

MEMORANDUM

The Newport News Commonwealth’s Attorney’s Office has completed its review of all evidence regarding shots fired on January 5, 2024 inside a trailer at 1 Davis Park Drive, Newport News, VA., resulting in the death of David Mark Noteboom. Virginia Law requires us to analyze the facts surrounding an officer’s use of deadly force through the eyes of the officer involved.¹ Therefore, we examine this incident by considering what the officer knew in the moments leading up to the shooting, and whether it was reasonable for the officer who discharged his firearm to believe that there was an imminent threat of serious bodily harm to himself or others.

STATEMENT OF FACTS²

On January 4, 2024, officers from the Newport News Police Department responded to 1 Davis Park Drive. Early in the morning hours, David Noteboom made a 911 call expressing suicidal ideations. During the call, Mr. Noteboom told dispatchers that he had a firearm to his head and made repeated requests for dispatchers to contact his girlfriend, Michelle Ellers. Officers arrived at his residence and located Mr. Noteboom in his vehicle holding a gun to his chin. After numerous attempts at communication, officers stopped speaking to Mr. Noteboom and retreated to their patrol vehicles. Eventually, Mr. Noteboom exited his truck and ran into his trailer – while pointing his gun to his head.

¹ Couture v. Commonwealth, 656 S.E. 2d 425, 427 (Va. App. 2008).

² This is an abbreviated summary of the facts. “What was said and done before this imminent danger may be relevant background, but it is not dispositive on the question of self-defendant” or defense of others. Colas v. Tyree, 882 S.E.2d 625, 634 (2023). The Office of the Commonwealth’s Attorney determined the facts based on interviews with witnesses and law enforcement, crime scene reports, the report of the Chief Medical Examiner, and police body camera footage.

After evacuating local residents near Mr. Noteboom's trailer, Officer Dawley obtained an Emergency Custody Order ("ECO") for Mr. Noteboom. Officers attempted to serve the ECO on Mr. Noteboom but were unable to establish contact with him. It was determined, several hours later, officers should leave the area because Mr. Noteboom had only threatened himself and not others. Newport News Police left the area of 1 Davis Park Drive without serving the ECO, or knowing Mr. Noteboom's condition.

The following day, January 5, 2024, Newport News Police learned that family and friends had not heard from Mr. Noteboom. Newport News Police made contact with Ms. Ellers, who indicated she could provide police with a key to enter the residence. Police planned to conduct a welfare check later in the day to determine Mr. Noteboom's condition. Prior to the Crisis Negotiations Team ("CNT") and the Tactical Operation Team's ("TOU") arrival to the trailer at 1 Davis Park Drive, Assistant Chiefs Creswell and Hires observed a woman, later identified as Ms. Ellers, enter the trailer. Police ran Mr. Noteboom's information again through NCIC, finding that he had an active order for his arrest out of the City of Chesapeake for failure to appear in court from January 4, 2024. Newport News Police disseminated this new information to members of the CNT and TOU team who were waiting outside Mr. Noteboom's trailer.

CNT attempted to make contact with Mr. Noteboom and Ms. Ellers via a PA system, instructing Mr. Noteboom to exit the trailer to be taken into custody.³ While attempting to make contact, officers heard screams from the trailer that sounded like a woman in distress. Sergeant C. Carter, believing Ms. Ellers was in danger, ordered members of the TOU to make entry into the trailer.

³ Police body camera footage confirms law enforcements repeated attempts to communicate with Mr. Noteboom and Ms. Ellers.

Newport News Police TOU members breached the trailer and entered. Once inside, officers heard yelling and other sounds of distress emanating from the bedroom area of the trailer. One member of the TOU team, Master Police Officer (“MPO”) Mark. E. Hillmann, approached the bedroom where he observed a physical altercation between Mr. Noteboom and Ms. Ellers. Mr. Noteboom held a firearm in his hand and attempted to put the firearm in his mouth. Ms. Ellers grabbed Mr. Noteboom’s arm holding the firearm and pulled it away from his mouth. Mr. Noteboom then turned his firearm toward officers, including MPO Hillmann.⁴ Fearing for his safety and the safety of his fellow officers near him, MPO Hillmann fire three (3) rounds at Mr. Noteboom—striking him three (3) times. Officers immediately removed Ms. Ellers from the area and then rendered aid to Mr. Noteboom. Emergency responders transported Mr. Noteboom to Riverside Regional Medical Center, where he later died from his injuries. Police recovered a firearm from the area near Mr. Noteboom.⁵

LEGAL ANALISIS

When a police officer has probable cause to believe that a suspect poses a threat of serious physical harm to others, he may use deadly force to prevent that harm. Couture v. Commonwealth, 656 S.E. 2d 425, 427 (Va. App. 2008). An officer’s use of deadly force is justified when he perceives an imminent threat of serious bodily harm to himself or others. Lynn v. Commonwealth, 499 S.E.2d 1, 9 (Va. App. 1998); Couture, 656 S.E.2d at 427. *See also* Colas v. Tyree, 882 S.E.2d 625.⁶

⁶ In Virginia, self-defense includes both subjective and objective components. The defense of others “ is commensurate with self-defense.

"Among the many interests served by the Fourth Amendment, the privacy interest in one's home has few equals...[However,] the Fourth Amendment's text endorses no absolutes. It ...condemns only 'unreasonable' searches and seizures." Kyer v. Commonwealth, 45 Va. App. 473, 480 (2005) One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. . . . [L]aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. Stallings v. Commonwealth, 2007 Va. App. LEXIS 451 citing Mincey v. Arizona, 437 U.S. 385, (1978) "[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. ***And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?" Reynolds v. Commonwealth, 9 Va. App.430, 437 (1990)

Therefore, we analyze the circumstance by considering what MPO Hillmann would have reasonably believed in the moments just prior to discharging his firearm.

On January 5, 2024, while attempting to contact Mr. Noteboom, members of TOU heard screams, sounding like a woman in distress, coming from inside the trailer. Upon entering the trailer, TOU members continued to hear yelling and sounds of distress emanating from the bedroom. As MPO Hillmann entered the bedroom, he observed a physical altercation between Mr. Noteboom and Ms. Ellers. Additionally, Mr. Noteboom was possessing a firearm in his right hand. As appearing in the body camera footage, the firearm remained in Mr. Noteboom's right hand as he turned towards officers. Fearing for his safety and for the safety of the other TOU

members, MPO Hillmann discharged his firearm. Despite rendering aid Mr. Noteboom later succumbed to his injuries.

Based on these facts, it is clear that Mr. Noteboom posed an imminent threat of serious harm to TOU members as well as Ms. Ellers. Therefore, TOU's entry into the trailer and MPO Hillmann's use of deadly force in the fatal shooting of Mr. Noteboom was justified by the facts and the law.