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**FINDINGS AND CONCLUSION of**  
**Berkshire District Attorney Andrea Harrington**  
**Regarding May 12, 2020 Police Shooting of Kerry P. Robinson**

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Following are Berkshire District Attorney Andrea Harrington's findings and conclusions related to the police-involved shooting of Kerry P. Robinson, age 52 (fifty-two), of Pittsfield. This investigation was undertaken by the Office of the Berkshire District Attorney at the request of the Pittsfield Police Department. Based upon a review of the completed investigation, the Berkshire District Attorney's Office is closing this case and recommends that no criminal charges be filed against any law enforcement officer.

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These factual findings are based on a review of all investigative reports and witness statements. The investigation was conducted by the Massachusetts State Police Detective Unit assigned to the office of the Berkshire District Attorney. The Pittsfield Police Department cooperated fully throughout the investigation.

On May 12, 2020, at approximately 10:53 p.m., Carol Robinson called 911 seeking police assistance for her son, Kerry Robinson (hereinafter "Robinson"), who was angry and destroying

items inside her residence at 12 Glenwood Avenue.<sup>1</sup> Carol Robinson told her son that she had called the police which made him more upset. Pittsfield police officers Arena and Civello were dispatched to respond. Upon arrival, officers heard a male party yelling and smashing items inside. Officer Arena spoke to Carol Robinson, who was standing outside her home in the driveway because she was afraid of her son who was inside. Carol Robinson informed Officer Arena that her son was upset and was inside destroying her home. Officer Arena asked Carol Robinson if her son had taken any kind of substance to which she said it was possible. Officer Arena called for additional officers to assist and proceeded to the front door in an attempt to speak with Robinson. Robinson smashed the front door of the residence with what appeared to Officer Arena to be some type of wooden bat<sup>2</sup> and yelled to Officer Arena, "Come inside and see what happens. I will kill you."<sup>3</sup>

Additional units arrived to assist. Officers Slater and Arena again attempted to speak with Robinson from the front of the residence as well as determine the location of Robinson inside the residence. Robinson continued to yell and smash items inside the residence while still armed with what appeared to be a wooden baseball bat. Robinson again shouted to officers that he had a gun and would shoot the police if they came inside the house. Officers Slater and Arena maintained a visual of Robinson until he went to the second floor of the residence and began destroying items on the second floor. Based upon the threats to kill officers coupled with Robinson's behavior in destroying the residence, as well as the fact that

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<sup>1</sup> 12 Glenwood Avenue is a multi-level residential duplex with number 12 on the right and number 14 on the left.

<sup>2</sup> Police recovered broken wooden table legs during a subsequent search of the residence.

<sup>3</sup> Officer Civello also heard Robinson threatening to kill officer Arena when he attempted to speak with Robinson at the front door. Officer Civello reported hearing Robinson yelling, "Let's go. I will fucking kill you if you come inside. Let's go."

he was armed with weapons, Officer Civello retrieved a less-lethal shotgun<sup>4</sup> from his cruiser. Officer Civello spoke with Ms. Robinson further and asked if her son was in possession of a firearm or if there were any firearms in the residence. Ms. Robinson stated that although she knew him to have had a BB gun years ago, he did not have it with him. Officer Civello also obtained detailed information from Ms. Robinson regarding the layout of the residence.

Sergeant Jacob Barbour arrived on scene and instructed officers to back away from the front door and to set up a perimeter around the residence. Sergeant Barber also retrieved a less-lethal shotgun. In addition to officers Civello and Barbour, who were armed with less-lethal shotguns, Officer Cheryl Callahan retrieved a patrol rifle from her cruiser. Officers positioned themselves in the rear, southeast corner, north side and front of the residence. Officers shut down Glenwood Avenue to the public in order to contain the scene, and requested an ambulance to set up down the street. Officers could hear Robinson continue to yell and the sound of breaking items inside the residence although they were unable to see where he was located inside the residence. At one point Robinson went quiet and stopped yelling and breaking items for approximately ten minutes. Officer Civello, a member of the Berkshire County Special Response Team (BCSRT),<sup>5</sup> was placed in charge of the scene until Sergeant JP Murphy arrived on scene and command was turned over to him. Officer Civello instructed perimeter officers that if they observed any movement or heard any noises to call it in so that all officers would be aware of Robinson's location and actions inside the residence. A cruiser spotlight illuminated the front of the house.

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<sup>4</sup> A less-lethal shotgun utilizes rubber or beanbag-type rounds as projectiles.

<sup>5</sup> BCSRT is a highly trained, specially equipped unit that is tasked with responding to incidents that exceed the capabilities of standard police resources. BCSRT is Berkshire County's special operations or SWAT unit.

Officer Cheryl Callahan, who had known Robinson for years and is trained in crisis intervention, attempted to reach Robinson on his cellular phone to calm him down and defuse the situation. Robinson did not answer the phone. Rather, the phone went to voicemail and Officer Callahan left a message. Officer Callahan also sought the assistance of Robinson's estranged wife by having her call Robinson's cellphone, but it rang once and then went straight to voicemail.

Sergeant JP Murphy, team leader of the Berkshire County Special Response Team, was called at home and requested to respond due to the volatile nature of the scene and Robinson's threats to shoot officers should they enter. Upon arrival, Sergeant Murphy was briefed and took over command of the scene. Sergeant Murphy spoke with Robinson's mother who was sitting in a motor vehicle away from the residence with her neighbor that resided at 14 Glenwood Avenue. They informed Sergeant Murphy that the neighbor's 12 year-old son was inside 14 Glenwood Avenue. The safety and evacuation of the neighbor's 12 year-old son from 14 Glenwood Avenue was a priority. While Sergeant Murphy communicated the plan to evacuate the 12 year-old from 14 Glenwood Avenue with officers who were standing on Glenwood Avenue across the street from the front of the residence, Robinson appeared agitated and aggressive in the front doorway smashing the glass on the door. Robinson exited the house and officers began communicating over the radio, "he's coming out, he's coming out." Officers, including Sergeants Barbour and Murphy moved closer to the front of the residence. Robinson was on the porch moving toward the officers yelling, "Let's go, let's go, let's do this!"

Sergeant Murphy moved closer to Robinson in an attempt to contain him and was positioned between the roadway and walkway. Sergeant Murphy had his department issued firearm drawn. Sergeant Barbour was off to the right of Sergeant Murphy armed with a less-lethal shotgun. Sergeant Murphy could see that Robinson had objects in each of his hands. As Robinson moved closer to the officers, Sergeant Murphy was able to see that the objects in Robinson's hands were a knife and a broken golf club. Sergeant Murphy alerted officers on scene by yelling out, "he's got a knife. He's got a knife." Sergeant Murphy and other officers were yelling commands to Robinson to stop and to drop the knife. Robinson ignored the officers' commands, paused for a moment, and then turned directly to Sergeant Murphy. Sergeant Murphy and Robinson locked eyes. Robinson then charged at Sergeant Murphy while screaming and raising the knife above his head.<sup>6</sup> Sergeant Murphy began walking backwards to put distance between him and Robinson who was still advancing toward him with the knife.

Several officers, including Officers Arena and Callahan who at this time had their department-issued Tasers drawn, and Officer Civello who was armed with a less-lethal shotgun, did not have either enough time or a clear shot to stop Robinson's attack upon Sergeant Murphy. Sergeant Barbour fired several less-lethal rounds at Robinson but was unable to determine if any of them struck Robinson. Robinson, seemingly unaffected by the less-lethal rounds, continued closing in on Sergeant Murphy. As Sergeant Murphy was backpedaling, he lost his footing and fell backwards. At this time Robinson was close enough to Sergeant Murphy that it was inevitable that Robinson would make physical contact with Sergeant

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<sup>6</sup> Several civilian witnesses who were watching the events unfold from a distance described Robinson as charging and rushing at the officers. They indicated that Robinson was running and waving his arms as if he had objects in his hands.

Murphy. As he was falling backward to the ground, Sergeant Murphy fired twice at Robinson. Robinson fell on top of Sergeant Murphy causing his firearm to leave his hand and fall onto the roadway. A struggle ensued with Sergeant Murphy and other officers trying to disarm Robinson of the knife in his hand. At this point officers were unaware that Robinson had been struck by one of the rounds Sergeant Murphy fired at him.

After placing Robinson in custody, police recovered a steak knife with a serrated silver blade and a broken metal golf club from the ground in the area where Robinson was placed into custody. Officer Callahan rendered medical aid to Robinson who had a gunshot wound to his right thigh. Robinson told Officer Callahan to let him die, to which she responded that he wasn't going to die. Officer Callahan asked Robinson if he had taken any drugs that day, to which Robinson responded, "you know I smoke crack and drink alcohol."<sup>7</sup> Robinson stated he hadn't taken anything else.

Robinson continued to be violent and aggressive even after being placed into custody. While being transported via ambulance to Berkshire Medical Center Robinson had to be restrained to stop him from biting an EMT. Berkshire Medical Center staff had to request security assistance due to Robinson being combative. Eventually Robinson cooperated with medical staff and he was treated for his injuries that were not life-threatening. While being treated, Robinson reported to medical personnel that he has smoked crack every day for the last 30 years, and reported that he had consumed about 18 nips earlier in the evening.

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<sup>7</sup> Robinson's medical records from Berkshire Medical Center indicate that he was under the influence of alcohol and narcotics at the time the assault occurred.

Investigators processed the scene immediately after Robinson was taken into custody and transported to the hospital. Physical evidence recovered from the scene included discharged less-lethal shotgun beanbag projectiles, spent casings from the less-lethal shotgun, spent casings from a firearm, a knife, and a fragmented golf club consistent with the reported assault upon the officers and Sergeant Murphy. The inside of 12 Glenwood Avenue was significantly damaged as a result of Robinson's actions. Robinson has been charged with armed assault with intent to murder Sergeant JP Murphy. Additional charges may be pending.

Based upon the facts, and review of controlling law, I find that Sergeant Murphy's discharging of his service weapon was a lawful use of force in self-defense in response to the assaultive and life-threatening behavior of Kerry P. Robinson. I also find that Sergeant Barbour's discharging of his less-lethal shotgun was similarly a lawful use of force in self-defense and defense of another in response to Robinson's assaultive and life-threatening behavior. Officers made several attempts to talk with Robinson and defuse the situation without using force. These attempts were either ignored by Robinson or resulted in his anger escalating. At the point in time when Robinson charged at officers, including Sergeant Murphy, wielding a knife, officers were in a position where they had no alternative but to use force to defend themselves and Sergeant Murphy.

Robinson communicated his intention to kill and inflict physical harm on officers numerous times during the incident when yelling at them that he would shoot and kill them. Robinson's demeanor prior to law enforcement's arrival and during the entire interaction with law enforcement was combative and violent. When Robinson exited his home, he charged at the officers in an aggressive and assaultive manner while armed with a knife and golf club. He

refused to comply with officers' commands to put his hands in the air and get on the ground. Rather, he continued charging at officers, ultimately turning his attention solely to Sergeant Murphy and advancing upon him while armed. Sergeant Murphy's attempt at retreat was unsuccessful when he fell backwards to the ground and was left in a position where he had to defend himself against the impending attack on his person by Robinson.

In Massachusetts, an individual may act in self-defense by using a dangerous weapon likely to cause injury or death where there is evidence that he had a reasonable apprehension of great bodily harm or death and a reasonable belief that no other such means would suffice to prevent such harm. Commonwealth v. Jordan, 464 Mass. 1004, 1005 (2012). The individual must also have actually believed that he was in imminent danger of serious harm or death. Id. A person may not use force in self-defense until he has availed himself of all proper means to avoid physical combat, and must use no more force than reasonably necessary in all the circumstances. Id. A person is not guilty of a crime if he acted in self-defense. See Commonwealth v. Allen, 474 Mass. 162 (2016).

Sergeant Murphy's use of a firearm constituted use of deadly force. Deadly force is defined as force intended or likely to cause death or serious bodily harm. Commonwealth v. Wolmart, 57 Mass. App. Ct. 780, 783 (2003). Such force can be used in self-defense only on a reasonable belief that one is in imminent danger of death or serious bodily harm. Id. In Massachusetts, "deadly force" tracks the definition of a dangerous weapon, which is an instrument likely to produce death or serious bodily injury. Id. The relevant inquiry regarding use of deadly force is what level of force was used, not what the resulting injuries were. Id.



Sergeant Murphy's shooting of Robinson was a legally justified use of deadly force in self-defense. Sergeant Murphy attempted to back up and retreat from Robinson, who was charging directly at him. However, Sergeant Murphy lost his footing and fell backward onto the ground. With Robinson standing over him with a knife in stabbing position, Sergeant Murphy was forced to shoot his service weapon to defend himself from being stabbed by Robinson. Not only was Sergeant Murphy in fear of serious bodily harm or death, the other officers on scene were as well. Any reasonable person in his position would be in such fear.

Massachusetts law further provides that an individual may legally act in defense of another, as Sergeant Barbour did so here. An individual is justified in using force against another to protect a third person when a) a reasonable person in the individual's position would believe his intervention to be necessary for the protection of the third person, and b) in the circumstances as that reasonable person would believe them to be, the third person would be justified in using such force to protect himself. Commonwealth v. Allen, 474 Mass. 162, 168 (2016). The intervening individual must have had a reasonable belief that the third party was being unlawfully attacked, and the reasonableness of the belief may depend on the relationships among the persons involved. Id. at 169.

Sergeant Barbour's use of a less-lethal shotgun constituted non-deadly force because the beanbag pellets in a less-lethal shotgun are specifically used as a non-lethal alternative to ammunition. The right to use non-deadly force arises at a somewhat lower level of danger than the right to use deadly force. Commonwealth v. Pike, 428 Mass. 393, 395 (1998). However, given the facts and circumstances, had Sergeant Barbour discharged his service weapon instead

of the less-lethal shotgun, he still would have been legally justified in doing so because Sergeant Murphy was justified in doing so to protect himself.

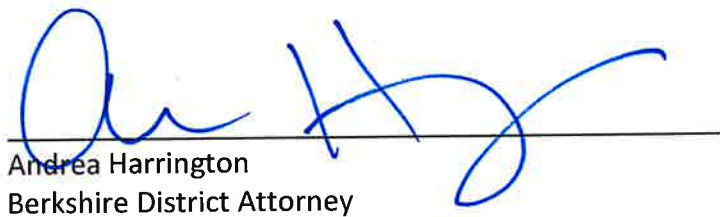
Sergeant Barbour's use of a less-lethal shotgun was a reasonable attempt to disarm and stop Robinson from engaging in further assaultive and dangerous behavior toward Sergeant Murphy as well as all of the other law enforcement officers on scene. A reasonable person would believe that Sergeant Barbour was justified in using such force to protect Sergeant Murphy, and based on his own observations, Sergeant Barbour reasonably believed Sergeant Murphy was being unlawfully attacked. Sergeant Barbour's actions thus constituted defense of another.

When the Commonwealth prosecutes an individual who asserts that he acted in self-defense or defense of another, the Commonwealth bears the burden of disproving such facts beyond a reasonable doubt. Commonwealth v. Allen, 474 Mass. 162, 171 (2016); Commonwealth v. Williams, 450 Mass. 879, 889 (2008). Based upon all of the facts and circumstances in this case, the Commonwealth would be unable to meet such a burden. Rather, the facts and circumstances support the finding that Sergeant Murphy acted in proper self-defense, and Sergeant Barbour acted in proper defense of another.

Considering all the facts and circumstances I have reviewed, I find that the shooting of Kerry P. Robinson was legally justified and necessary in order to ensure the safety of officers on scene. In addition, I find that Sergeant Murphy acted in self-defense when shooting at Kerry P. Robinson. Thus, his actions are legally justified. Sergeant Barbour acted in defense of another, and his actions are legally justified as well.

I want to express my thanks and appreciation to the following agencies: the Berkshire State Police Detective Unit, The State Police Crime Scene Services Section and Firearms Identification Section as well as the forensic scientists attached to the State Police Crime Lab. I would also like to thank the Pittsfield Police Department who cooperated fully as well as the Berkshire Special Response Team, Berkshire Sheriff's Office and other EMS/public safety agencies who responded to the scene and assisted in the investigation. I am also grateful that Mr. Robinson is expected to make a full recovery from his injury.

Having been updated regularly and viewing case related physical, digital, testimonial and medical evidence as well as personally travelling to and observing the scene the night of the incident, I am confident that there has been an objective and thorough investigation into this unfortunate event.



Andrea Harrington  
Berkshire District Attorney