

Jennifer Sprague  
Assistant District Attorney  
Office of Plymouth County District Attorney Timothy J. Cruz  
166 Main Street, Brockton, MA 02301

## Use of Force Review

### The Arrest of Thomas C. Murray

As Prepared by:

Cameron Deane  
Cambridge Police Department  
MPTC Level IV Defensive Tactics Instructor – Trainer  
Defensive Tactics Coordinator/Middlesex County  
Certified Force Science Analyst

At the request of Jennifer Sprague, Assistant District Attorney for the Plymouth County District Attorney's Office, I have conducted a complete review of the facts and circumstances surrounding the force deployed by Trooper Steven Buccheri of the Massachusetts State Police (MSP) during the arrest of Thomas C. Murray in the early evening hours of February 16, 2020. Although several other troopers and police officers from the MSP and the Newbury Police Department (NPD) assisted Trooper Buccheri during this incident, this review was conducted with a concentration on the specific actions of Trooper Buccheri. The general purpose of this review was to evaluate, specifically, whether Trooper Buccheri conducted himself in a manner consistent with the training guidelines set forth by the MSP, the Municipal Police Training Committee (MPTC) of Massachusetts, the policies and procedures of the MSP, and legal constitutional standards regarding police use of force. The findings and opinions contained within are not intended to supersede or replace any internal or criminal review conducted by the MSP, NPD, Essex County District Attorney's Office, or the Plymouth County District Attorney's Office. Rather, this review was conducted from the prospective that the Plymouth County District Attorney's Office desires to: **(1)** gain an overall better understanding of the force deployed during this particular arrest and **(2)** provide guidance to help determine if the actions of Trooper Buccheri are consistent with his training and departmental policies regarding use of force. The following is my professional assessment of this incident.

### **Section I: Statement of Facts**

A complete review must begin with an examination of the facts and circumstances surrounding this arrest. To do this effectively and to create a workable timeline of the event, I will be referring collectively to the reports, interviews, pictures, video evidence, audio recordings, and other materials provided to me by the Plymouth County District Attorney's Office. In addition to the informational resources listed above, I independently sought information regarding the suspected criminal activities of Thomas C. Murray, in the form of police reports and Computer Aided Dispatch (CAD) notes, from the North Andover Police Department and the Lexington Police Department.

On February 15, 2020, at 2:20pm, the Burlington Police Department (BPD) responded to a report of a past larceny that occurred at the Burberry store located at the Burlington Mall. Officer V. Costa arrived and spoke to store employees who informed him that approximately three (3) hours earlier, at 11:15am, a male suspect had stolen a jacket from the Burberry store and fled the scene in a black Toyota Camry, NY registration T768907C. A Burberry employee followed the male out of the mall and into the parking lot where he proceeded to take photographs of the suspect's vehicle with his cell phone. He provided Officer Costa with four (4) cell phone photos of the vehicle and both registration plates. Another employee informed Officer Costa that he recognized the male as an employee of the Starbucks store in Middleton and that his name was "Thomas". Officer Costa was eventually able to ascertain the identity of the male suspect as Thomas C. Murray DOB 2/13/89 SS#011720856. He also learned that the vehicle Murray was operating had been reported stolen from LaGuardia Airport in New York on February 13, 2020.

After fleeing from the Burlington Mall, Murray drove to Boston where, according to the Boston Police Department, he abandoned the Camry and subsequently stole or carjacked (unclear in documents provided) a black Infinity, MA registration T88714 from Myrtle Street, Boston.

Later that afternoon, at approximately 3:46pm, the North Andover Police Department (NAPD) responded to the Starbucks Coffee located at 562 Turnpike Street for a reported carjacking. Upon arrival, Officer T. Driscoll was informed a male suspect, later confirmed to be Thomas C. Murray, had carjacked a blue Audi SUV, MA registration 486BF4, that was parked with the motor running in front of Starbucks Coffee. The vehicle contained an adult female sitting in the passenger's seat and a 5-year-old child in the rear passenger's seat. When Murray entered the driver's door of the Audi, he began yelling at the adult female repeatedly to "get out of the car!" The frightened female began to scream. Murray continued yelling at her to "get out", at which time she exited the Audi, immediately opened the rear door, and pulled the child out of the vehicle. She fled, with the child, from the vehicle and ran towards Starbucks. Murray subsequently fled in the Audi northbound on Route 114.

The NAPD investigation revealed that Murray had abandoned the stolen black Infinity (taken during the earlier incident in Boston) near Tripoli Pizza, a business that is adjacent to the Starbucks Coffee. He entered the Starbucks and interacted with the store manager and another employee. Both stated to police that they were very familiar with Murray and positively identified him. The employee also stated that she personally witnessed Murray commit the carjacking.

On February 16, 2020, at approximately 6:00am, Officer W. Theodore of the Canton Police Department (CPD) observed the same blue Audi, still operated by Murray, on Royall Street in Canton. Murray stopped and asked Officer Theodore for directions back to the highway. As he drove away, Officer Theodore queried the registration and discovered it was a stolen vehicle. He attempted to stop the Audi, but Murray accelerated away from him and refused to stop. Officer Theodore pursued Murray onto Interstate 95 (I-95) North, then onto I-95 South. The pursuit was terminated by CPD for safety concerns and information about the stolen vehicle and the pursuit were radio broadcasted to the MSP and the Norwood Police Department.

After avoiding apprehension by fleeing from Officer Theodore in the early morning hours, there was no information concerning Murray's whereabouts for the next several hours. The blue Audi would later be recovered unoccupied in Lexington at approximately 4:43pm, but the Lexington Police Department stated that on February 16, 2020, there were no reported interactions with Murray and no other vehicle thefts were reported that day.

Later that day, at approximately 2:50pm, Murray approached an elderly female's vehicle in the parking lot of 900 Chelmsford Street, Lowell. The elderly female was sitting in the driver's seat of a red Subaru Legacy, MA registration 8MS788, looking at her cell phone when Murray opened the driver's side door and told her, "Hurry up! Get out!" As the elderly female exited the vehicle, Murray grabbed her pocketbook and tried to pull it from her grasp. A brief "tug of war" over the pocketbook ensued before Murray was finally able to pull it away from her and shut the driver's door. He drove off with the Subaru in an unknown direction on Chelmsford Street. Officer J. Moore of the Lowell Police Department (LPD) responded and was able to use an app on the elderly female's cell phone to track the Subaru. The app provided a location of Route 3 North in Nashua, NH. Lowell Police dispatchers then notified the Nashua (NH) Police

Department and the New Hampshire State Police (NHSP) of the carjacking and the location indicated on the cell phone.

At approximately 5:00pm, Murray abandoned the red Subaru at 147 Daniel Webster Hwy, Nashua, NH, in the parking lot of the Tulley BMW of Nashua Dealership. He then entered the dealership and requested to sit in a black 2018 BMW X5M VIN#5YMKT6C58J0Y83672. After an employee informed him the dealership had closed at 4:00pm, Murray continued to insist that they still allow him to sit in the vehicle. Eventually, an employee obtained the key to the BMW, walked outside with Murray, and opened the driver's door for him. As Murray was about to get inside, he suddenly stopped and produced a 5 to 6 inch hunting or "buck" knife with a black handle. He began pointing it at the employee stating, "Give me the fucking keys! Give me the fucking keys!" At some point in the confrontation, the employee stated Murray cut him with the knife, obtained the key to the BMW, and got into the driver's seat. The employee received cuts on his right arm, in the area of the right wrist. This employee then entered the rear seat behind Murray and grabbed him around the neck while other employees began arriving to assist. During the struggle, he stated Murray was "waving" the knife around. In addition, Murray swung the knife at two other employees who were attempting to stop him from taking the BMW, but did not make contact with them. Finally, one of the employees told everyone to back away from Murray, allowing him to leave with the vehicle.

Approximately ten (10) minutes after Murray carjacked the BMW, at 5:20pm, the MSP Station A dispatcher provided the first of several area-wide radio broadcasts in relation to the incident. Trooper S. Buccheri received these broadcasts while patrolling on I-95 North in the area of Georgetown and Rowley. The broadcasts named Murray as the suspect in multiple carjacking incidents that occurred on the previous day (February 15, 2020) and in the carjacking of the red Subaru from Lowell earlier that day. The dispatcher stated that the red Subaru had been recovered at the same dealership from which the BMW had been stolen in Nashua, NH. Information was also provided that Murray had been armed with a knife and injured an employee during the theft of the BMW. The stolen black BMW was identified as a model X5 with no registration plates attached.

In addition to receiving the radio broadcasts from MSP Station A, Trooper Buccheri stated that while working his previous shifts, he had been monitoring reports of multiple carjacking incidents and was aware the suspect in all of these incidents was a person named Thomas Murray.

At approximately 5:53pm, MSP Station A reported that the stolen BMW was equipped with a tracking system and that it was currently traveling at high rate of speed on I-95 North in the Georgetown/Boxford area. Trooper Buccheri, operating a fully marked cruiser, was parked inside the weigh station located on I-95 North in Rowley when he received this radio broadcast. He immediately realized he was in the same geographical area of I-95 as the BMW. He exited the weigh station onto I-95 North and began trying to locate the BMW. While searching for the vehicle, Trooper Buccheri was informed that the BMW had a dealer (paper style) plate on the back with the "Tulley" dealership logo on it.

At 5:57pm, the MSP Station A dispatcher informed all the responding MSP units that the BMW had stopped at 17 Central Street in Byfield (accessible from Exit 55 on I-95). Trooper Buccheri

immediately responded to that location. As he exited the Exit 55 off-ramp from I-95 South onto Central Street, he turned right and slowly rolled his cruiser to the side of the westbound travel lane, just east of the AL Prime Gas Station located at 17 Central Street. He immediately observed a dark colored BMW SUV parked at the first row of gas pumps, located directly outside the front door of the gas station building. Trooper Buccheri stated he clearly observed the BMW logo on the rear of the vehicle, along with a paper dealer plate displaying the "Tulley" dealership logo. The plate was not attached on one side, allowing it to hang down and to the left.

At this time, Sgt. S. Jenkins and Officer B. DiCenzo of the Newbury Police Department (NPD) joined Trooper Buccheri at his location on Central Street, east of the gas station. Trooper Buccheri stated he knew he possessed probable cause to stop the BMW and arrest the operator based on his observations and the information provided by MSP Troop A. That information was that the vehicle was stolen and operator had committed an assault with a dangerous weapon. Sgt. Jenkins and Trooper Buccheri collectively decided they would conduct a felony stop, with Sgt. Jenkins and Officer DiCenzo pulling their unmarked cruiser in front of the BMW while Trooper Buccheri pulled his fully marked cruiser behind it to "pin him in". (*The term "pin [him] in" refers to preventing a vehicle from moving in any direction by placing police vehicles closely in front, behind, or even on the sides if applicable, to restrict continued movement.*) Trooper Buccheri stated that they wanted to prevent the BMW from leaving the gas station and escaping onto the nearby highway (I-95) or any of the surrounding side streets.

As both cruisers entered into the gas station lot, Sgt. Jenkins activated his emergency blue lights and angled his cruiser towards the driver's door and left front tire of the BMW, keeping his cruiser back approximately twenty (20) feet from the BMW. As Trooper Buccheri maneuvered his cruiser in behind the BMW, he stated that he observed one white male occupant (Murray) sitting in the driver's seat with his head tilted back as if he was "sleeping".

Trooper Buccheri, Sgt. Jenkins, and Officer DiCenzo then exited their cruisers. Trooper Buccheri stated he began giving verbal commands, stating multiple times, "Driver, show us your hands. Shut the car off!" Trooper Buccheri observed Murray suddenly sit upright, as if he was "startled", put the vehicle into gear and move forward. Sgt. Jenkins also observed Murray sit up and begin to pull the BMW forward after he appeared to acknowledge the presence of the officers. Sgt. Jenkins stated he believed Murray was attempting to maneuver the BMW around the front of the NPD cruiser because there appeared to be enough room between the cruiser and the fence for Murray to escape. Sgt. Jenkins got into his cruiser and moved it forward to prevent the BMW from getting past, placing the front "push-bumper" into the hinge on the driver's door to hold the vehicle in place. Sgt. Jenkins observed the BMW immediately begin to accelerate forward and backwards multiple times, causing the tires to spin and pushing it further into the NPD cruiser's front bumper and right front quarter panel. He also stated that at some point during the contact between the two vehicles, the driver's side window on the BMW completely broke. After the window broke, Sgt. Jenkins stated Murray began yelling, at least twice, "I have a gun!" Officer B. DiCenzo also stated he heard Murray yell, two or three times, "I have a gun!" Sgt. Jenkins then observed the front wheels of the BMW turn towards the NPD cruiser he was operating. The BMW suddenly accelerated forward, pushing his cruiser backwards and to the side. Sgt. Jenkins responded by accelerating his cruiser back into the BMW to keep it from fleeing.

Trooper Buccheri observed the BMW make contact with the NPD cruiser and the sudden movement of those vehicles "created distance" between his own cruiser and the BMW. Trooper Buccheri observed the BMW pushing the front of the NPD cruiser to the left as it accelerated. He also observed the NPD cruiser pushing back into the BMW to keep it from fleeing. He described it as a "battle" or "demolition derby", stating that he observed tires spinning and he could hear the sound of metal "impacting" and "crunching". Trooper Buccheri then observed the BMW "bounce off" the NPD cruiser, jump forward and strike a metal dumpster. He stated the BMW narrowly missed striking a "collection of propane tanks" located just to the left of the dumpster. These individual propane tanks were located in a larger container up against the fence on the west side of the gas station.

Trooper Buccheri stated he returned to his cruiser, moved it forward, and repositioned it directly behind the BMW again to prevent it from backing up through the "large distance" created during the collision with the NPD cruiser and the dumpster. He then exited his cruiser and approached the BMW on the passenger's side. He stated he moved to the passenger's side of the BMW because it was still "locked" together with the NPD cruiser on the driver's side. Trooper Buccheri stated he kicked the front passenger door of the BMW to get the attention of Murray and get him to stop his actions, but Murray did not respond. Trooper Buccheri continued to give Murray verbal commands, but he was not responding. Trooper Buccheri stated he believed Murray was "fixated" on finding a path of escape, looking around quickly in all directions as if "his head was on a swivel". Trooper Buccheri tried to open the passenger's door of the BMW using the handle, but it would not open. At this time, Trooper Buccheri stated he heard one of the NPD officers state, "He has a gun!" Trooper Buccheri stated he now had his weapon out in a "low ready" position. (*The term "low ready" refers to the firearm held in a manner where it is not at eye level and not purposely pointed at an intended target. The front of the firearm is typically pointed in a downward angle when held in this position.*) He began to back away from the vehicle while observing that the BMW was now in reverse, with the tires spinning under hard acceleration in an attempt to unlock itself from the NPD cruiser.

Trooper Buccheri then observed the BMW abruptly separate from the NPD cruiser. It quickly accelerated backwards, passing within a few feet of Trooper Buccheri and striking his cruiser, pushing it back several feet. At this time, Trooper Buccheri stated he feared for his life. He stated that he believed Murray was now using the BMW "as a weapon" to escape and was going to "kill someone". He also stated he feared for the lives of the NPD officers on scene and the lives of the residents living directly behind the propane container. He believed Murray was intently focused on trying to escape the police, with no apparent regard for the dangers posed by recklessly operating the BMW in close proximity to him, the NPD officers, the propane tanks, and the gas pumps. Lastly, Trooper Buccheri stated he knew that Murray had injured a person with a knife during the theft of the BMW, and now believed Murray possessed a firearm. He stated Murray's current actions provided no indication that he intended to stop his assaultive behavior now or in the future. Trooper Buccheri stated he believed he needed to immediately stop Murray's assaultive behavior and take him into custody so that Murray would not seriously injure or kill someone with the vehicle during his escape, or with a weapon while continuing to commit further crimes.

Trooper Buccheri then fired a single round into Murray's vehicle from his Smith and Wesson MMP .45 Caliber service weapon. That round entered the vehicle through the front passenger's window and struck Murray. The BMW immediately came to a complete stop. Additional officers from the Massachusetts State Police and the Newbury Police Department arrived on scene and helped remove Murray from the vehicle. Sgt. Jenkins, Trooper Buccheri, and other officers provided medical attention for the gunshot wound until EMS arrived. Murray was transported to Anna Jacques Hospital in Newburyport by ambulance and would later be pronounced deceased.

## **Section II: Standards of Reasonableness**

Throughout the history of policing in the United States, jurisprudence has traditionally recognized that police officers, on occasion, must be allowed to use force or the threat of such force to carry out their duties. (The United States (U.S.) Supreme Court specifically stated in *Graham v. Connor*, 109 U.S. 1865 (1989) "*Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.*") Because of this inalienable right that has been given to the law enforcement officer, the U.S. Supreme Court has outlined, through case law, the standards that must be followed by all police officers when any amount of force is deployed under any circumstance. These baseline standards have traditionally assisted police departments in shaping policies and procedures concerning the use of force by officers and are the sole basis of the use of force curriculum for the MPTC in Massachusetts.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the U.S. Supreme Court ruled that police officers do not need to have actual knowledge that a subject possesses a weapon or that an individual intends to resist or assault them, but instead may also rely on other articulable factors and indicators to make a reasonable perception of danger. The Court clearly stated that police officers may use their perceptions of a developing situation, and even act on those perceptions, to protect themselves from potential or actual danger. The Court also stated that officers must specifically articulate the factors and indicators on which they relied when danger was perceived. ("*A perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for [392 U.S. 1, 27] the purpose of prosecuting him for a crime.*" . . . . . "*And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.*" – *Terry v. Ohio*)

The U.S. Supreme Court clarified their position concerning the use of force by law enforcement officers in *Graham v. Connor*, 109 U.S. 1865 (1989) by establishing standards under the Fourth Amendment to determine the reasonableness of any force deployed by an officer in the line of duty. ("*The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.*" – *Graham v. Connor*)

The Court specified that the reasonableness of any amount of force deployed, in any given situation, had to account for the fact that police officers must often make these quick decisions under extremely stressful conditions. Therefore, their actions cannot be judged by those who have the luxury of time to dissect the situation, but rather can only be judged using the perspective of another reasonable police officer faced, in that moment, with the same set of facts and circumstances.

The Court recognized that the amount of force applied in a particular moment may appear unnecessary or even excessive after the fact, but that it does not mean the force used at the moment the resistance was encountered was unreasonable. (*"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 test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application"* . . . . . , *"however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight"* . . . . . *"With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' Johnson v. Glick, 481 F.2d, at 1033, violates the Fourth Amendment. The calculus of reasonableness must embody [490 U.S. 386, 397] allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation"* - *Graham v. Connor*).

In *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court specifically outlined the parameters where police officers may use deadly force for the purposes of apprehending a fleeing suspect. The Court ruled that probable cause of a felony crime, with no other considerations, does not automatically authorize the use of deadly force to apprehend the suspect. Instead, the Court stated that the use of deadly force by law enforcement constitutes a seizure under the Fourth Amendment, requiring officers to satisfy the reasonableness requirements of the amendment when justifying such actions. Therefore, whenever an officer uses deadly force to apprehend a fleeing suspect, they must 1) possess probable cause that the suspect committed a crime that caused or threatened serious physical harm to the officer or another and 2) the subject poses a substantial risk of causing death or serious physical injury to the officer or others if apprehension is delayed. (*"Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where [471 U.S. 1, 12] feasible, some warning has been given . . . . . The Court of Appeals concluded that the rule set out in the Model Penal Code 'accurately states Fourth Amendment limitations on the use of deadly force against fleeing felons.' 710 F.2d, at 247. The relevant portion of the Model Penal Code provides: 'The use of deadly force is not justifiable . . . unless (i) the arrest is for a felony; and (ii) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and (iii) the actor believes that the force*



*employed creates no substantial risk of injury to innocent persons; and (iv) the actor believes [471 U.S. 1, 7] that (1) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or (2) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed." American Law Institute, Model Penal Code 3.07(2)(b) (Proposed Official Draft 1962)."* – Tennessee v. Garner).

**[NOTE]:** The U.S. Supreme Court's ruling in Tennessee v. Garner harmonized the federal guidelines for the use of deadly force by police with the existing Massachusetts state guidelines established eight (8) years earlier by the Massachusetts Supreme Judicial Court (SJC) in Commonwealth vs. Klein 372 Mass. 823 (1977). (*Accordingly, we establish as the law of Massachusetts the rules (in so far as they are material to the instant case [Note 6]) as found in Section 3.07 of the Model Penal Code (Proposed Official Draft 1962).* – Commonwealth v. Klein).

Using the aforementioned case law as a base, the MSP and the MPTC have adopted a use of force model developed by Gregory J. Conner and Dr. Franklin Graves based on a concept known as the Totality Triangle©. This model was developed in 1991 for the United States (U.S.) Federal Law Enforcement Training Center (FLETC). In addition, the International Law Enforcement Educators and Trainers Association (ILEETA) accepted it nationally. The concept of the Totality Triangle© is based on the premise that officers must consider the totality of the circumstances when deciding how much force is reasonable in a given situation. The triangle consists of three (3) categories: perceived circumstances, perceived subject actions, and reasonable officer response. Furthermore, each category has five (5) levels used to assist officers in describing what they perceived, what they observed, and what options may be considered a balanced response to properly address the situation. It is important to note that the Totality Triangle© is simply a model that provides visual guidance of the existing case law to officers and should never be viewed as a use of force continuum. Using this model, officers need not start at the lowest level of force and work their way up to a higher level, but rather may use their perceptions to first select the appropriate entry perception level anywhere within the model, then immediately prepare or deploy a suggested balanced force option. Also, the model has no definitive separations between the levels, indicating that not every situation encountered will fit into a specific level and may have reasonable options on multiple levels. (The colors blend between the levels instead of using lines to separate). In fact, it is quite common for multiple officers involved in a single incident to develop different perceptions of the same incident. These differing perceptions could occur based upon the individual officer's level of training, previous experience, the level of confidence in the officer's own personal skills, and/or the location from where the officer viewed the incident. Therefore, it would not be reasonable to view any one response as wholly appropriate.

Within the Totality Triangle©, officers must base their use of force responses on a concept known as the Control Superiority Principle© in which officers are instructed to achieve a recognized officer advantage, while maintaining a recognized subject disadvantage at all times. Simply stated, for the entire duration of any encounter, a subject should never believe they possess a physical or tactical advantage over the officer on the scene. A recognized officer advantage may be achieved by actions as simple as command presence (stance, appearance, etc.),

verbal commands, or having multiple officers present. It may also be achieved through the threat, or actual use, of force, at which time officers should ensure that the balanced force option chosen is proportional to the threat, yet enough to gain immediate conclusive control of a situation. Officers should constantly strive to maintain a winnable position that allows them to successfully control a confrontation from the outset. A police officer in Massachusetts, while acting under the color of his/her official duties, is not obliged to desist from making a lawful stop or arrest because resistance may be encountered or threatened. They may not only stand their ground, but also may press forward to achieve a lawful objective, overcoming force with force. According to the MSP and MPTC, conclusive control of a situation is achieved when the subject is no longer a threat to the safety of an officer and/or others, or the subject becomes compliant.

The above referenced material has been included in the Use of Force training curriculum approved by the MSP and the MPTC since 1997. It is presented to recruits and veteran officers in the form of printed handouts, lecture, Microsoft PowerPoint presentations, video analysis, and verbal review. (*See Addendum #1 for MPTC Totality Triangle© Model and Addendum #2 for MPTC Use of Force Model and Control Superiority Principle©*)

### **Section III: Assessment**

At approximately 6:00pm on February 16, 2020, MSP Trooper Steven Buccheri, along with two (2) NPD officers, approached a vehicle operated by Thomas C. Murray with the intent of placing him under arrest for the carjacking of a BMW X5M that had occurred approximately 50 minutes earlier in Nashua, NH. Murray was also the named suspect in several other crimes that occurred earlier that day and the day before. During the course of this arrest, Trooper Buccheri eventually discharged his weapon one (1) time into the vehicle. Murray was struck by the single round and later pronounced deceased. As referenced earlier, the case materials provided to me by the Plymouth County District Attorney's Office contained multiple electronic files in the form of videos, photos, audio files, written reports, and interviews. I also independently obtained one (1) police report from the North Andover Police Department. All of these materials were used to assist me in evaluating this incident. Because the sequence of events in the incident has importance, I conducted my assessment by examining each of the case documents individually, then collectively as they related to each part of this incident, starting with Murray's criminal activities on February 15-16, 2020.

Included in the provided materials were several documents and photos depicting Murray's involvement in criminal activities on February 15, 2020. This included the possession of a stolen Toyota Camry (as observed in file marked 2020-106-99\_10 IMG\_8334.jpg, IMG\_14551.jpg), the larceny of a Monochrome jacket valued at \$1790.00 USD (file marked 2020-106-99\_10 IMG\_3465-3469.jpg), and the theft of a motor vehicle in Boston (as observed in file marked 2020-106-99\_10 Burlington PD Report.pdf). Later that day, Murray was positively identified, at the scene, as the perpetrator of a carjacking in North Andover where a blue Audi SUV was taken from a female and a child (as observed in files marked 2020-106-99\_10 Burlington PD Report.pdf/Canton PD Report.pdf, NAPD 20NOH-2389-OF[7831], OIS Newbury Extended – Lt. Benson.wav 2:24-2:59).

On February 16, 2020, a Canton Police officer positively identified Murray, for the second time, as the operator of the stolen blue Audi carjacked in North Andover the previous day. Murray then committed several additional criminal and civil infractions when he failed to stop for the officer in Canton and eluded apprehension in the stolen Audi (as observed in file marked 2020-106-99\_10 Canton PD Report.pdf).

Several hours later, Murray perpetrated another carjacking in the City of Lowell. During this event, he physically assaulted a 74-year-old female, stole a pocketbook from her person, and fled in the victim's red Subaru sedan (as observed in file marked 2020-106-99\_13 Lowell PD report Mary Jo Nispel.pdf, Mary Jo-Lowell PD statement.docx, file marked OIS Newbury Extended – Lt. Benson.wav 00:00-00:07, 2:58-3:08, file marked Nashua PD file #1.pdf pages1-2).

Finally, Murray perpetrated a third carjacking from an auto dealership in Nashua, NH. While attempting to steal a 2018 BMW X5M, Murray threatened and cut an employee with a knife to obtain the keys. He then swung the knife at other employees when they tried to prevent him from taking the vehicle (as observed in file marked 2020-106-99\_23 Nashua PD file #1.pdf page 5 photos 2-4 L-R, file marked 2020-106-99\_15 Tulley BMW-Nashua interview with Joe MacIntosh.m4a 4:27-4:58, 7:09-7:24, 8:44-8:50, 10:53-11:29, 12:35-13:27, file marked 2020-106-99\_23 Corbin Tulley.wmv 8:07-8:32, 10:05-10:30, file marked OIS Newbury Extended – Lt. Benson.wav 3:11-3:18).

Trooper Buccheri stated while working his shifts leading up to February 16, 2020, he had been following the reported sequence of events involving Murray as the suspect. When informed about the carjacking of the BMW in Nashua, NH, the MSP Station A dispatcher reiterated that Murray was not only the suspect in this carjacking, but also the North Andover and Lowell carjacking events. The dispatcher stated that Murray had injured an employee with a knife during the theft of the BMW, and that the vehicle he carjacked in Lowell was also taken by force (as observed in file marked OIS Newbury Extended – Lt. Benson.wav 00:33-00:47, 1:58-2:18, 2:24-3:18, file marked OIS Buccheri part 1- 2-28-20.MP3 13:55-14:05).

Trooper Buccheri acknowledged receiving the aforementioned MSP Station A radio broadcasts. He observed a dark colored BMW SUV, with a paper license plate and the "Tulley" dealership logo on it, in the exact location provided by the vehicle tracking software (17 Central Street, Byfield). Trooper Buccheri knew that Murray was the suspect in multiple felony crimes, including the carjacking of the BMW. He also knew that Murray was accused of using force to commit his crimes, including one victim being physically assaulted and another being injured with a knife (as observed in file marked OIS Buccheri part 2 2-28-20.MP3 01:05-01:20). Trooper Buccheri stated he believed Murray may be in possession of a dangerous weapon based on the information provided. He also perceived Murray to be a dangerous individual because his violent behavior towards others had graduated from physical force to the use of a weapon (as observed in file marked OIS Buccheri part 1- 2-28-20.MP3 13:55-14:05, file marked OIS Buccheri part 2 2-28-20.MP3 01:05-01:35). In my professional opinion, there is overwhelming evidence to support Trooper Buccheri's perception that Murray may be armed and dangerous, and that probable cause to arrest him for one or more violent felony crimes existed at the time the officers approached the BMW.

After observing the BMW in the gas station at 17 Central Street, Trooper Buccheri did not immediately approach the vehicle. Instead, he waited for the arrival of additional officers. When those officers arrived, Trooper Buccheri decided to conduct a “felony stop” to apprehend Murray (as observed in file marked OIS Buccheri part 1 2-28-20.MP3 23:21-23:52, file marked OIS Buccheri part 3 2-28-20.MP3 00:38-1:34). A “felony stop”, also referred to as a “high risk motor vehicle stop”, is a procedure commonly used by law enforcement during the apprehension of a suspect who is located inside a motor vehicle, considered armed and/or dangerous, and is reasonably believed to have committed a felony crime involving the use, or threatened use of violence. The basic intent of a “felony stop” is to maintain a controlled environment that provides officers a tactical advantage during the apprehension of a dangerous suspect, thus reducing the potential risk of harm to the officers and the suspect. These tactics are also designed to mitigate the abilities of a dangerous suspect to harm others or evade arrest. In my professional opinion, given Murray’s recent violent criminal history, Trooper Buccheri’s decision to utilize a “felony stop” while attempting to apprehend Murray was a reasonable and appropriate course of action.

During the execution of the “felony stop”, Sgt. Jenkins of the NPD positioned his black unmarked police cruiser at an angle that faced the driver’s side front door of the BMW. Although there were no police markings on the front or sides of his cruiser, Sgt. Jenkins stated the vehicle was equipped for patrol duties (as observed in file marked 2020-106-99\_4 202099jenkins.MP3) and was similar to a marked police cruiser, with a push-bumper on the front and blue emergency lights. However, instead of an overhead light bar, the blue emergency lights were located in the upper section of the windshield, the front headlight area, the push-bumper, and the front grill area. There were also blue lights located in side rear windows, as well as the top of the rear hatchback door (as observed in file marked 2020-106-99\_14 20200216\_180141.mp4 0:07). Trooper Buccheri then placed his cruiser directly behind the BMW. This vehicle is a fully marked police cruiser, with the words “State Police” printed on both front quarter panels and the rear hatchback door. A clearly visible State Police patch is also located on both front doors. The vehicle colors are standard for marked state police cruisers in Massachusetts, using two-tone dark blue and light blue colors, with a strip of reflective moulding across the front and rear bumpers. There is an overhead emergency light bar on the roof and additional lighting in the front headlight and push-bumper areas. The portion of the gas station where the stop occurred is well lit by overhead lighting in the canopy above the gas pumps, and from the exterior and interior lighting of the gas station building (as observed in file marked 2020-106-99\_19 HAS\_4114-4118.JPG). Given the physical description of both cruisers (as observed in file marked 2020-106-99\_19 HAS\_4199.JPG, HAS\_4116.JPG, HAS\_4294.JPG, HAS\_4301-4333.JPG ) and the overall general lighting of the gas station, I believe it is highly likely a reasonable person would have been aware these vehicles were, in fact, police cruisers.

Trooper Buccheri, and Officer DiCenzo, who both exited their vehicles, were dressed in full police uniforms at the time of the motor vehicle stop. Trooper Buccheri was dressed in the standard MSP winter uniform that consisted of a long sleeve uniform shirt with tie, breech style pants and high leather boots. Officer Dicenzo was in standard NPD dark blue or black uniform pants with matching color uniform jacket or sweater (not clear in video but patches and badge are displayed). Sgt. Jenkins was also in a full police uniform (as observed in file marked 2020-106-99\_14 20200216\_180141.mp4 0:23, 0:25). Trooper Buccheri stated he began to give loud

verbal commands to Murray (as observed in file marked OIS Buccheri part 1- 2-28-20.MP3 28:30-28:36). These commands included statements such as, "Driver, show us your hands! Shut the vehicle off!" He stated Murray did not respond at first, but then quickly sat up and looked around. Murray's state of mind or level of mental crisis during this entire incident, if suffering any signs of crisis at all, remains unknown. Therefore, we are not able to determine with a high degree of accuracy if he immediately recognized the police vehicles next to him and behind him as police cruisers. However, given the known facts, provided through officer statements and corroborated by video evidence, it would be reasonable to conclude that Murray was aware these were police cruisers trying to stop his vehicle and that the individuals on foot near his vehicle were police officers.

During the initial stages of the felony stop, Murray attempted to move his vehicle forward. However, Sgt. Jenkins responded by placing the push-bumper of his cruiser against the driver's door "hinge" section of the BMW to stop it. Trooper Buccheri observed that the BMW began pushing the NPD cruiser. Murray then managed to power the BMW past the NPD cruiser. It suddenly moved forward several feet, striking a red metal dumpster and narrowly missing a "collection of propane tanks" located just to the left of the dumpster (as observed in file marked 2020-106-99\_19 HAS\_4173). These individual propane tanks were in a larger container against the fence on the west side of the gas station. The container was clearly marked with "Blue Rhino" propane signs (as observed in files marked 2020-106-99\_19 HAS\_4173-4179.JPG). Although the left side of the BMW would later become heavily damaged from impacting the NPD cruiser, there was also documented damage to the right front bumper and right front grill that appeared consistent with Trooper Buccheri's observation of an impact with the dumpster (as observed in file marked 2020-106-99\_19 HAS\_4449.JPG). Trooper Buccheri's observation that the BMW struck the dumpster and almost struck the propane container were corroborated through witness statements (as observed in file marked Gas Clerk Interview 01 Track 1.mp3 6:12-6:21, 9:14-9:29) and photographic evidence.

When Trooper Buccheri returned to his cruiser and repositioned it directly behind the BMW, an employee of the gas station began to record the incident with his cell phone. In order to determine the accuracy of video observations in relation to the optics, movement, and speed of an event, the frame-rate of each provided video would have to be known or documented. Any video recorded at frame-rate of less than 30 frames per second (FPS) may leave "information gaps" where available information is not documented. These systems then paste together existing frames to fill those gaps. This can result in uneven playback that may cause visual illusions where objects will appear to move slower or quicker than the actual speed of the object at the time of the recording. The frame rates of the provided videos were not included in the materials. However, based on the manufacturer specifications of the cell phone, it does not appear to be problematic for this review. The Samsung Galaxy Note 9 Model#SM-N960U cell phone video camera used by the employee of the AL Prime Gas Station to capture a portion of this incident has a manufacturer listed FPS rate of 30fps to 60fps.

Another consideration was that the video evidence provided was captured from behind a large glass door with signs and stickers attached to it. This may cause minor focal and/or spatial disparities due to the reflection or refraction of light as it passed through the glass door to the lens of the camera. The stickers and signs on the glass may also cause visual illusions as the

camera attempts to decipher between the visual clarity of objects both near and far away. The result may be that objects further away in the video are, in reality, closer than they appear in the video, while those objects closest to the camera may appear to be further away. The Samsung Galaxy Note 9 camera is equipped with an automatic focus mechanism that may attribute to the occurrence of these visual illusions if they are in fact present in the videos. For the purposes of this review, I believe it is acceptable to account for these potential inconsistencies by simply viewing the relationship between objects at a similar distance from the camera as well as using other aspects of the video as a visual guide (i.e. pavement marks, painted lines, etc.). This would be an appropriate method because the videos provided were only used as supporting documentation for Trooper Buccheri's statements to investigators and not to mathematically calculate precise data.

The next part of the encounter between Trooper Buccheri and Murray requires examining the evidence on multiple layers in order to gain an understanding of what transpired. In evaluating this portion of the encounter, I relied mainly on the cell phone videos and the audio-recorded statements of Trooper Buccheri during his interview with investigators (for easier documentation purposes during this portion of the review, any video evidence obtained from the file marked 2020-106-99\_14 will be referred to by the video file number and time stamp only).

The cell phone video marked 20200216\_180141.mp4 began with Trooper Buccheri repositioning his cruiser behind the BMW after it was already locked together with the front of the NPD cruiser. Officer DiCenzo was visible standing to the left rear of the BMW and a sizable gap appeared to exist between Trooper Buccheri's cruiser and the BMW (20200216\_180141.mp4 0:08-0:18). Trooper Buccheri stated he exited his cruiser and approached the passenger's side of the BMW, drawing his firearm after he believed Officer DiCenzo informed him that Murray had "a gun." Although Officer DiCenzo and Sgt. Jenkins both stated they heard Murray yell, "I have a gun", Trooper Buccheri stated another officer relayed that information to him (as observed in OIS Buccheri part 2 2-28-20.MP3 1:20-1:23). In the video marked 20200216\_180141.mp4, at time stamp 0:22-0:23, an unknown officer can be heard asking, "Do you have a Taser?" That was followed by Trooper Buccheri running between the front of his cruiser and the rear of the BMW, then running towards the front of the BMW on the passenger's side and out of view. Officer DiCenzo was observed moving forward, approaching the rear of the BMW with his firearm in a low-ready position (20200216\_180141.mp4 0:25-0:26). Immediately after Trooper Buccheri moves out of view, the voices of the officers can be heard again, but after exhaustive examination, I was not able determine what was said between them (20200216\_180141.mp4 0:25-0:27). However, the timing of this particular verbal exchange between the officers was consistent with the timeframe Trooper Buccheri recalled hearing Officer DiCenzo state, "He has a gun!" Therefore, the video evidence appeared to support Trooper Buccheri's recollection that information was exchanged at that time and I found no other evidence in the materials provided to discredit his recollection that the information exchanged included the statement, "He has a gun!"

While Murray's vehicle was continuing to strike the NPD cruiser (20200216\_180141.mp4 0:32-0:45), Trooper Buccheri exited his cruiser, drew his service weapon, and began to make his way to the passenger's side of the BMW. In evaluating whether or not it was reasonable for Trooper Buccheri to draw his service weapon, there must be an overall examination of Murray's actions

during this portion of the encounter. Previously, it was determined that Murray had physically assaulted a victim and used a knife to injure another victim. Now, he was actively using his BMW X5M to forcefully strike a police cruiser as a means to escape a lawful arrest. The 2018 BMW X5M has a curb weight listed by the manufacturer as 5,260 pounds. It is powered by an internal combustion engine that is capable of generating a significant amount of kinetic energy (listed at 567 horsepower). This amount of energy can easily move the vehicle from a state of rest to a state of rapid motion. When considering the size and energy generating potential of a mid-sized SUV motor vehicle such as the BMW X5M, it can be determined that Murray's vehicle provided him a tool of mechanical enhancement that allowed him to generate a greater amount of kinetic energy than if he relied on his own muscular strength and abilities. Trooper Buccheri needed to consider the actions of Murray, who had previously committed multiple violent felonies and was striking the NPD cruiser at this time, and weigh that against the amount of force Murray could potentially generate using his vehicle as a mechanical enhancement tool. In my professional opinion, it was reasonable for Trooper Buccheri to perceive the actions of Murray as capable, or potentially capable, of causing serious bodily harm or death if he used his vehicle against Trooper Buccheri, the other involved officers, or any persons in the area. Murray had assaulted a victim with a hand-held dangerous weapon forty (40) minutes earlier, and was now using the force of his vehicle as a weapon to assault the officers. When considering the kinetic energy potential generated by a SUV-type motor vehicle, it would have been reasonable for Trooper Buccheri to perceive serious danger to himself and others if the BMW were to strike the propane tanks or the gas pumps, causing them to rupture. Lastly, Trooper Buccheri believed Murray may still be in possession of a knife and may now possess a firearm. Therefore, drawing out his service weapon would be a reasonable, prudent, and balanced response to this situation. This response would be consistent with MSP and MPTC training, and the MSP Use of Force Policy (MSP UOF-01 Pg. 5).

Next, the BMW began pushing the front of the NPD cruiser to the left as it accelerated forward. The acceleration of the BMW's engine can be heard and the sound of spinning tires and crushing metal were also observed (20200216\_180141.mp4 0:35, 0:38-0:43). Trooper Buccheri then observed the BMW shift into reverse and begin accelerating backwards. Finally, Murray was able to generate enough kinetic energy with the BMW to break free from the NPD cruiser. The vehicle accelerated backwards (southeast) in the direction of the gas pumps, but instead struck the front of Trooper Buccheri's cruiser at an angle, moving it backwards several feet (20200216\_180141.mp4 0:35, 0:43-0:47). Trooper Buccheri believed Murray was so intently focused on escaping that he would have struck the gas pump if the cruiser were not there to absorb the impact (as observed in file marked OIS Buccheri part 1- 2-28-20.MP3 38:30-38:45, file marked OIS Buccheri part 3 2-28-20.MP3 8:10-8:17, file marked 2020-106-99\_19 HAS\_4185.JPG).

At this time, Trooper Buccheri stated he feared for his life. He found himself positioned between the passenger's side the BMW and the wall of the gas station building. He feared that Murray might attempt to escape by backing the BMW through a small gap that now existed between the gas station building and his cruiser. If this happened, Trooper Buccheri believed he would become "trapped" between his cruiser and the wall of the gas station and potentially be struck by the BMW (as observed in file marked OIS Buccheri part 1- 2-28-20.MP3 38:18-39:20).

Trooper Buccheri stated that Murray was continuing to use hard acceleration to maneuver the BMW forward and backwards as he attempted to free it from the NPD cruiser. He believed that Murray, in a desperate attempt to evade arrest, would either accelerate forward and strike the container of propane tanks in front of him, or reverse into the gas pumps behind him (as observed in file marked OIS Buccheri part 1- 2-28-20.MP3 38:18-39:30). Trooper Buccheri stated he feared the officers, and anyone in the residence adjacent to the gas station (located directly behind the propane tanks), were in danger of serious injury or death should Murray strike the propane tanks or gas pumps with his vehicle. During his interview, Trooper Buccheri inferred, but did not explicitly state, why he thought himself or others would be in danger if the BMW struck the propane container or the gas pumps. However, I believe it is basic common knowledge that if a vehicle were to strike a collection of propane tanks or fuel pumps, those objects may become physically compromised and create a significant risk of explosion or fire (as observed in file marked OIS Buccheri part 3 2-28-20.MP3 8:10-8:24).

In addition to those concerns, Trooper Buccheri stated the last location he observed Officer DiCenzo was on foot behind the BMW (20200216\_180141.mp4 0:32). When he observed the BMW in reverse with the engine under hard acceleration and the tires spinning, he feared Officer DiCenzo may be struck by the vehicle itself or injured during a collision with the gas pumps.

Trooper Buccheri stated he believed Murray was not acting rationally and had shown no regard for the safety of the officers or others while operating the BMW. Trooper Buccheri stated that in addition to the dangerous manner in which Murray was operating the BMW, he had information that Murray had injured a person with a knife during the theft of that vehicle. He also knew Murray was the suspect in several recent felonious crimes, during which he was "forcibly taking people's belongings" and "pushing people to the ground" (as observed in file marked OIS Buccheri part 3 2-28-20.MP3 8:24-9:30). There was also new information that Murray may be in possession of a firearm. Trooper Buccheri stated he was concerned that Murray's behavior was becoming increasingly more violent over time. He believed if Murray were to escape, there was a significant risk he would cause serious harm or death to others using the vehicle itself, the knife used during the theft of the BMW, or the alleged gun he now possessed. Trooper Buccheri stated Murray's behavior, combined with his apparent willingness and ability to cause serious harm, constituted a substantial threat to his life, the lives of the other officers, and those who may encounter him in the future (as observed in file marked OIS Buccheri part 3 2-28-20.MP3 8:24-9:30). After considering all of the above information, Trooper Buccheri stated Murray's apprehension could not be delayed any longer and his actions needed to be stopped immediately. He raised his weapon and fired one (1) round into the vehicle, striking Murray in the right shoulder.

Before continuing to analyze the above information, it must be noted that in his interview, Trooper Buccheri suffered an emotional episode while recalling his thought process that led him to discharge his firearm. Through my Crisis Intervention Team (CIT) training, my Force Science Analyst Certification, and the Trauma Informed Police Training Program, I am aware this reaction is a typical response to traumatic memories for an individual that has experienced a traumatic event. At 40:10 on the audio file marked OIS Buccheri part 1- 2-28-20.MP3, Trooper Buccheri experienced what I believe to be the release of emotion commonly associated with encoded trauma. He abruptly stopped his statement and was unable to speak for a few seconds.



As he attempted to compose himself, the interviewer suggested a break in the interview. This common sign of trauma came about as Trooper Buccheri was retrieving his thoughts and actions concerning the discharge of his weapon from his memory.

Trooper Buccheri's emotional reaction during the interview closely resembles what many victims of traumatic events, such as violent crimes or violent sexual assaults, commonly experience. According to Dr. James Hopper, Ph.D. (Harvard Medical School/Trauma Informed Policing Instructor), fragments of a traumatic event are "burned" into a person's memory. They are different from normal memories in that they are "strongly encoded". Even if a traumatic memory fragments during the encoding process, when the victim later retrieves the memories, they are usually accompanied by intense emotions such as fear, horror, and/or pain. According to Dr. Hopper, these emotions can feel just as intense to the victim as they did when the initial event occurred. In many instances, victims of a traumatic, violent crime are not able to provide specific details about facts deemed important by investigators, such as the exact description of the perpetrator or the exact location of certain events. However, they may be able to describe other facts and objects in precise detail because that was their focal point during the traumatic brain encoding process. These concepts of memory encoding and victim reactions to traumatic events were corroborated and reinforced by Dr. David Hines, MD and Dr. Edward Geiselman, Ph. D. during my Force Science Analyst Certification.

Trooper Buccheri specifically stated or inferred on multiple occasions during his interview that he believed Murray was armed and dangerous and that his actions constituted a substantial and immediate threat to his life, the lives of the other officers, and those who may encounter him in the future. When the interview began, Trooper Buccheri provided an initial description of his observations, thoughts, and actions during his confrontation with Murray on February 16, 2020. After he experienced his moment of traumatic emotion and paused the interview, he returned and provided another consistent, but more detailed, version of the events. He also expanded on why he believed Murray posed an imminent threat of serious bodily injury or death to himself and others (file marked OIS Buccheri part 2 2-28-20.MP3, file marked OIS Buccheri part 3 2-28-20.MP3). According to Dr. Hopper, a trauma victim may develop a better clarity of the event after emotionally processing traumatically encoded memories. This is not uncommon and would be consistent with how a victim of trauma may typically recall an event.

In my professional opinion, there is sufficient evidence to support Trooper Buccheri's belief that Murray was using the BMW as a weapon that created a significant risk of serious harm or death to Trooper Buccheri and others. Using the the trauma-based evidence outlined above, I also believe it was highly likely that Trooper Buccheri did legitimately fear for his life and the lives of others when he made the decision to fire his weapon.

#### **Section IV: Conclusion**

On February 16, 2020, Trooper Steven Buccheri of the Massachusetts State Police perceived he was in a life-threatening confrontation with Thomas C. Murray. He also perceived that Mr. Murray would likely cause serious injury or death to others if his apprehension was delayed. Due to a series of rapidly unfolding, complex events within that confrontation, Trooper Buccheri eventually used deadly force to bring conclusive control to the situation. In this review, I

assessed all of the evidence and research in a light most favorable to the deceased, Thomas C. Murray. This was because Mr. Murray was not afforded an opportunity to defend himself against the available evidence and the statements of the officers. By conducting the review in this manner, I reasoned if Trooper Buccheri's actions could be viewed as reasonable and justified using the most stringent standards of evaluation, the results of my review would only be strengthened when compared to the minimum acceptable standards. Conducting reviews in this manner allows for a more stable and solid foundation on which to base my professional opinion.

In the assessment section of this review, it was determined that Trooper Buccheri had legal justification and probable cause to arrest Mr. Murray. Prior to encountering Mr. Murray, he knew that he was the suspect in several recent felony crimes that incorporated escalating violence, the last of which involved the use of a knife to injure an individual. When Trooper Buccheri attempted to apprehend Mr. Murray, he began using his vehicle as a weapon to escape.

It was also determined that Trooper Buccheri was justified in perceiving Mr. Murray as a lethal threat and, as a response, drawing out his firearm. Trooper Buccheri knew Mr. Murray was a violent felon who had recently committed several crimes involving the threatened or actual use of violence. During his most recent crime, Mr. Murray used a knife to injure an individual. When used as a weapon, knives are universally considered capable of causing serious bodily harm or death. Trooper Buccheri also observed the BMW almost strike a container of propane tanks and possibly would have struck a gas pump had it not been stopped by Trooper Buccheri's cruiser. He observed that Mr. Murray was not complying with his verbal commands and was using hard acceleration to move the BMW forward and backwards without any apparent regard for the officers, their cruisers, or the propane tanks and gas pumps located directly in front and behind his anticipated path of travel.

Trooper Buccheri believed Mr. Murray may still have a knife and also be in possession of a firearm. His knowledge that Mr. Murray had not just threatened, but actually used a deadly weapon to injure another, caused him to fear that Mr. Murray would not hesitate to use a knife or a gun to injure his next victim. Trooper Buccheri factored in that Mr. Murray was purposely using the BMW to strike cruisers and other objects as he attempted to facilitate his escape. Based on his previous acts of violence and his current operation of the vehicle, Trooper Buccheri believed Mr. Murray would continue to operate the BMW in a manner that posed significant danger of serious harm to other motorists, pedestrians, or any other person he may encounter if he were to escape.

In addition to the risks created by striking the propane container or the gas pumps, Trooper Buccheri feared for his own life because he found himself positioned between the gas station building and the BMW. He believed Mr. Murray may use the vehicle to strike him or trap him against the building. He also expressed his concern for the life of Officer DiCenzo because he last observed him on foot directly behind the BMW and believed Mr. Murray may strike him while trying to escape. It was also determined that Trooper Buccheri exhibited well-documented signs of experiencing a traumatic event and that it was highly likely he perceived his life and lives of others was being immediately threatened when he made the decision to fire his weapon.

After considering all of the provided information, it is my professional opinion that Trooper Buccheri reasonably believed Mr. Murray constituted a lethal threat to Trooper Buccheri and others. Trooper Buccheri was aware that Mr. Murray had used violence, or the threat thereof, to commit several felony crimes. Mr. Murray eventually resorted to the use of dangerous weapons to enhance his personal kinetic energy capabilities to that which may cause serious physical harm or death. During the carjacking of the BMW, Mr. Murray used a knife to injure a victim. Now he was using a vehicle weighing over five thousand (5000) pounds to enhance his capability to exert life-threatening violence, this time on the officers. If Mr. Murray's operation of the BMW caused it to strike an officer (as Trooper Buccheri feared), it would be reasonable to perceive the resulting harm as serious or life threatening. Furthermore, Mr. Murray's operation of the vehicle created a substantial risk of striking the large container filled with multiple propane tanks and/or the gas pumps. I believe it was reasonable for Trooper Buccheri to perceive the possibility of a resulting explosion or fire as capable of causing serious bodily injury or death to himself or others in the immediate area. Finally, Trooper Buccheri perceived that Mr. Murray's operation of the BMW was becoming increasingly more violent and unpredictable. Trooper Buccheri believed the officers were losing containment of the BMW and there was now an immediate risk Mr. Murray may strike an officer with the vehicle and/or escape. Trooper Buccheri also reasonably believed Mr. Murray may be in possession of a firearm.

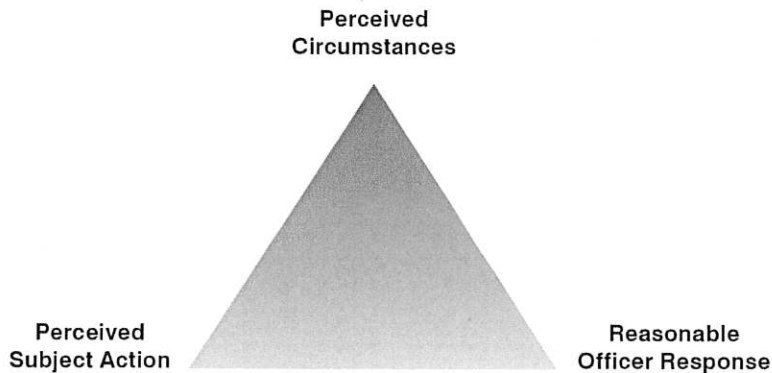
When considering the totality of the circumstances, it is my opinion that Trooper Buccheri reasonably believed there was a substantial likelihood Mr. Murray would cause serious injury or death to Trooper Buccheri and/or others while resisting or evading arrest and/or during the commission of a future criminal act should Mr. Murray successfully evade capture. There is no evidence that Trooper Buccheri and Mr. Murray had any past interactions or knew one another, or that Trooper Buccheri's actions were premeditated in any way. Trooper Buccheri accurately perceived an imminent threat to his life and the lives of others and responded by employing lethal force to immediately and conclusively stop that threat. In accordance with the training guidelines set forth by the MSP and MPTC, an officer who develops a lethal threat perception based off the actions, or perceived actions, of a subject would be reasonable and justified to respond with lethal force to counter that threat.

The MSP's Use of Force Policy UOF-1 contains language and concepts based largely on the referenced case law and the MPTC Use of Force Model training guidelines. After examining the policy, it was also determined that Trooper Buccheri's actions were within the policy guidelines of the Massachusetts State Police as outlined on pages three (3) and five (5).

Therefore, it is my overall professional opinion, given the facts and circumstances surrounding the arrest of Thomas C. Murray, that the force deployed by Trooper Steven Buccheri on February 16, 2020 was reasonable and justified under the legal guidelines set forth by the U.S. Supreme Court, as well as the state and federal training standards set forth by the Massachusetts State Police (MSP), the Municipal Police Training Committee (MPTC) of Massachusetts, the U.S. Federal Law Enforcement Training Center (FLETC), and the use of force policies and procedures of the MSP.

Addendum 1

## **Totality Triangle**



The **Totality Triangle** © depicts the three elements which must be considered in determining whether an application of force was objectively reasonable.

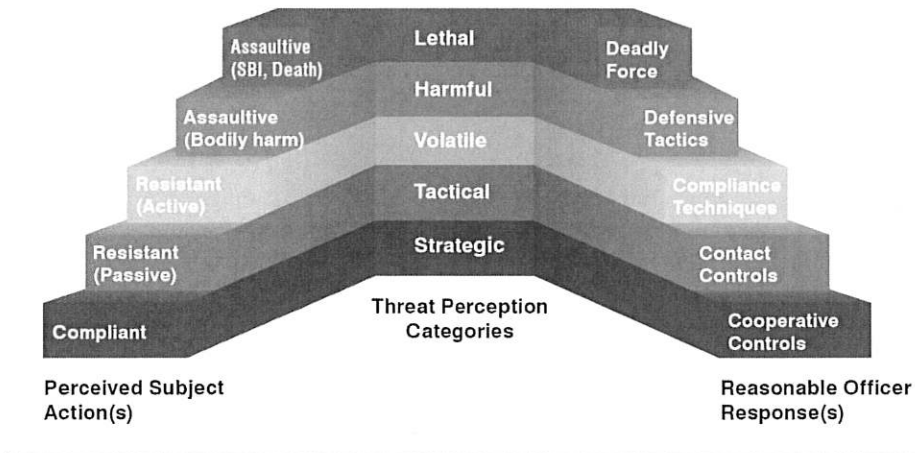
**Perceived Circumstances** - the officer's perspective of the severity of any crime, the existence of an immediate safety threat to the officer or others, and the degree of compliance / non-compliance from the subject; culminating in its identification on the Use of Force Model.

**Perceived Subject Action (s)** - the subject action (s) as perceived by the reasonable officer that designate the subject at one or more of the Use of Force Model's compliant / non-compliant categories.

**Reasonable Officer Response (s)** - the "balanced" response (s) appropriate for the reasonable officer's selection from the Use of Force Model's identified response categories, in order to maintain or gain subject compliance and control.

## Addendum 2

# Use of Force Model



*The Use of Force Model was developed in 1991 by Dr. Franklin Graves, Federal Law Enforcement Training Center and Professor Gregory J. Connor, University of Illinois Police Training Institute.™ 1998, G. Connor. All rights reserved.*

**Threat Perception Color Code** - the tactically applied and color adapted correlation of the Threat Perception Categories on the Use of Force Model.

**Control Superiority Principle** © - the understanding and visualization method utilized to reinforce the inherent principle of officer force superiority over the subject's degree of compliance / non-compliance.

**Assessment / Selection Arrows** - the mechanism utilized to indicate the dynamic nature of an officer's decision-making process of Tactical Transition © during the enforcement encounter.

### Threat Perception Categories

**Strategic** - the broad "mind set" of the officer, represented by the blue baseline on the Threat Perception Color Code©. The contemporary officer must maintain this functional foundation, centered upon strategies designed to enhance the status of safety.

**Tactical** - the second level on the Use of Force Model, depicted by the color green. Here the officer perceives an increase in threat potential within the confrontational environment and tactical procedures are designated and deployed.

**Volatile** - the third level on the Use of Force Model utilizing the color yellow to indicate an activated level of alertness and threat potential. Here the officer is confronted with the presence or potential of critical dynamics, including threat intensity and severity within the enforcement encounter.

**Harmful** - at this level on the Use of Force Model the color orange denotes an accelerated perception of threat directed upon the officer or others. In this regard the officer must deploy initial defensive force in the effort toward eventual subject compliance and control.

**Lethal** - the highest level on the Use of Force Model correlates to the most intense color in the Threat Perception Color Code ©, red. Although this potentially lethal degree of threat is most infrequent, it remains most crucial for the continuation of officer safety and security.

### Perceived Subject Action (s) Categories

**Compliant** - represents the vast majority of officer / citizen confrontations in the form of cooperation and control. Such cooperation is generally established and maintained via cultural acceptance, verbalization skills, etc.

**Resistant (Passive)** - the preliminary level of citizen non-compliance. Here, the citizen, although non-compliant, offers no physical or mechanical energy enhancement toward the resistant effort.

**Resistant (Active)** - the subject's non-compliance is increased in scope and / or intensity. The subject's non-compliance now

includes energy enhanced physical or mechanical defiance.

**Assaultive (Bodily Harm)** - the officer's attempt to gain lawful compliance has culminated in a perceived or actual attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject would not result in the officer's or other's death or serious bodily harm.

**Assaultive (Serious Bodily Harm / Death)** - the officer's attempt to gain lawful compliance has culminated in the perception of an attack or the potential for such an attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject could result in serious bodily harm or death to the officer or others.

### Officer Response (s) Categories

**Cooperative Controls** - include contemporary controls developed to preserve officer safety and security, including:

communication skills, restraint applications, etc.

**Contact Controls** - includes resistant countermeasures designed to guide or direct the non-compliant subject. These "hands on" tactics would include the elbow / wrist grasp, Hand Rotation Position ©, etc.

**Compliance Techniques** - includes resistant countermeasures designed to counter the subject's enhanced degree of resistance. These tactics could include the Hand Rotation Technique ©, chemical irritants, etc.

**Defensive Tactics** - includes assaultive countermeasures designed to cease the subject's non-lethal assault on the officer or others, regain control, and assure continued compliance. These tactics could include baton strikes, kicking techniques, etc.

**Deadly Force** - includes assaultive countermeasures designed to cease an assault which is lethal or could cause great bodily harm on the officer or others. These tactics could include the use of a firearm, lethal strikes, etc.