STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

Peter F. Neronha
Attorney General

INVESTIGATIVE REPORT
May 23, 2023

Incident Type:	**Officer-Involved-Shooting**
Incident Location:	**99 Veterans Memorial Drive, Warwick, R.I.**
Incident Date:	**January 14, 2022**
Police Department:	**Warwick Police Department**
Officer Involved:	**Sgt. Walter Larson, Officers Michael Bailey, Jessica Masso and Oliver Pinheiro**

SUMMARY OF FINDINGS

The Office of the Attorney General has concluded its review of the officer-involved shooting incident involving four Warwick Police officers on January 14, 2022. 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 the force used by the officers was legally justified.

A complete account of the investigation may be found in the Rhode Island State Police Report of Investigation and attachments thereto which will be forwarded to Warwick Police under separate cover. We lay out here only the facts most pertinent to our conclusion that the officers' discharge of their service weapons was objectively reasonable and necessary under the circumstances.

EVIDENCE REVIEWED

1. Rhode Island State Police Investigative Report (52 pages)
2. Rhode Island State Police Incident Report (8 pages)
3. Narrative of RISP Det. Robert J. Hopkins (1 page)
4. Narrative of RISP Sgt. Marc A. Alboum (1 page)
5. Warwick Police Arrest Report (4 pages)
6. Narrative of Warwick Det. Terence R. McMullin (1 page)
7. Supplemental Narrative of Warwick Det. Terence R. McMullin (1 page)
8. Narrative of Warwick Det. Matthew T. Smith (1 page)
9. Supplemental Narrative of Warwick Det. Matthew T. Smith (1 page)
10. Supplemental Narrative of Warwick Det. Roger J. Courtemanche (2 pages)
11. Supplemental Narrative of Warwick Off. Bruce D. Law (1 page)
12. Supplemental Narrative of Warwick Off. Michael Rocchio (1 page)
13. Supplemental Narrative of Off. William R. Holz (1 page)
14. Warwick Police Radio Recordings
15. Warwick Police Headquarters Surveillance Video (5 views)
16. Affidavit from E-911 (1 page)
17. Warwick Police Crime Scene Entry Sheet (3 pages)
18. Warwick Fire/EMS Incident Report (5 pages)
19. Warwick Police Use of Force Policy (11 pages)
20. Firearm Qualifications for Warwick Police Officers Involved (4 pages)
21. Taser Qualification for Off. Andrew Distelhurst (7 pages)
22. Off. Distelhurst's Taser Functionality and Use Log (11 pages)
23. Jacob Thomas Criminal History and DMV Record (11 pages)
24. Jacob Thomas Warwick Police Contacts (18 pages)
25. Rhode Island State Police Forensic Services Unit Report (26 pages)
26. Rhode Island State Police Forensic Services Unit Photographs (714 images)

27. Rhode Island State Crime Lab Reports (7 pages)
28. Statements/Transcripts[1]
    a. Warwick PD Sgt. Charles Austin (10 pages)
    b. Warwick PD Off. Michael Bailey (70 pages)
    c. Warwick PD Lt. John Curley (10 pages)
    d. Warwick FD Ff. Nikolas Degiulio (6 pages)
    e. Warwick PD Off. Andrew Distelhurst (33 pages)
    f. Warwick PD Sgt. Walter Larson (49 pages)
    g. Warwick PD Civilian Krisann MacPhee (36 pages)
    h. Warwick PD Off. Jessica Masso (29 pages)
    i. Warwick PD Off. Frank Montanaro (11 pages)
    j. Warwick PD Off. Oliver Pinheiro (46 pages)
    k. Warwick PD Off. Jake Reddy (10 pages)
    l. Warwick PD Off. Jonathan Reef (11 pages)
    m. Warwick FD Rescue Lt. Matthew Wood (10 pages)

SUMMARY OF THE FACTS

On Friday, January 14, 2022, at about 4:20 p.m., Jacob Thomas arrived at the Warwick Police Station at 99 Veterans Memorial Drive, Warwick. He parked his vehicle in the parking lot facing the main entrance of the station and exited the car. Before proceeding to the station, he got down on both of his knees next to his car and appeared to be praying. One of the five surveillance cameras at the station which is directed from the station entrance into the parking lot and front plaza clearly shows Thomas' movements at this time. After just a few moments, he comes to his feet and walks towards the main entrance of the police station. Officer Jonathan Reef, who had just finished his shift, observed Thomas in the parking lot and thought he looked suspicious. Reef proceeded to his truck but didn't leave the parking lot because he "felt like something was up." He, too, is captured on the surveillance camera walking past Thomas and then remaining in his car.

Thomas entered through the main entrance and paced around the lobby of the station. After two minutes, the two surveillance cameras in the lobby show him leaving the station without speaking to anyone including the receptionist, Krisann MacPhee, who sat behind a glass enclosure immediately to the left of the entrance. She saw Thomas come in and walk around, but she did not take more than a passing notice of him. Upon exiting the station, Mr. Thomas meandered around the benches outside the entrance for approximately one minute before re-entering the building through the

[1] Officers Bailey, Distelhurst, Masso, Pinheiro and Sgt. Larsen were compelled to give statements after being advised of their rights under Garrity v. New Jersey, 385 U.S. 493 (1967). As the investigation into this matter progressed, all five of these officers, through counsel, waived their Garrity rights and agreed to make their statements available to investigators.

same door. Again, he mulled around the front of the police station lobby without addressing anyone.

Within thirty seconds of Mr. Thomas' return to the lobby, Sgt. Walter Larson and five other police officers completed roll call. Normally, roll call occurred in the secure area of the station behind a locked door, but due to Covid restrictions, roll call was held in the Community Room.[2] The Community Room's double-doors open into a small hallway within just a few feet of the front lobby.

Before walking through the double-doors and into the lobby, some of the officers took note of Mr. Thomas'[3] presence through the windows of the Community Room doors. Officers saw Thomas standing near the secure entrance at the far end of the lobby. He was looking around, talking to himself and "moving his fingers" as you would "before you get ready to fight someone." Sgt. Larson saw him as well and decided to address him and find out what he needed.

Sgt. Larsen exited the Community Room with Officers Bailey, Masso and Pinheiro behind him. Larson walked in Thomas' direction and said, "Hey sir. What's going on?" Thomas turned around and immediately lifted his right hand over his head, exposing a knife which was raised in a threatening manner. The folding knife in Thomas' hand measures about six inches in total length with a two-and-a-half-inch blade. Measurements completed after the incident put Sgt. Larsen approximately twenty feet from Thomas at this time.

Thomas is visible in the surveillance footage raising his hand with the knife protruding from his fist and then running for the officers entering the small hallway. As he charges towards the officers exiting the Community Room, he goes out of view of the cameras. According to the officers on scene, Thomas charged the officers, who were tightly packed in the hallway, while yelling "kill me" repeatedly. All four of the officers saw Thomas' violent actions and made some effort to back up in the face of his threats. At this moment, Larson, Masso and Pinheiro were outside the Community Room in the small hallway. Bailey was still just inside the Community Room's open door. The adjacent hallway is a very compact area as it measures approximately 12 feet by 9 feet. Additionally, the doors from the Community Room open into the hallway thereby further restricting the officers' movements.

Sgt. Larson took a step back towards the nearby stairwell and commanded Thomas to stop and drop the weapon. His commands had no effect on Thomas. According to several of the officers on scene, Thomas initially appeared to focus on attacking Sgt. Larson, but when Larson retreated towards the stairwell, he adjusted his focus onto Officer Masso.

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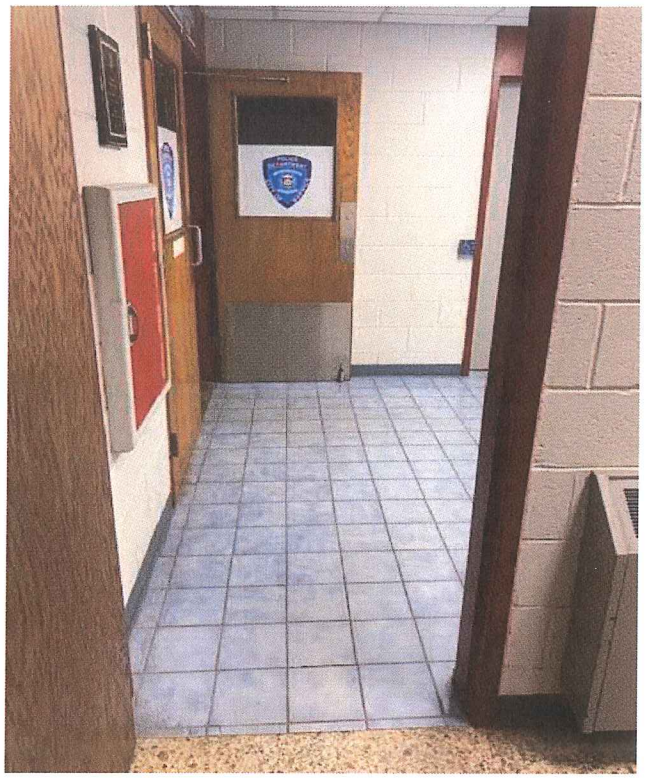
[2] The evidence suggests that Mr. Thomas knew that officers would be exiting roll call from the secure area of the station as that is the area where he was waiting/loitering and focusing his attention when the incident began.

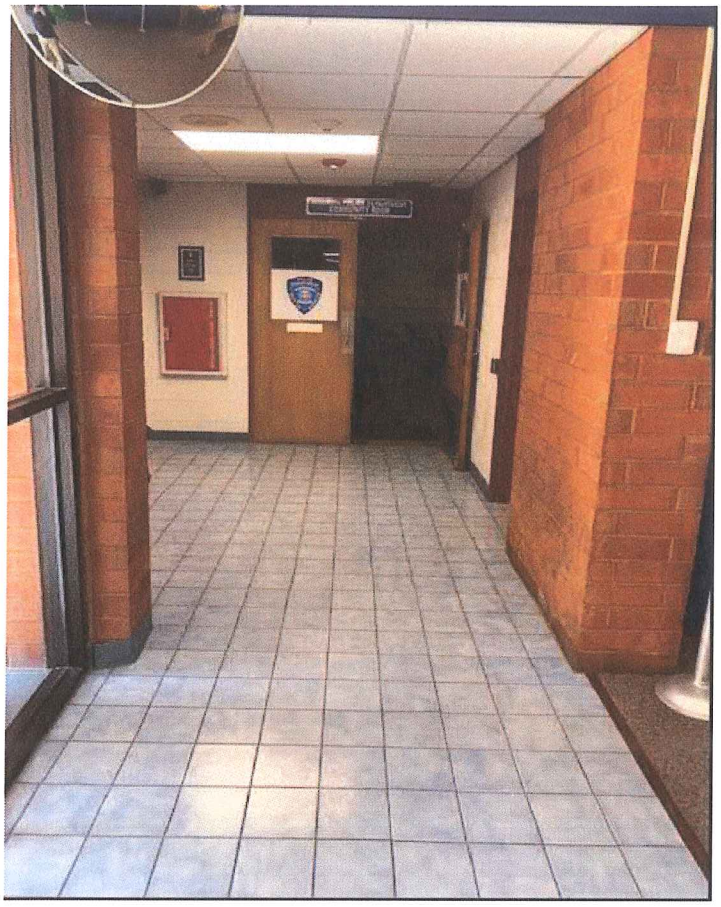
[3] None of the officers involved in this incident knew Jacob Thomas prior to January 14, 2022.



This is a view from the stairwell door into the hallway outside the Community Room. Following roll call, WPD officers exited through the doors on the left. As Thomas approached officers with a knife raised from the right, Sgt. Larson retreated to the stairwell area in the foreground of this photograph.

Thomas then aggressively approached Officer Jessica Masso. She tried to retreat back into the Community Room, but her movement was restricted by the open door of the Community Room, other officers and the walls of the hallway that come to a corner in that area. Masso saw Thomas coming toward her with the knife in his right hand. He lunged at her in a stabbing motion and cut her shirt on the left side of her chest pocket. The knife did not reach her skin as she had multiple items in her shirt pocket and was wearing her protective vest.

The photograph below, again, is of the hallway outside the Community Room. Thomas rushed from the foreground towards the double doors at the far end of this photograph. As Sgt. Larson exited through the doors and Thomas came at him, he stepped back and positioned himself near the red fire extinguisher door which is near the stairwell entrance shown in the previous photograph. Officer Masso exited the Community Room after Larson. She, too, tried to step back in the face of Thomas' approach, but became wedged between the open door of the Community Room and the wall on the right side of this photograph.



Sgt. Larsen saw all of this unfold and continued to yell commands, but Thomas kept yelling "Kill me. Kill me." When Thomas lunged at Officer Masso in a stabbing motion, Sgt. Larsen fired his duty weapon at him "six or seven times" aiming at his back. While Larsen was firing his weapon, Officer Michael Bailey also fired his weapon at Thomas through the window of the Community Room doors.

The surveillance video from the lobby gives us some indication of how quickly this initial encounter unfolded. From the point at which Thomas raises the knife and began to charge for the officers to the initial round of gunshots in the small hallway is approximately four seconds.[4] Events were unfolding exceptionally fast and without any warning.

After the initial burst of gunfire, Thomas was still on his feet. Surveillance video shows him bobbing up and down like a boxer on the tiled floor as he retreats to the foreground area of the previous photograph. Again, the video shows Thomas charging for the officers with the knife held out from his waist on his right side. Officer Pinheiro yelled for him to "drop the knife" but Thomas refused. Pinheiro and Masso fired their weapons at Thomas and Thomas fell to the floor near the door to the information desk

[4] This is a rough estimate based upon the WPD lobby video. It measures the time period from the point Thomas raises the knife and steps towards the officers until shots from the first volley produce a visible reaction from receptionist MacPhee.

while still clutching the knife. No additional shots were fired once he fell to the floor. He again tried to get to his feet, but eventually fell back to the floor.

As Thomas continued to move about on the floor, other officers arrived in the lobby through the front entrance as well as from the secure area of the station across the lobby. Lt. John Curley heard the shots being fired from the opposite side of the station and he and Sgt. Charles Austin responded to the lobby with their firearms drawn. Upon arrival, Lt. Curley saw Thomas on the floor trying to get up with the knife still in his hand. As the ranking officer on the scene, Lt. Curley took command and yelled instructions to prevent multiple officers from firing and possibly harming each other. He also gave repeated commands for Thomas to drop the knife to no avail. Officer Distelhurst drew his taser and levelled it at Thomas. When Thomas refused to drop the knife, Lt. Curley ordered Distelhurst to tase him. Distelhurst did so and the taser had the desired effect as within seconds, Thomas finally released his hold on the knife. The entire incident, from the first display of the knife to the deployment of the taser, lasted approximately one minute.

Sgt. Larsen pulled Thomas away from the discarded knife which was removed from the area, and he was handcuffed. Thomas had obvious multiple gunshot wounds. Officers immediately began life saving assistance before Warwick Rescue arrived approximately four minutes after the scene was secured. Rescue had Thomas' handcuffs removed and they started covering the gunshot wounds with chest seals to stop the bleeding. Lt. Wood of Warwick Rescue observed at least five gunshot wounds to Thomas' chest, multiple gunshot wounds to his back and one near his abdomen.[5] Rescue was not able to definitively ascertain how many gunshot wounds Mr. Thomas had. His injuries were considered by Rescue to be "pretty extensive" and he needed "significant medical aid...he needed [to get to] the OR (operating room)." Within minutes of arriving at the station, paramedics had Mr. Thomas in the Rescue and headed to Rhode Island Hospital. En route, Mr. Thomas was alert and paramedics encouraged him to continue breathing. Thomas' response was, "Please let me die."

Once at Rhode Island hospital, doctors assessed his condition and quickly took him up to the operating room for emergency surgery. Mr. Thomas survived his injuries. He was later charged with Assault with Dangerous Weapon (knife) on Officer Jessica Masso.

The State Police Forensic Services Unit processed the scene and seized the following items:

A. Knife – This is the folding knife carried by Jacob Thomas. The knife was about six inches long with a two-and-a-half-inch blade. It was located on the carpeted area of the lobby floor. It had red and brownish stains on the blade and handle which tested positive for the presumptive presence of blood.

[5] Mr. Thomas, through counsel, declined to provide consent for disclosure of his hospital records. The only medical records available to investigators at the time of this writing was the Warwick Fire EMS run report.

B. Cartridge Cases – Ten cartridge cases were located in the small hallway outside the Community Room on the tiled floor. Three cases were found in the stairwell immediately adjacent to the small hallway and four were in the Community Room.

C. Projectiles and Projectile Fragments – Eight projectiles and six projectile fragments were located in the lobby, the hallway outside the community room and in the small office of receptionist MacPhee.

D. Projectile Impacts – Damage caused by fired projectiles was located in several areas around the lobby. Projectile impressions were found in the main doorway and directly across from the reception area on the front of the Traffic Division sign. Two projectile defects were also identified on both sides of the door into the receptionist's office. The bullets travelled through the door and made impressions on the opposite wall inside the office narrowly missing Ms. MacPhee. The Community Room door had three defects in the glass as well. FSU determined that the three defects were created by gunshots being fired from inside the Community Room through the glass into the lobby area.

E. Officer Jessica Masso's Uniform – Officer Masso's shirt was turned over to the State Police for examination. Located on the left front pocket was an imperfection described as a "cut" measuring nine centimeters long. The cut did not go all the way through the shirt.

F. Clothing of Jacob Thomas – The hooded sweatshirt, underwear, pants and shoes worn by Mr. Thomas were seized and analyzed. The sweatshirt had a total of thirty-four imperfections throughout the garment including two silver taser prongs with wires attached to them. The underwear had nine imperfections and had been cut by medical personnel. Thomas' sweatpants had four imperfections on the front and two in the rear.

G. Firearms of Warwick Officers – The firearms of the four officers who fired them were turned over to the RISP investigators. Accompanying the firearms were the magazines and ammunition carried within the firearm, the magazine or on the officers' belt.

H. Taser – The taser used by Off. Distelhurst was seized as part of the investigation. The taser device log indicates that the weapon was deployed during the incident for approximately five seconds before it was deactivated.

I. Rhode Island State Crime Lab (RISCL) – The officers' service weapons, seventeen cartridge cases, and nine projectiles, including one turned over to the State Police by hospital staff, were delivered to the RISCL for testing. By

examining the expelled cartridge cases found at the scene, the RISCL determined that:

(a) two projectiles were discharged from Officer Masso's firearm;

(b) eight projectiles were discharged from Officer Bailey's firearm;

(c) one projectile was discharged from Officer Pinheiro's firearm; and,

(d) six projectiles were discharged from Sgt. Larson's firearm.

LEGAL ANALYSIS

Applicable Law

When considering a police officer's actions which involve the use of force in his/her capacity as a peace officer a two-part analysis is required. First, it must be determined if the officer's use of force in arresting or detaining the suspect was necessary and reasonable. If an officer's conduct is found to be necessary and reasonable, then the inquiry ends, and no criminal charges will stem from the incident. If, however, it is determined that the use of force was not necessary and not reasonable then an inquiry must be made as to whether the use of force meets the elements of the applicable criminal statute, in this case Felony Assault, R.I. Gen. Laws § 11-5-2. In this case, as we find that Officers Larsen's, Bailey's, Masso's and Pinheiro's actions were objectively reasonable, we do not engage in the second prong of the analysis.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A "seizure" of a "person," can take the form of "physical force" or a "show of authority" that "in some way restrain[s] the liberty" of the person. Terry v. Ohio, 392 U.S. 1, 19, n. 16, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). An arrest or seizure of a person carries with it the right of police officers to use some degree of force. Graham v. Connor, 490 U.S. 386, 396 (1989). "All claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest ... or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard...." Graham, 490 U.S. at 395; Tennessee v. Garner, 471 U.S. 1 (1985).

The Fourth Amendment instructs that the *degree* of force law enforcement officers are permitted to use must be "objectively reasonable" under the totality of the 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. 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." Id. 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).

The Warwick Police Department's Use of Force Policy comports with the constitutional standards governing the use of lethal force. The policy provides, in relevant part, that an officer is authorized to use lethal force "when the officer has a reasonable belief that an imminent threat of death or serious bodily injury exists to himself/herself, another officer, or other person(s)." The Policy further provides that "when feasible, police officers will identify themselves and state their intent to use lethal force."[6]

Analysis

Based on the investigation conducted by the Rhode Island State Police and the Warwick Police, a summary of which is recounted above, we conclude the following:

1. Mr. Thomas arrived at the Warwick Police station armed with a folding knife. He waited outside the door to the secure area where only law enforcement are permitted to enter. He did not speak with anyone including the receptionist behind the information desk.
2. Mr. Thomas saw Sgt. Larsen and his fellow officers exit the Community Room and immediately turned, raised his right hand which had the knife in it and charged in the officers' direction.
3. As Mr. Thomas headed for the officers, he was heard by officers and civilian MacPhee to be yelling "Kill me. Kill me."
4. Sgt. Larsen and the other officers drew their weapons in response to the threat that Mr. Thomas posed to them as he closed the distance between himself and the officers. As Thomas got closer to the group of officers, Sgt. Larsen retreated to the stairwell side of the hallway in order to put some space between himself and Thomas. Multiple officers were yelling for Thomas to drop the knife.
5. Thomas diverted his attention from Larsen and focused on Officer Masso. He then lunged for Officer Masso leading with the knife in a stabbing motion. He made contact with the front chest pocket of her uniform causing a small tear.
6. As he did so, multiple officers discharged their firearms in an effort to stop him from stabbing Masso or other officers. Sgt. Larsen fired multiple times at Thomas aiming at his back side and Officer Bailey shot at Thomas three times through the glass door of the Community Room.
7. Thomas was not immobilized by the initial round of gunshots by police. He retreated back into the main lobby still brandishing the knife. After a few seconds, he again rushed into the hallway where the officers were. He was met with more gunfire until he finally fell to the floor. It was on Thomas' second approach that Masso and Pinheiro first fired their weapons at him.

[6] Warwick Police Department Use of Force Policy issued on January 11, 2022 – pg. 2.

8. Thomas was on the floor of the lobby visibly bleeding, but still did not release his grip on the knife. Additional officers entered the lobby and Distelhurst directed his taser at Thomas. Commands were given to drop the knife without effect. Distelhurst discharged his taser and Thomas finally dropped the knife.
9. First-aid was administered almost immediately upon the knife being secured and Fire/Rescue arrived in approximately four minutes.

The Warwick Police officers use of deadly force was objectively reasonable in light of the fact that they were faced with deadly force from Mr. Thomas. Mr. Thomas' actions clearly demonstrate that he was intent on ambushing police in an effort to get them to react with deadly force. Thomas armed himself and arrived at the station at shift change when he knew there would be many officers present. He lingered outside the door leading to the secure area where he expected police officers to be. He had no other business at the station as he never sought the assistance of Ms. MacPhee who sat just a few feet away at the information desk.

As Sgt. Larsen approached Thomas in an effort to assist him, Thomas immediately pulled out his knife and raced toward the officers who were leaving roll call. Thomas made his intentions clear as he pleaded with the officers to kill him. He got close enough to Officer Masso with the knife to cause a slit in her shirt. It was only then that officers reacted with deadly force by discharging their weapons. This use of force by the officers was clearly justified as Thomas presented a risk of imminent serious bodily injury or death to Officer Masso. Officers had no warning of this assault and were left with few options as they were cornered and by Thomas. With just a few seconds to assess the situation and react, officers fired their weapons.

While the knife measured just under three inches, a single strike with that knife to the neck or chest of an officer could cause death or serious bodily injury if not prevented. Although the officers had tasers available to them, a taser would likely not have been able to stop Thomas.[7] In close encounters, firing the weapon at a target will likely not give the shooter the "spread" of the taser prongs that you need to incapacitate the attacker. Additionally, there is always a possibility that clothing will prevent the prongs from embedding. In both of these instances, the weapon will be only marginally effective or ineffective.[8] With only seconds to react, it is not unreasonable for officers to resort to a higher level of force knowing the suspect was armed and charging in their direction. He had to be stopped by the quickest means possible.

It should be noted that our analysis is the same with respect to all of the officers who used deadly force. Officer Masso was clearly justified in discharging her weapon as Thomas had already lunged at her with a knife and seemed intent on doing so again as

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[7] Tasers propel metal prongs that carry an electrical current. When the prongs embed in the skin of the suspect, the greater distance between the prongs, the more debilitating the weapon will be.

[8] According to the Axon Taser Instructor Certification Course materials, the effectiveness of the weapon is "directly related to probe spread and location. Greater probe spread increases the effectiveness." The "preferred target area" is the suspect's back. Factors that limit the weapon's effectiveness are missing with the probes or only connecting with one probe and connecting with the suspect's loose fitting clothing.

he lunged towards her a second time, prompting her to fire her gun. The other three officers were in close proximity to Officer Masso and directly witnessed Thomas' attack on her. They also observed that he did not relent after he was initially fired upon. Once Thomas fell on the ground officers stopped firing. Yet, it was still necessary for Sgt. Distelhurst to deploy the taser in order to disarm him.

Under the applicable legal standards governing the use of deadly force set forth above, there is no question that the officers' actions were justified.

CONCLUSION

It is miraculous that no one was killed as a result of the incredibly dangerous situation created by Mr. Thomas. Mr. Thomas survived due in no small part to the actions of Warwick Police and Warwick Fire/Rescue as well as the doctors who treated him at Rhode Island Hospital. Bullets came very close to striking Ms. MacPhee as police sought to stop Thomas' assault on the officers, but fortunately she walked away. And thanks to the training of Warwick Police, the possibility of deadly "friendly fire" was somewhat minimized due to the quick thinking of supervisors in the lobby that day.

Based on the facts of the investigation, and the applicable law, we conclude that Sgt. Larsen's, Officer Pinheiro's, Officer Masso's and Officer Bailey's use of deadly force in defense of themselves and their fellow officers was objectively reasonable and necessary. This matter is therefore closed.

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