

Report of Charles M. DiChiara

Officer Involved Shooting in Brockton, MA 12/28/2020

Plymouth County District Attorney's Office

Reports and Documents Reviewed

1. All Crime Scene photos from 33 Overlook Avenue-Brockton
2. Doorbell Surveillance Video's (2)
3. Grand Jury Testimony of Moesha Aitken
4. Grand Jury Testimony of Charlene French
5. Grand Jury Testimony of Jodian Allen
6. Grand Jury Testimony of Karla Martin
7. Grand Jury Testimony of Carmeta Murray
8. MA State Police Interview of Brockton Fire Lt. Lee Malafronte
9. MA State Police Interview of Brockton Firefighter Juan Rios
10. MA State Police Interview of Brockton Firefighter Scott Hurst
11. MA State Police Interview of Brockton Officer Ron Cunningham
12. MA State Police Interview of Brockton Officer Isiah Callahan
13. Autopsy Results of Mr. Bryan Cruz-Soto

Expert Opinion of Charles M. DiChiara

I. Qualifications

I am currently the Training Officer/Coordinator for the City of Waltham Police Department, as well as in Instructor-Trainer for the Municipal Police Training Committee. I have been a police officer for over 32 years and I am currently the Lead Defensive Tactics Instructor and Use of Force Instructor, as well as a Firearms Instructor at the Lowell, Randolph, Boylston, Fitchburg State University and Northern Essex Community College Police Academies. I have trained thousands of police officers, including MA Chiefs of Police, and Supervisors in the areas pertaining to Police Use of Force, Deadly Force, Patrol Procedures, Officer Survival, Electronic Weapons, Less Lethal Force and Verbal Defense and Influence. I have been identified as a Subject Matter Expert within the Commonwealth of Massachusetts and currently sit on the Executive Boards

for the Defensive Tactics Committee, the Firearms Committee, and the Patrol Tactics Advisory Board. In 2020 I was named as the Statewide Coordinator for Use of Force following the Police Reform Bill being passed. During the past 20 years I have acted as a Field Training Officer for the department, training new officers as well as being in charge of in-service training for veteran police officers. In 2014 I was a contributing author to the rewrite of the Defensive Tactics Instructors Manual for the Commonwealth of Massachusetts and in 2018 I assisted with the revamping and rewrite of the MPTC's Basic Recruit Academy training program for police recruits in the areas of Use of Force and Arrest & Control. Also in 2014 I attended the Force Science Institute in Virginia to become a certified analyst of human behavior as it relates to use of force events. I am currently employed as an independent consultant and expert witness in police use of force and have reviewed numerous cases involving police use of force and deadly force. I have also reviewed cases involving police misconduct, for both Plaintiff's and Defense, and reviewed cases involving police tactics to determine if they were consistent with law, department policies and police training. Within the Commonwealth of Massachusetts I am currently a court qualified expert witness in District, Superior and United States District Court, as well as the State of Rhode Island. Within the past four years I have testified in the following cases:

***Carli Taylor vs Police Officer Ryan Moore and the Town of Falmouth Police Department. United States District Court case #1:17-cv-1143PBS**

*** Carla Sheffield Personal Representative of the Estate of Ramsey Burrell-White vs Boston Police Officers Mathew Pieroway and Joel Resil. United States District Court case #15-cv-14174-NMG.**

*** State of Rhode Island vs Providence Police Sgt. Joseph Hanley. Case #61-2020-04072**

***Judges Inquest into a deadly police shooting in 2019. The Commonwealth of Middlesex County Honorable Judge Stacey L. Fortes inquest into the death of Alan Greenhough in Reading, MA. Woburn District Court docket #2018INQ001.**

II. Purpose of Engagement for Services

I have been retained by the Plymouth County District Attorney's Office to review the facts and provide expert opinion as to whether the actions of Brockton Police Officer Ronald Cunningham and Isiah Callahan in using deadly force against Mr. Bryan Cruz-Soto were objectively reasonable and consistent with acceptable standards of police policies, practices and training. I am receiving no compensation for my report or my Grand Jury testimony.

III. Methodology in Expression of Opinions

All of the opinions in this report are expressed to a reasonable degree of certainty in my fields of expertise. They are offered in each subject on which an opinion is rendered and presented in a general statement regarding whether the acts of the officer were objectively reasonable and consistent with police policies, practices and training.

IV. Standard of Analysis

My opinions in this case were developed by viewing the facts contained in the provided materials from the perspective of an objectively reasonable police officer confronted with the circumstances as they existed at the time the incident occurred.

V. Incident Synopsis

On the afternoon of Monday, December 28, 2020 at approximately 14:52 hours, Brockton Police Department received an emergency 911 call regarding an ongoing violent domestic disturbance between a male and female at 33 Overlook Avenue, Brockton, MA. During the call it appeared to be chaotic as there was yelling and screaming heard in the background. Officer Ronald Cunningham, a 7 year veteran of the department, was working his 8:00 am to 4:00pm shift and on his lunch break when he cleared to respond due to the nature of the call. Upon parking his marked cruiser two houses down from the reported location, Officer Cunningham approached the front of the home, where he observed an injured female exiting the front door and headed to the ambulance which was already on scene. The female appeared to have been

assaulted and her shirt was ripped open. As medics attempted to treat her she stated "he's in the house wearing a white T-shirt".

At this time a second officer, Officer Isiah Callahan, a 5 year veteran also working the day shift, was just pulling up to the house as well. Officer Cunningham entered the house through the front door, announcing his presence as he walked into the kitchen area. Officer Cunningham stated he observed a male subject look at him, then run towards the kitchen area. As he chased after him, Officer Cunningham attempted to apprehend him by grabbing his shoulders from behind. He stated he then realized the male had a knife in his right hand and was attempting to stab him over his right shoulder. Officer Cunningham was able to avoid being stabbed and disengaged by shoving the subject out the back door, where he fell down the back stairs and landed on his chest. Officer Cunningham stated he continued on down the back stairs where he saw the male sit up, and without the knife in his hand. He stated he saw the knife on the ground directly to his right, so he closed the distance and kicked the subject, in order to create separation and prevent him from grabbing the knife. The attempt was not successful, resulting in the male immediately picking up the knife as he got up. Officer Cunningham then attempted to de-escalate the situation by drawing his firearm, backing up to create distance and repeating verbal commands to "drop the knife". At this point the subject was approximately four feet away from Officer Cunningham and refusing to drop the knife as he continued to come towards him in an aggressive manner, placing the officer in fear of being seriously injured or killed. In response Officer Cunningham discharged his department issued firearm twice in the direction of the armed subject, striking him both times. As the officer reassessed the situation and continue to back up the subject continued forward with Officer Cunningham firing once more as he backed up and fell off of the retaining wall.

Officer Callahan, who was the second officer or backup officer on scene, also fired two rounds from his department issued firearm, in an attempt to stop the subject. When Officer Callahan arrived and was pulling up on scene, Officer Cunningham was already walking inside the front door of 33 Overlook Avenue. Officer Callahan stopped briefly to speak to the three females standing out front, and was advised by one of the females that she had been thrown down

the stairs and choked by the subject. As he was speaking with her he heard what appeared to be a scuffle or struggle inside. Officer Callahan ran towards the kitchen area and towards the back door to assist up the other officer. As Officer Callahan went out the back door he fell down the steps onto his rear, as he heard Officer Cunningham yell that the subject had a knife. At this time he also drew his firearm and ordered him to drop the knife as well. Officer Callahan observed the armed subject advance aggressively towards his partner, and fearing that Officer Cunningham was going to be stabbed, he fired two rounds in an attempt to stop his behavior, striking the subject both times. He stated the subject was 6-7 feet away from him at the time and advancing on Officer Cunningham.

Immediately after the subject, later identified as Bryan Cruz-Soto, was shot, officers summonsed Brockton Firefighters and Paramedics who were already on scene to render immediate trauma first aid. Mr. Cruz-Soto was transported to Good Samaritan Hospital where he died shortly after. The female on scene, Charlene French, was also transported to Brockton Hospital for her injuries.

Analysis

The International Association of Chiefs of Police (IACP) defines "force" as being "the amount of effort required by police to compel compliance from an unwilling individual". Law enforcement officers are taught and trained to make split second decisions on the amount of force that is to be utilized in situations that are tense, stressful and rapidly changing. Law enforcement officers are trained to take action to protect themselves, as well as others; in fact they have a duty to do so. Officers are taught and trained that force should only be used when there is resistance or reasonable certainty of resistance. Officers are to restrict their force to what is reasonable, necessary and appropriate for the safe custody of the arrestee, and for overcoming any resistance that might be offered. In arrest type situations, officers are taught and trained to use force to stop resistance and gain compliance, as well as to stop a subject's assaultive behavior. In immediate defense of life situations, officers are trained to use deadly force in order to stop a subject's deadly

behavior, or potentially deadly behavior. When the subject's behavior ceases, officers are to cease with their use of force.

*As stated by the United States Supreme Court, in *Graham vs 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 judgements in circumstances that are tense, uncertain, and rapidly evolving, about the amount of force necessary in a particular situation."*

The standard for deadly force in Massachusetts is that a person may use deadly force to defend himself, 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. 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.

All officers within the Commonwealth of Massachusetts are trained under the "Totality Triangle" and are taught to respond to both the "risk assessment" of the arena they are operating in, as well as to respond to the "subject's actions". This will assist them in forming the basis for a reasonable officer's response to the situation they are dealing with, and help them make the proper decision on what type of force to utilize.

*In analyzing Officer's Cunningham and Officer Callahan's use of force and whether it was reasonable and appropriate for that particular confrontation on the evening of December 28, 2020 it is to be analyzed with three criteria in mind. First, whether it was within the "objective reasonableness" standard set forth by the United States Supreme Court in the 1989 case *Graham vs Connor*. Second, whether it was within the state guidelines (MPTC Use of Force Model). The MPTC is the Municipal Police Training Committee, the government entity that governs police training within the commonwealth for both veteran officers and recruit officers. Lastly, whether it was within department policy and procedure (Brockton Police Department General Orders). It is furthermore to be analyzed if it is consistent with acceptable standards of police policies, practices and training.*

Under the “objective reasonableness” standard set forth in Graham vs Connor, officers are to be judged from the perspective of a “reasonable officer at the scene”, and it must embody for the fact that officers are often forced to make “split second decisions in circumstances that are tense, stressful and rapidly changing”. We must not judge the officer with the benefit of “hindsight being 20/20” or “Monday Morning Quarterbacking”. We must instead analyze the officer’s decision by “walking in their shoes”. We must judge the incident based on the facts and circumstances that were in front of the officer at the time that they deployed force, not what was later learned. Factors that need to be considered in determining whether the officer’s force was reasonable and appropriate include 1) severity of the crime 2) was the suspect a fight or flight risk, in other words was the suspect attempting to fight, flee or evade apprehension 3) did the subject pose an immediate threat to the officers or others. Another lesser factor to be considered is could the officers have used a less intrusive force option.

In analyzing the actions of Officer Cunningham and Officer Callahan and their application of force, there is nothing that would indicate that they violated the standard set forth in Graham vs Connor.

Officers Cunningham and Callahan in that split second had a life or death decision to make. They felt they were dealing with an extremely dangerous situation and they felt based on all those circumstances in front of them at the time that an officer or possibly an innocent person could have been killed or seriously injured.

Any reasonable police officer, with those facts and circumstances in front of him at that time, would have believed that his life was in peril and would have responded with the same amount of force.

Officer Cunningham was attempting to affect an arrest or apprehend a dangerous person for a violent crime. The crime or call for service was serious enough that although not even dispatched to the scene, Officer Cunningham voluntarily disregarded his lunch break and headed in that direction to assist. The officer was legally there on scene and his role was to protect the victim and place Mr. Cruz-Soto under arrest for a serious crime against a person. The assault(s) that took place at 33 Overlook Avenue were substantial and severe.

It was obvious that Mr. Cruz-Soto was in fact attempting to fight, as he was attempting to stab the officer, as well as evade capture. This was later confirmed by almost all of the witness statements that he was "not going back" to jail. Even when he dropped the knife when Officer Cunningham pushed him through the back door, Mr. Cruz-Soto could have at that point, re-evaluated his situation and surrendered to police. Instead, he again picked up the knife and went towards Officer Cunningham in a menacing manner, creating a substantial risk to the officer. The last Graham factor that needs to be analyzed, is "immediacy of the threat". It is clear that any reasonable officer, placed in the same situation with a similar fact pattern, would believe that Mr. Cruz-Soto did pose an immediate threat to the officers as well as other victims at the scene.

Officer Callahan, as well needs to be analyzed under the "objective reasonableness" standard. He was the second officer on scene, right behind Officer Cunningham. It was clear to him from his observations and statements from a victim out front, that a serious assault had taken place. As he heard his partner, Officer Cunningham involved in some sort of altercation, he entered the home and worked his way through the kitchen to the rear of the house. As he fell down the back steps he was immediately confronted with a deadly force situation, where an armed individual was within feet of another officer, being given multiple chances to drop the knife. Officer Callahan drew his weapon and also gave verbal commands as well, which were met with negative results. As Mr. Cruz-Soto closed the distance, he felt the immediacy of the threat and he also discharged his weapon in an attempt to stop that potentially deadly behavior.

A fourth factor, that is sometimes analyzed as an additional factor, was were there other less intrusive force options that could have been utilized. This scenario which was unfolding on Overlook Avenue was a tense, uncertain situation that was rapidly changing. There was no other force options that could have been utilized in this situation that would have been reasonable and appropriate. For an officer to attempt a less lethal force option in this scenario, would have been putting themselves in serious jeopardy.

In analyzing the officer's use of force under the "totality triangle" and the MPTC guidelines, we must first analyze the officer's "Risk Assessment/Perceived Circumstances". The five levels of Risk Assessment include Strategic, Tactical, Volatile, Harmful and finally Lethal, with Lethal being the least encountered but most serious of the categories. From the officer's incident/arrest reports, as well as the many documents I have viewed in this case, it is evident that this was a clearly a Lethal situation.

After the assessment of risk, the officer must then properly analyze the Subjects Actions portion of the "totality triangle". There are also five levels of subject's actions contained within the MPTC Use of Force Model, starting essentially on whether or not the subject is Compliant or Non-compliant. The five levels are Compliant, Passive Resistant, Active Resistant, Assaultive (bodily harm) or Assaultive/Serious Bodily Harm or Death.

When Officers Cunningham and Callahan got the initial call to respond to 33 Overlook Avenue for a physical altercation and family disturbance, the officers from that point on are taught to begin assessing risk. At a minimum, when officers pulled up to the scene and exited their marked units to a chaotic scene, they were entering into a Harmful situation. Domestic violence is a serious crime that officers often respond to and by their nature, they are both volatile and unpredictable. The officers risk assessment quickly escalated from a Harmful situation to a Lethal situation, once they were confronted in the kitchen with an armed individual who was "not going back to jail". A Lethal situation is best described as a situation that has the potential to cause death or serious bodily injury to innocent persons or the officers themselves.

Once the officers assess the risk of the situation, they are taught and trained to analyze the Subject's Actions. Though the officers were initially dealing with an Assaultive Subject (level IV), that changed and very quickly escalated to an Aggravated Assaultive individual, otherwise known as level V or Assaultive/Serious Bodily Harm or Death subject. This represents the least

encountered, but most serious level of non-compliance that an officer must deal with, as it poses the greatest threat to officer safety.

It appears the officers were professional in their response and properly utilized the Use of Force Model (Continuum), in assessing what level of force they should use for this particular confrontation. The officers reasonably believed they were dealing with a potentially lethal situation and were dealing with a subject that was at the highest level of non-compliance, being an Assaultive (Serious Bodily Injury or Death) individual. Officers are trained that a balanced or reasonable and appropriate response to this type of situation would be to utilize deadly force. Though the sanctity of human life is a core value of all law enforcement agencies, and preservation of life is paramount, officers some times are forced to use deadly force as a last resort. It is clear that the officer's actions were consistent with police practices and training, and it was consistent with how the officers were taught and trained to utilize the Use of Force Model/Continuum during their training at the Police Academy.

After analyzing the officer's use of force under the Graham Standard as well as the Municipal Police Training Committee's Use of Force Model and Totality Triangle, the final phase of the evaluation involves whether the use of force was "within policy". After an extensive review of the Brockton Police Departments Rules and Regulations and General Orders, it is apparent that the use of force was in compliance with those policies. The Brockton Police Department has clearly established rules and guidelines as to when a police officer can use force in performance of his duties, and most of those guidelines are based upon the Federal and State guidelines for use of force. I see no evidence that they violated the department Use of Force Policy including the Use of Deadly force.

9.0 Use of Force Parameters 1.3.2. Brockton Police Department Policy and Procedure state: Officers shall not use deadly force except in situations where the officer reasonably believes that the action is needed to protect himself/herself or another person from imminent death or serious physical injury. The officer will need the following factors: The individual must have the

ability and opportunity to cause a person serious physical injury or death, a life is in jeopardy and no reasonable alternative exists.

Officer Cunningham and Officer Callahan did not violate their policy or their use of force training.

VI. Final Conclusion

The death of any young man, in circumstances such as this, is no doubt tragic. However, the behavior, actions and choices that were made by Mr. Bryan Cruz-Soto on this afternoon, were what set in motion the set of circumstances that resulted in his death. In the totality of the circumstances, Officer Cunningham's life was in imminent danger and he was in danger of being stabbed and killed by Mr. Cruz-Soto who was given multiple chances by the officers to stop. Officer Cunningham drew his weapon, gave verbal commands and ordered him to not pick up the knife. Mr. Cruz-Soto made the conscious decision to grab a knife and try to stab Officer Cunningham, not once but twice, leaving Officer's Cunningham and Callahan with a decision to shoot him or risk being gravely injured. Officer Cunningham fired three rounds and Officer Callahan fired two rounds in defense of life, to a center mass area in order to stop the deadly threat, and preserve Officer Cunningham's life.

It is my opinion that Officer Cunningham and Callahan exhibited professionalism in light of such dangerous circumstances. The officers did not fire an excessive amount of rounds, and even after shooting Mr. Cruz-Soto, they stopped and assessed the situation, rather than continue firing, again giving the subject an opportunity to stop his deadly behavior. The officers did attempt to de-escalate the situation prior to using force, by using distance and space, as well as verbal commands and a display of firearms. Officer Cunningham even tried to use "hands-on" techniques as well as a front kick to stop the initial attack, which is much less force than he was justified to use.

Officers are taught and trained to "shoot to stop", not "shoot to kill". The argument arises as to why officers cannot just "shoot him in the leg", or another extremity. All officers are taught and trained that when they have to shoot in a high stress and dangerous situation, they should shoot to center mass of the

available target, in order to hit what they are shooting at and effectively stop the deadly confrontation. If they shoot for a leg or other area, and miss, then people's lives are in jeopardy. Therefore, officers are trained to shoot for center of available target then reassess, which is what Officer Cunningham and Callahan did in this instance. There is also no guarantee that hitting someone in an area such as the leg or pelvic girdle could not be fatal as well. I have debriefed multiple shootings where a subject or officer was shot in the leg and did not survive and the last two officer involved shootings I debriefed had a suspect shot in the head and survived. The point being, you cannot predict the damage from a bullet or predict the end result. Therefore, officers are taught and trained to hit the center mass area of the person who is exhibiting lethal behavior, in order to stop that behavior and save lives.

In final analysis, the actions of Officer Ronald Cunningham and Officer Isiah Callahan in using deadly force against Bryan Cruz-Soto on December 28, 2020 were well within the standard set forth in Graham vs Connor and well within the guidelines of the MPTC Use of Force Model, to which all of the officers in the Commonwealth are trained. Their actions were consistent with acceptable standards of police policies, practices, standards and training and in compliance with Massachusetts General Laws. The actions of the officers were also in compliance with the Brockton Police Department Rules and Regulations and General Orders.

Respectfully Submitted,

And Signed under the pains and penalties this 11th day of April, 2021

Charles M. DiChiara