once firing commenced, it took about .2 to .25 seconds to fire each additional shot.[3] Scientific literature suggests that a stop reaction time when a person is actively engaged in an action and then reacts to a signal to stop is about one half of a second. In Lewinski's study of officers firing under conditions in which they received a visual signal to stop firing, results were consistent with this general finding. As Lewinski points out, "In law enforcement, these times have to be translated into trigger pulls to be fully appreciated." In his experiment, in which officers were reacting only to a light going off as a signal to stop shooting, the time to termination of the trigger pull response, when the officer was engaged in a chain of

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[2] Related articles by Lewinski are available at the web site of his nonprofit research center at Minnesota State University. (www.forcescience.org)

[3] See, *Officer Reaction-Response Time Delay at the End of A Shot Series*, Tobin & Fackler, M.D., Journal of The International Wound Ballistics Association, Vol. 5, Issue 2, 2001.

trigger pulls, was at least two and sometimes three trigger pulls or more.[4] Obviously, in the street, in the midst of a highly stressful confrontation, the officer is also engaged in other simultaneous activities that will impact on the termination of his trigger pulling response.[5] Reactions are also complicated by what a National Institute of Justice study concerning officer involved shootings confirms: most officers reported experiencing a range of psychological, emotional and physiological reactions that distorted time, distance, sight and sound in shooting situations.[6]

Lewinski has also summarized research done at his own center and at Johns Hopkins, Cornell, Oxford and The University of Illinois all related to an officer's ability to stop shooting in response to a change in threatening behavior.[7] He concludes:

> *"The delay in noticing any change in the nature of the threat and having the officer change their behavior in response to that threat would likely take the average officer a second to a second and a half in a dynamic, "real world" life-threatening encounter. This process alone could result in an extra 4 to 6 rounds being fired by the officer–if the officer was shooting as quickly as they can, focused on shooting to save their life and also simultaneously assessing the threat."*

Other research shows that threat assessment and decision making increase an officer's reaction time in these situations. As Tobin and Fackler point out in several studies, the beginning and ending of a real life shooting situation is unlike the test environment in which officers are simply given instructions to begin or end shooting in response to a signal. (Such studies do not require the

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[4]See, *Reaction Times in Lethal Force Encounters: Time to Start Shooting? Time to Stop Shooting? The Tempe Study*, Lewinski, Hudson, Police Marksman, September/October 2003.

[5] Lewinski points out that officers who are "multi-tasking" (moving and trying to take cover while firing) will demonstrate longer delays in stopping a series of shots.

[6] NIJ Journal Issue No. 253: *Police Responses to Officer-Involved Shootings* (It is clear this happened in this case. For example, Officer Richmann's belief that Sellers was firing his weapon most likely resulted from distortion of the sound of firing by other officers.)

[7] See, *New Developments in Understanding the Psychological Factors in the "Stop Shooting Response*, Lewinski, FSRC.

officer to make a decision about whether it is appropriate to shoot or not, he is merely reacting to a signal.) In a real life situation an officer must monitor the situation as it unfolds to decide when to shoot and when to stop shooting. Decision time must therefore be added to reaction-response time to rationally estimate delays in both beginning and ending a series of shots.[8] Assuming, as Lewinski does, that such experiments at least provide a minimal measure of the time it takes an officer to start firing and stop firing under ideal conditions, the results of these studies define minimal limits on an officer's ability to "immediately" respond to changing stimuli and react appropriately.

Application of these principles to the actions of the officer on the scene who fired the largest number of rounds at Sellers is instructive. Officer Panesar deployed his semi-automatic rifle at the scene. He was the only officer who utilized such a weapon, and the eleven cartridge cases recovered from the scene are attributable to his weapon. Panesar fired these rounds as quickly as he could in a period of about three seconds.

It is uncontroverted that Panesar began firing at Sellers under reasonable apprehension of death or serious injury. The reasonableness of his actions have to be assessed with an understanding of his capability toboth react to and then disengage from complicated changing stimuli so as to overcome a state of fear (which is the basis of self-defense. Under the circumstances of this case, he did so as quickly as could be expected. Firing as quickly as he could, and at the same time trying to assess whether or not the threat Sellers presented had been effectively eliminated, and then making a decision to stop shooting, all within a period of a few seconds, it certainly appears that Panesar acted and reacted within normal limits. Assuming, as

[8] See, *Officer Reaction-Response Time Delay at the End of A Shot Series*, Tobin & Fackler, M.D., Journal of The International Wound Ballistics Association, Vol. 5, Issue 2, 2001, and *Officer Decision Time in Firing a Handgun*, Tobin, Fackler, M.D., Journal of The International Wound Ballistic Association, Vol. 5, Issue 2, 2001.

Lewinski's research documents, that it took Panesar a second to a second and a half to notice a change in the level of threat Sellers presented and to change his behavior accordingly, it is not surprising that he fired as many rounds as he did, at the rate of four per second. The evidence supports no different conclusion with respect to the actions of the other officers who fired at Sellers. It is apparent that the other officers who fired did so in reasonable apprehension that Sellers was about to fire his weapon at them directly or at a fellow officer.

In assessing the appropriateness of the force used by the officers in this case, it is also necessary to address whether or not the situation as it unfolded could have been resolved by use of a lesser degree of force. The law on this issue is absolutely clear. There is no requirement that law enforcement officers use all feasible alternatives to avoid a situation where deadly force may be required. *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7th Cir., 1994). The law imposes no duty to attempt the use of lethal force in a less than lethal manner. Once a person is entitled to use deadly force in self-defense or in defense of others, there exists no obligation to wound, disable, or disarm one's adversary short of killing him.

Discussion of the use of less than lethal force could simply rest on the law governing the issue. However, the facts of the case demonstrate that as much as it was not legally required, it was also not a feasible option under the circumstances. In assessing these options, much speculation has arisen from sources, who, in spite of knowing little or nothing about the case, express confidence that the situation could have ended without Sellers' death. For example, a representative of an organization identified as Virginia Citizens for Police Accountability, quoted in the *Alexandria Times* March 28, 2013 edition, claims police could have used other means: "stun gun, tasers, or even just conversed with the guy. I think they were just hasty in their actions." Such assertions are not accurate.

First, it is abundantly clear that officers made repeated efforts to engage Sellers in conversation without success. Sellers was unresponsive to these entreaties. There is no indication that Sellers was unable to hear or see the officers, as he made eye contact with several of them and responded affirmatively to Officer Dunn's initial inquiry as to whether he had a gun. Sellers was not impaired or under the influence of drugs or alcohol at the time of the shooting. Various officers offered different estimates as to how long a period of time elapsed as officers attempted to convince Sellers to surrender himself peacefully. It is critical to understand the point at which the officers fired at Sellers was controlled and dictated by Sellers, not by the police. Officers had refrained from shooting for some length of time because Sellers had made no overtly threatening action against them or anyone else up to the moment when he elected to aim his gun at officers. Had Sellers continued to act in a non-threatening manner and not pointed his weapon at the officers, he would not have been shot. To suggest that officers should have continued to attempt to engage Sellers in conversation at that moment when he aimed his weapon at them is simply nonsensical. Whatever else reasonable restraint requires in the use of force, it does not require an officer to wait until he is fired upon before using his weapon.

The use of a Taser or electronic control device was likewise not an option in this case. Such devices carried by some Alexandria officers have optimal range capability of a distance of eight to fifteen feet, and a maximum effective range of twenty five feet. The officer positioned closest to Sellers with adequate cover was slightly over forty-four feet away. To be within range to use a Taser in this case, an officer would have been required to advance toward Sellers without adequate cover and while knowing Sellers possessed a firearm. In addition, police directives (Directive 7.6) explicitly state that such devices should not be used against a person holding a firearm. In short, any attempt to deploy such a device in these circumstances would be contrary to

directives and clearly place an officer at risk of being shot and killed.

Police directives also cover the use of less lethal munitions, which include beanbag rounds, rubber bullets, rubber pellet rounds, foam projectile rounds and wooden baton rounds. Such munitions are designed to incapacitate hostile individuals without causing death; even so, there always exists that possibility even when the munitions are deployed properly. Such weapons are also called Sage Less Lethal Munitions (SLLM). Only officers trained and certified in their proper use may use SLLM. SLLM will not be used in circumstances when the officer believes it is unsafe to approach within the effective range or when there is no cover officer who can use lethal force as protection if needed. Within the past two years deployment of these weapons within the police department has been virtually phased out in favor of Tasers, and very few officers have maintained current certification to use SLLM. On February 18, only one such weapon was deployed on the street and being carried by an officer who was certified and trained to use SLLM. Several minutes after Dunn encountered Sellers, a dispatcher radioed for any police unit with a SLLM weapon to respond. At the time of the incident the one officer on the street certified in SLLM use was unable to arrive at the scene before the shooting took place.

Even if SLLM weaponry had been available, its use under the circumstances of this case would not have been appropriate. SLLM weaponry is not intended to replace lethal force or any other type of force that may be justified under the circumstances that are present at the time. Under the circumstances of this case, officers had no legal obligation to attempt to utilize SLLM. Further, by directive, use of the SLLM is equivalent to use of an impact weapon. In the continuum governing use of force by Alexandria officers, impact weapons are not considered appropriate in response to a display of lethal force by a subject. This weaponry is more commonly employed in situations requiring control of persons who are believed to pose a threat only to

themselves or who do not present the immediate capability to use deadly force. Neither of these circumstances applied in this situation. Finally, while Sellers was within range of SLLM, (officers are trained in firing this weapon at distances of 10, 15 and 20 yards) officers within that distance adjacent to Dunn's vehicle did not have a clear shot at the SLLM recommended target area on Sellers' body. Use of less than lethal force in this case was not legally required or practically feasible.

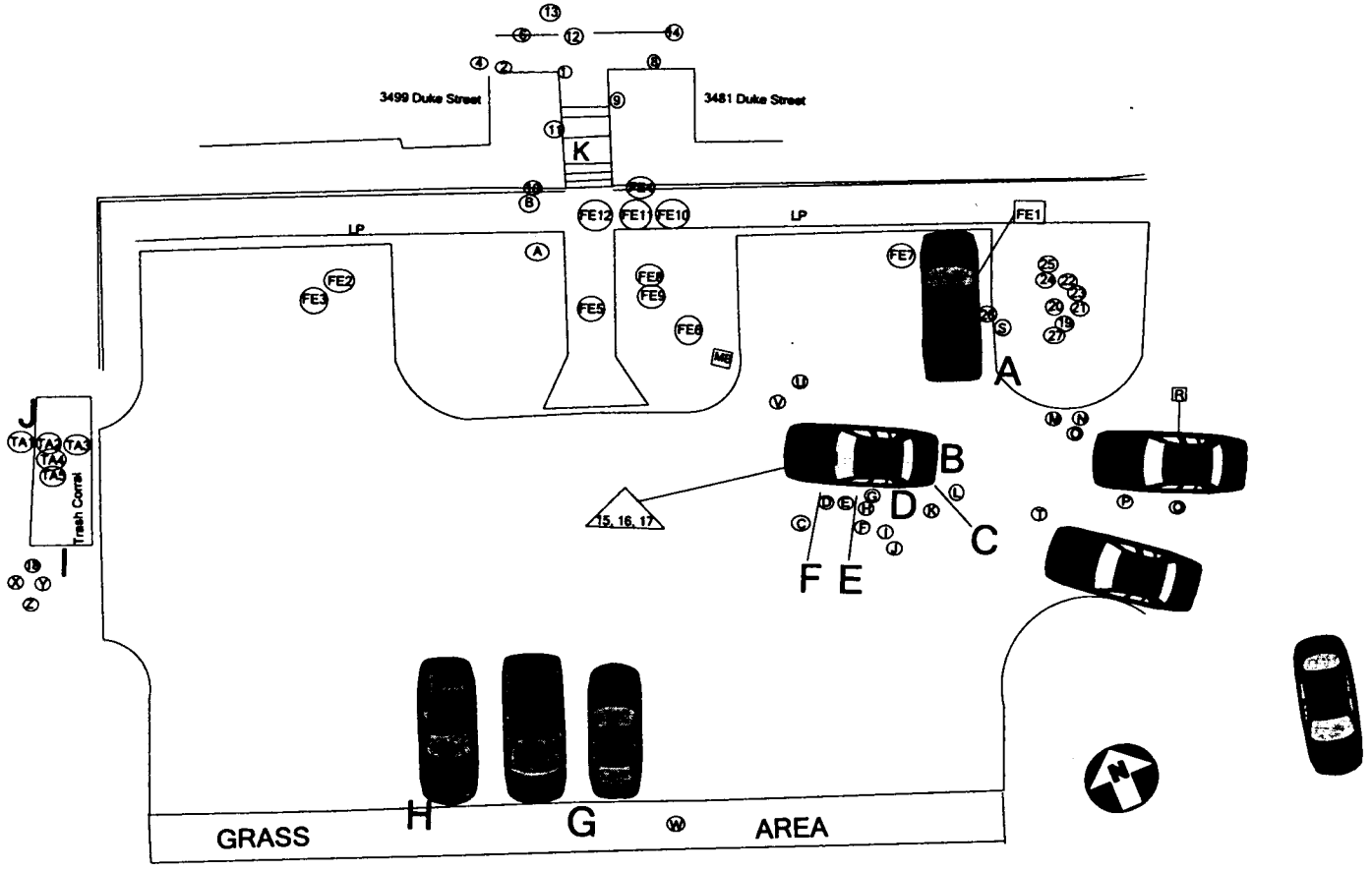
There is no conclusive evidence regarding any motive for Sellers to have acted in the way that he did. Sellers had served honorably in the Marines from 2001 to 2007 and had received extensive training in the use of firearms. He had held duty assignments which included guard duty and security of U.S. embassy property. Several who knew Sellers described his struggle with depression, and earlier on the day of the shooting, at about 1:15 p.m., he had sent an e-mail to friends and family which strongly implied that he was going to commit suicide.[9] Whether or not at the moment before he was shot, Sellers deliberately chose to provoke police officers into using deadly force against him remains unclear. The idea of committing suicide in this manner is based on exploiting procedures that law enforcement officers are trained to use. The most common scenario arises when someone points a firearm at a police officer or another individual which would reasonably provoke an officer to fire in self-defense or in defense of others. It is certainly reasonable, based on his military background, to assume that Sellers understood the likely outcome of pointing a firearm at armed officers. He acknowledged to the first officer he encountered that he had a gun and placed his hand behind his back. To no avail, officers made

[9]When friends and family members became aware of this e-mail, they attempted to reach out for help. When Sellers' girlfriend became aware of this e-mail, she called the police at 1:42 p.m. Officers were dispatched to her residence on Seminary Road at 1:48 p.m., and arrived at 1:59 p.m. By the time officers surmised that this call was possibly related to activity in the 3400 block of Duke Street, Mr. Sellers had already been shot. Officers had been dispatched to the Duke Street call at 1:29 p.m., and Sellers was pronounced dead at about 1:50 p.m.

protracted attempts to defuse the situation short of using force. Ignoring repeated requests by officers to show his hands, discard his weapon and surrender peacefully, Sellers then aimed his gun at officers who reasonably feared for their safety and fired in self-defense. In the final analysis, if Sellers did harbor suicidal ideation at this moment, this certainly adds yet another sad and tragic dimension to this case, but it does not alter what officers saw and acted upon in this situation.

VII. Conclusion

The officers who fired their weapons at Taft Sellers on February 18, 2013, did so in reasonable apprehension of Sellers shooting and killing or wounding one or more of the officers at the scene. Under these circumstances the killing of Sellers by police was a justifiable homicide in defense of self or others, and no criminal charges will be brought against any of the officers involved.



LEGEND
Case Number: 13-106342
Address: 3400 Block Duke Street
Date: February 18, 2013

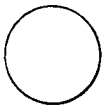
0 25 50

KEY and SYMBOL: See attached page

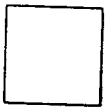
OFFICER LOCATIONS
A: S. Riley
B: B. Maynard
C: D. Barnes
D: O. Dunn
E: J. Hancq
F: J. Panesar
G: C. Stowe
H: A. Gorham
I: H. Richmann
J: T. Ashman

CIVILIAN LOCATION
K: T. Sellers

Case Number: 13-106342
Address: 3400 Blk Duke Street
Date: February 18, 2013

 : Ground

: Elevated

 : Underneath

A	Glock 9mm, Model 19
B	Police Ballistic Shield
C	Nike Glove
D	Nike Glove
E	.223 Shell Casing
F	.223 Shell Casing
G	.223 Shell Casing
H	.223 Shell Casing
I	.223 Shell Casing
J	.223 Shell Casing
K	Shot Shell Casing
L	Glock 40, Model 23 Magazine
M	.40 Shell Casing
N	.40 Shell Casing
O	.40 Shell Casing
P	.40 Shell Casing
Q	.40 Shell Casing
R	.40 Shell Casing
S	Glock 40, Model 23 Magazine
T	.40 Shell Casing
U	.223 Shell Casing
V	.223 Shell Casing
W	.40 Shell Casing
X	.40 Shell Casing
Y	.40 Shell Casing
Z	.40 Shell Casing
1	Federal Premium Shotgun Slug
2	Fragment
3	Hole in door-photo only
4	Fragment
5	Hole in door-photo only
6	Fragment
7	Fragment-photo only
8	Fragment
9	Fragment
10	Fragment
11	Cellphone
12	Fragment
13	Fragment
14	Fragment
15	.223 Shell Casing
16	.223 Shell Casing
17	.223 Shell Casing
18	.40 Shell Casing
19	.40 Cartridge
20	.40 Shell Casing X 2
21	.40 Shell Casing
22	.40 Shell Casing
23	.40 Shell Casing
24	.40 Shell Casing
25	.40 Shell Casing
26	Fragment
27	.40 Shell Casing

TA: "Trash Area"

TA1	.40 Shell Casing
TA2	.40 Shell Casing
TA3	.40 Shell Casing
TA4	.40 Shell Casing
TA5	.40 Shell Casing

FE: "Fresh Eyes Search"

FE1	Fragment
FE2	Fragment
FE3	Fragment
FE4	Fragment
FE5	Fragement
FE6	Fragment
FE7	Fragment
FE8	Fragment
FE9	Fragment
FE10	Fragment
FE10	Fragment
FE11	Fragment
FE12	Shot Shell Wad

ADDITIONAL SCENE DIAGRAM NOTES

1. Items 3, 5 and 7 are fragments which struck the residence at 3499 Duke Street. They are not shown on the diagram but were documented by photographs.
2. Item 11, a cell phone, belonged to Mr. Sellers.
3. The location of item A (Mr. Sellers' weapon) shown on the diagram is the location to which it was moved by police so as to be out of Mr. Sellers' reach.
4. The location marked for Officer Hancq (E) is where he was when he originally arrived on the scene. He left this location to consult with other officers, and when he fired at Sellers he was close to location B.
5. Item L (Glock magazine) was dropped by Officer Barnes.
6. Item S (Glock magazine) was dropped by Officer Riley.
7. Item 19 (40 caliber cartridge) was most likely ejected from Officer Riley's weapon.
8. Item 1 (shotgun round) was ejected from Officer Dunn's weapon when he operated the slide when approaching Sellers after the shooting had ended.
9. Item K is the casing from the shotgun round fired by Officer Dunn, item FE12 is the wadding from the round.
10. The positions of the officers indicated on the diagram approximate their respective locations before shots were fired. Officers were moving and adjusting their positions during the incident.
11. The term "fresh eyes search" means that subsequent to the initial examination of the crime scene, an additional search was conducted in which additional bullet fragments were located. The scene was still secure at that time.