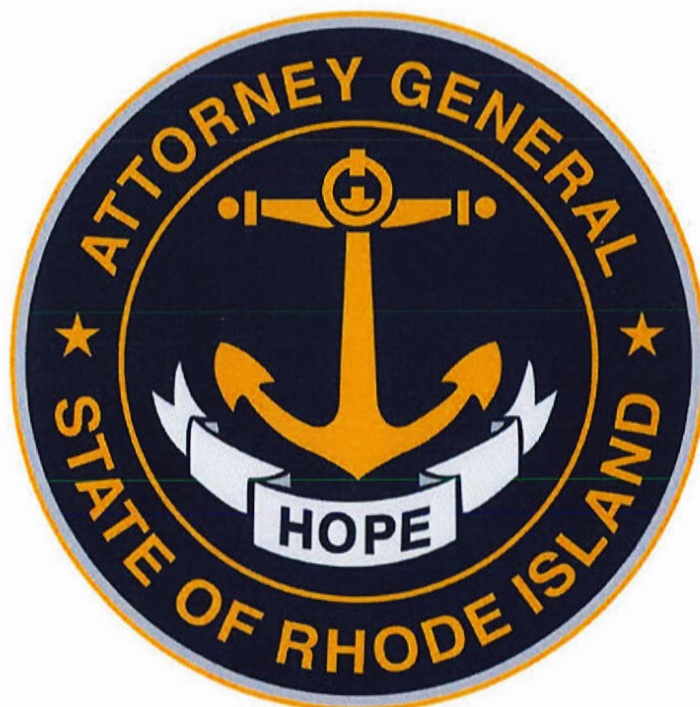


**STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL**

*Peter F. Neronha  
Attorney General*



**INVESTIGATIVE REPORT  
November 29, 2022**

<b>Incident Type:</b>	<b>Officer-Involved-Shooting/Death Resulting</b>
<b>Incident Location:</b>	<b>Lockwood Condominiums, 3524 West Shore Road, Warwick</b>
<b>Incident Date:</b>	<b>November 22, 2021</b>
<b>Police Department:</b>	<b>Warwick Police Department</b>
<b>Officer Involved:</b>	<b>Officer Justin Martin</b>

## SUMMARY OF FINDINGS

The Office of Attorney General has concluded its review of the officer-involved shooting incident involving Officer Justin Martin on November 22, 2021. The investigation was conducted pursuant to the Attorney General's Protocol for the Review of Incidents Involving the Use of Deadly Force, Excessive Force, and Custodial Deaths ("the Attorney General Protocol"), together with the Rhode Island State Police and the Warwick Police Department. Based on this review, we concluded that Officer Martin's use of force was legally justified.

A fulsome account of the investigation may be found in the Rhode Island State Police Report of Investigation and attachments thereto. We lay out here only the facts most pertinent to our conclusion that Officer Martin's discharge of his service weapon resulting in the death of Mr. Frank Nappa during a response to a service call at the Lockwood Condominiums in the City of Warwick on November 22, 2021, was objectively reasonable and necessary under the circumstances.

### Evidence Reviewed

The Attorney General utilized the following investigative materials that were furnished to us by the Warwick Police Department and the Rhode Island State Police:

1. Rhode Island State Police Officer Involved Shooting Investigation Report by Detective Trooper Jeremy J. Gaucher – 48 pages
2. Rhode Island State Police Incident Report 21RIX1-1938-OF – 8 pages
3. Statement of [REDACTED] – 19 pages
4. Statement of [REDACTED] – 29 pages
5. Statement of [REDACTED] – 4 pages
6. Statement of Sergeant Christopher Cote – 8 pages
7. Statement of Sergeant Gregory Johnson – 10 pages
8. Statement of Patrolman Jonathan DiPietro – 20 pages
9. Statement of Patrolman Oliver Pinheiro – 7 pages
10. Statement of Patrolman Brenen Cardoza – 6 pages
11. Statement of Patrolman Joseph DiOrio – 6 pages
12. Statement of Patrolman Gian Micheletti – 15 pages
13. Statement of Patrolman Kevin Warren – 6 pages
14. Statement of Patrolwoman Sara Goes – 8 pages
15. Internal Affairs Audio-Recorded Statement of Patrolman Justin Martin – 49 minutes
16. Statement of Warwick Fire Department Lieutenant Justin Miller – 5 pages
17. Statement of Warwick Fire Department Firefighter Joseph Levesque – 5 pages
18. Handwritten Statement of [REDACTED] – 1 page
19. Handwritten Statement of [REDACTED] – 1 page
20. Handwritten Statement of [REDACTED] – 1 page
21. Audio recording captured by phone of [REDACTED]



22. Rhode Island State Police Forensic Services Report 21-223, dated August 5, 2022 – 22 pages
23. Rhode Island State Police Forensic Services Unit Photograph Disc – 169 images
24. Rhode Island Office of State Medical Examiners Report, Case 21-08716, dated July 27, 2022, autopsy and forensic blood toxicology report for Frank Nappa – 10 pages
25. Warwick Fire Department Rescue Run Report for Frank Nappa – 11 pages
26. Warwick 911 and Dispatch Recordings from November 22, 2021, between 10:37 p.m. and 11:08 p.m.
27. Warwick Police Dispatch Log from 11/22/21 at 10:38 p.m. to 11/23/21 at 3:08 a.m.
28. Warwick Police General Order 300.01 Use of Force Policy – 10 pages
29. Patrolman Justin Martin Patrol Rifle Training Log and course materials – 7 pages

### **Summary of the Facts**

On November 22, 2021, at approximately 10:37 p.m., [REDACTED] called 911 to request a response to her parents' residence, Unit A-115 at the Lockwood Condominiums, 3524 West Shore Road in the City of Warwick. [REDACTED] reported that her father, Frank Nappa, was "really depressed." She further reported that he had been drinking, that his brother had committed suicide almost three months prior, and that he might be trying to do the same. She reported that he had a gun and was "flipping" it over. She gave police her mother's phone number. [REDACTED] was not at her parents' apartment when she made the call, rather she was calling the police as a result of information that her mother, [REDACTED] relayed to her about the situation with [REDACTED] father. In response, officers were dispatched to that location and advised as to Nappa's suspected mental state, drunkenness, and presence of a firearm.

The complex of Lockwood Condominiums is located in the Apponaug section of Warwick. The specific building ("A" Building) where the incident under review occurred is U-shaped and has three floors of residential condominium units. Unit A-115 is on the first (or lower) level of the building and is located in its west wing at the southernmost end of the hallway. Unit A-115 is immediately adjacent to a stairwell that leads up to a landing with an exit door. From that landing, there are stairs that provide access to the floor above.

As the police response unfolded, the officers positioned themselves in the area surrounding Unit A-115. On the north end of the hallway, about forty feet from Unit A-115, were Sergeants Gregory Johnson and Christopher Cote, and Officers Brennan Cardoza, Oliver Pinheiro, Joseph DiOrio, Michael Rocchio and Gian Micheletti. Officers Justin Martin and Jonathan DiPietro originally responded to the north end of the hallway but made a decision to move to a position at the stairwell in south end. They were concerned that Nappa could make use of a back exit, escape and become a threat to additional people. The location in the stairwell was also closer to his apartment, making extraction of the wife in that direction less risky. Sergeant Cote left the north end of the hallway to further secure the perimeter, checking to see if there were any windows to the



apartment to make sure Nappa could not leave without the police knowing. Sgt. Cote made it to the location of Officers Martin and DiPietro.

Firefighters had also entered the building with Sgt. Johnson and staged behind the police officers. Shortly thereafter, police had the firefighters move outside, to the back side of the building to the door that opens from the stairs adjacent to Unit A-115. They were on hand to render immediate medical treatment if necessary. When officers were on the lower level where Unit A-115 was located, their police radios would not work. This caused officers on both sides of the hallway to reposition for transmissions—Officer DiOrio on the north end had to keep running up and down stairs for communication, and Officer Martin had to open the door to the outside on the landing to make radio contact.

There was intermittent phone contact between Warwick dispatch and Mr. Nappa's wife, [REDACTED]. During initial phone contact with the police, [REDACTED] reported that Nappa had the weapon on him and pointed at this throat. She also relayed that the weapon was loaded. During a second call to [REDACTED], dispatch instructed her to leave the Unit. After she exited, Officers Martin and DiPietro called her up to them on the steps. She complied. Officer DiPietro described her as intoxicated—to the point where he could barely understand some of the things she was saying. Officer DiPietro exhorted her to move up the stairs to the next level. Officer Martin put questions to her: "Is there anyone else in the apartment?"; "Does he have the gun?"; "Where in the apartment is he?" She responded in the affirmative, that he did have the gun, that there was no one else in the apartment, and that he was probably 15 or 20 feet inside the apartment and possibly in a recliner. Officer Martin recalls [REDACTED] saying that Mr. Nappa was loading the weapon.

Sergeant Johnson reported that the door to Unit A-115 opened and Mr. Nappa came out, brandishing what appeared to be an M-4 or semiautomatic rifle. To Sergeant's Johnson's view, the weapon was not pointed in the officers' direction but rather pointed straight at the wall as he came out of the door. Sergeant Johnson reported calling out to Mr. Nappa that they were the police and to drop the weapon. At that time, Mr. Nappa turned with the weapon pointed in the direction of the officers at the north end of the hallway. The officers dove back behind the wall to take cover, and Mr. Nappa backed up into the unit.

Moments later, the unit's door opened again, and the officers who were holding at the north end of the hall again yelled to Mr. Nappa to "drop the gun, put it down." He appeared to be shouldering the gun this time (i.e., holding it up). The officers stopped shouting and the door slammed. Within a few seconds, the door opened a third time, and on this occasion, Officer DiPietro could see Mr. Nappa with a rifle. Officer DiPietro shouted "put it down, put it down." Mr. Nappa turned and made eye contact with DiPietro. He then started coming towards Officers DiPietro and Martin and his wife, [REDACTED], with the rifle. Sgt. Johnson observed that Nappa was heading up the stairway and had the weapon pointed up with the buttstock between his side and his biceps and left hand on the foregrip of the rifle. As Mr. Nappa ascended two or three steps up the stairs, his wife, [REDACTED], was attempting to make her way down the stairs as if to talk to



him. Officer DiPietro pushed her back. From Officer Martin's vantage point, as Mr. Nappa took the first step up the stairs, he began to turn his weapon towards both Officers Martin and DiPietro. Officer Martin estimated the distance between Nappa and him to be 10 - 15 feet. Officer Martin aimed and fired two shots. As a result, Nappa fell to the floor, face down, facing away from the officers, with the rifle at his feet.

Following the shooting, Sgt. Cote requested that Officer Martin cover him as he made his way down to Nappa. Sgt. Cote seized Mr. Nappa's weapon and gave it to Officer Cardoza to make it safe. Cardoza satisfied himself that there was no round in the chamber. There was no ammunition or magazine seized with the weapon by the State Police. It was identified as a HI-Point 9mm carbine rifle, serial number B74275. It was test-fired by the State Police and found to be operable and without malfunction.

At the time of this incident, Officer Martin had approximately six years of experience as a police officer, including time with the South Kingstown Police Department. He was equipped with a Ruger AR-556 semi-automatic rifle, and was the only officer on scene with a patrol rifle. That rifle had no special modifications to it.

A canvass of neighboring units by police yielded statements from three residents. [REDACTED] of Unit [REDACTED] had been asleep and awakened by loud banging in the hallway. He recalled hearing "Police! Open up" and "put your hands up." [REDACTED], resident of Unit [REDACTED], could hear police officers outside his door ordering a suspect to drop his weapon multiple times. He heard two shots and additional orders to drop the weapon. [REDACTED] in Unit [REDACTED] reported hearing gunshots and yelling, but she did not remember anything specific.

Rhode Island State Police handled the evidence collection and processed the scene in the aftermath of the shooting. During a search for evidence, two cartridge cases were seized from the threshold area of the exterior door to the landing and stairwell where Officer Martin was when the shots were fired. One was located immediately outside the metal threshold of the door, and the second one was located behind that door in its opened position, covered under leaves.

An autopsy was conducted on the body of Frank Nappa by Dr. Patricia M. Ogera, M.D., of the Rhode Island Office of State Medical Examiners. Her examination found two gunshot entrance wounds of the torso. One was of the right chest, and the other was of the mid chest. In anatomical location, the gunshot wound of the right chest was thirteen and three-eighths inches below the top of the head and four and three-quarters inches right of the anterior midline; the gunshot wound of the mid chest was fifteen and three-fourths inches below the top of the head and seven-eighths of an inch left of the anterior midline. The resulting wound paths were described as being front to back, right to left and downward. Dr. Ogera concluded that these gunshot wounds of the torso caused the death of Mr. Nappa, and she classified the manner of death as homicide. Forensic toxicology analysis of Mr. Nappa's blood revealed the presence of 311 mg/dL of ethanol as sampled from the vitreous humor and 297 mg/dL of ethanol as sampled from the femoral blood. This places his blood alcohol content at approximately four times the .08 DUI limit. Also found were 49 ng/mL of Bupropion (Wellbutrin—antidepressant),



75 ng/mL of Hydroxybupropion (active metabolite of Bupropion), and 188 ng/mL of Citalopram/Escitalopram (Celexa/Lexapro—antidepressants).

### **Applicable Law**

“A police officer’s use of deadly force is deemed a seizure under the Fourth Amendment, and such an extreme action is reasonable (and, therefore, constitutional) only when ‘at a minimum a suspect poses an immediate threat to police officers or civilians.’” McKenney v. Mangino, 873 F.2d 75, 81 (1st Cir. 2017). In determining whether the use of deadly force was objectively reasonable or, alternatively, excessive force, we begin with the Fourth Amendment. Graham v. Connor, 490 U.S. 386, 395 (1989) (“all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard”).

The Fourth Amendment instructs that the *degree* of force law enforcement officers are permitted to use must be “objectively reasonable” under the totality of circumstances. Tennessee v. Garner, 471 U.S. 1, 8-9 (1985). Relevant facts include “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 or attempting to evade arrest by flight.” Graham, 490 U.S. at 396. An officer is entitled to act in defense of himself or others “[w]here 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.” Garner, 471 U.S. at 11. This is especially true where a weapon is involved: “. . . 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 feasible, some warning has been given.” Id.

The reasonableness of an officer’s 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.” Graham, 490 U.S. at 396. The Supreme Court has held that the determination of reasonableness must allow “for the fact that police officers are often forced to make split-second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” Graham, 490 U.S. at 396-97. Critically, the reasonableness inquiry is an objective, not a subjective, one. The “question 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.” Id. (emphasis added).

### **Analysis**

Reviewing the facts of this matter under the applicable law, we conclude that Officer Justin Martin’s use of deadly force was objectively reasonable and necessary in the context of the threat presented. Under the circumstances, it was objectively



reasonable for Officer Martin to believe that deadly force was necessary to protect himself and others from the imminent threat posed by Mr. Nappa who was himself armed with a semi-automatic rifle.

Officer Martin was part of a team of nine officers from the Warwick Police Department who entered the Lockwood Condominiums in response to a call from Mr. Nappa's daughter. She reported that her father was depressed, had been drinking and had a gun. This report was corroborated by Mr. Nappa's wife immediately after she successfully exited the apartment and met with officers outside. With officers positioned at both ends of the hallway of the unit where Mr. Nappa resided, the situation was one of extreme danger and unpredictability. The hallway and staircase at the end were narrow, offering little cover and little opportunity for egress. There were multiple residents in surrounding units. Officers observed Mr. Nappa exit his apartment three times with the rifle. They made multiple attempts to warn him of their presence and to direct him to drop his weapon – to no avail. Not only did Mr. Nappa fail to disarm himself, the third time he left the apartment he proceeded up the stairway towards Officer Martin, Officer DiPietro and his wife [REDACTED] while holding his rifle pointed in their direction. Only at that point, with Mr. Nappa beginning to make his way up a stairwell towards officers and disregarding commands to put down his firearm, did Officer Martin fire the two fatal shots at him.

Based on measurements taken at the scene by the State Police, Mr. Nappa would have been 12 feet or less from Officer Martin at the time Officer Martin fired his shot. This scenario compelled Officer Martin to reasonably conclude that Mr. Nappa posed an immediate threat of death or serious bodily injury to Officer Martin and the others assembled at the scene. Even if it was possible for Officer Martin, Officer DiPietro and [REDACTED] to safely retreat (an assumption that we believe is not supported by the physical layout of the location), it would not have been reasonable to allow Mr. Nappa to escape while armed. Mr. Nappa was reportedly intoxicated and mentally unstable. Lockwood Condominiums is a densely inhabited residential development. Thus, Mr. Nappa's continued armed presence there presented an imminent threat to the officers, rescue personnel, and neighbors. While Mr. Nappa's seized weapon was ultimately found to be without ammunition, neither Officer Martin nor the other officers on scene could have known that fact. It was reasonable for Officer Martin and the other officers to believe that the rifle was loaded, especially in light of [REDACTED] Nappa reporting that Mr. Nappa loaded the weapon.

### CONCLUSION

The use of deadly force by law enforcement, by its very nature, is an extremely serious event which demands close scrutiny. This is all the more so where the use of force results in the taking of a life, as it did here. The death of Mr. Nappa under these circumstances was tragic and regrettable. However, our review leaves no doubt that Officer Martin's conduct was legally justified. Mr. Nappa knowingly approached law enforcement with a semi-automatic rifle, having disregarded repeated warnings to disarm. With little room to maneuver or take cover in the narrow stairwell of Lockwood

Plaza and facing an imminent threat to himself and others, Officer Martin discharged his department-issued rifle twice, killing Mr. Nappa. Based on our review of the evidence under the applicable legal standards governing use of deadly force set forth above, Officer Martin's use of deadly force was objectively reasonable and necessary. This matter is therefore closed.

PETER F. NERONHA  
ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read "John E. Corrigan", written over a horizontal line.

John E. Corrigan, Esq.  
Assistant Attorney General