

MEMORANDUM

The Newport News Commonwealth’s Attorney’s Office has completed its review of all evidence from the October 14, 2024 fatal shooting of Mr. Aaron Dusinberre. Virginia Law requires us to analyze the facts surrounding an officer’s use of deadly force through the eyes of the officers involved.¹ Therefore, we examine this incident by considering what the officers knew in the moments leading up to the shooting, and whether it was reasonable for the officers who discharged their firearms to believe that there was an imminent threat of serious bodily harm to himself or others.

SUMMARY OF THE FACTS²

On October 14, 2024 at 1737 hours, Officers Reiner and McKay were dispatched to 500 Crown Court to conduct a welfare check on an individual making suicidal threats. Crown Court is an apartment building that houses multiple residents. Upon arrival, they observed the decedent, Aaron Dusinberre, seated in a lawn chair outside of 500 Crown Court. Almost immediately after Officers McKay and Reiner arrive, Dusinberre began to make suicidal statements, stating that he was ready to die. Contemporaneous to making such statements, Dusinberre removed a weapon from in between the side of the chair and his leg, holding it in his right hand. The weapon was in the style of a handgun with silver on the side.³ Upon presentation of the weapon, Officers McKay and Reiner both raised their duty weapons. Both

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

² This is an abbreviated summary of the details of that evening. “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).

³ See Appendix A

Officer McKay and Officer Reiner asked Dusinger several times to drop his gun. Officer McKay, who is a trained Crisis Intervention Officer for the Newport News Police Department, spoke to Dusinger in an attempt to de-escalate the situation. After a few minutes, Officers McKay and Reiner moved further from the decedent behind the cover of a police vehicle, duty weapons still drawn. At this time, other officers had arrived as backup, including Officer Camacho, who positioned himself across the parking lot with his department approved shotgun pointed at Dusinger. Dusinger eventually stood from the lawn chair and walked toward the officers. By this time, Sergeant Jessie had approached alongside Officer McKay with his duty weapon also drawn. Multiple officers ordered Dusinger to drop the gun. Dusinger pointed the weapon in the direction of the officers. Sergeant Jessie and Officer McKay discharged their duty weapons at the decedent. Officer Camacho fired his department approved shotgun at the decedent. Dusinger then dropped to the ground with the weapon next to him. Officers approached and conducted life saving measures on Dusinger. Dusinger was transported to Riverside Regional Medical Hospital where he succumbed to his injuries. A Report of Autopsy from the Office of the Chief Medical Examiner states that Dusinger's cause of death was from multiple gunshot wounds and shotgun wounds. He was shot in the lower extremity and abdomen.

Over the course of the entire interaction, Officer McKay observed Dusinger drink from a Steel Reserve alcohol can and observed multiple empty cans near the decedent. The body-worn camera video from multiple officers shows Dusinger exhibiting slurred speech. A

certificate of analysis from the Department of Forensic Science reflects a postmortem ethanol level of 0.349 in Dusinberre's blood.⁴

Police interviewed Witness 1, who was the 911 caller who asked for the welfare check. She said that Dusinberre had reached out to her saying that he thought it was a good day to die. When she told him that she was going to call the police, he indicated that he "would be waiting for them." The call for service notes reflect that Witness 1 told dispatchers that the decedent was coming off an anti-psychotic, that he normally doesn't want police called, but this time he told her to go ahead.

All involved officers had their Axon body cameras activated during the incident. Officer McKay's video shows Dusinberre stating, "I am ready to die," while removing the weapon from his side at 17:45:08 hours. At 17:45:20 hours, Officer McKay asks Dusinberre if the item he is holding is a BB gun. Dusinberre is non-responsive to the question and continues to make statements about being ready to die. He also continually disregards commands to drop the gun. At 17:48:34, Officer McKay again asks Dusinberre about having a BB gun. Dusinberre again is non-responsive, stating he is ready to die tonight. At 17:48:59, Officer McKay asks Dusinberre why he is pulling a BB gun out on him. Dusinberre is again non-responsive to the BB gun question. An officer in the distance makes a comment in the distance, and at 17:49:13, Dusinberre says, "I'm not pointing, I'm pointing it at myself." At 17:49:47, Dusinberre says he does not want to get tased and indicates that is why he put "that" [motorcycle style padding on

⁴ For reference, Virginia Code §18.2-269 creates a presumption of intoxication for driving while intoxicated cases if there is 0.08 percent or more by weight by volume of alcohol in the accused's blood sample at the time of the offense.

his arms and chest] on. At 17:50:34, Dusingberre raises the weapon and points the barrel underneath his chin, then stating, "I'm dying tonight." At 17:53:45, Dusingberre states, "I plan on y'all shooting me." Officer McKay responds, "We don't want to do that, dude." By 17:57:53, Dusingberre is standing and begins to walk and face officers. At 17:58:12, Dusingberre states again, "I want to die tonight." At 17:58:31, Dusingberre points the weapon in the direction of the Sergeant Jessie, Officer McKay, and other officers. Immediately thereafter, the video captures the sound of shots being fired. Several shots are fired at 17:58:32, which are attributed to Sergeant Jessie. One shot is fired at 17:58:35, which is attributed to Officer McKay, and one shot is fired at 17:58:36, which is attributed to Officer Camacho. In the few seconds between Sergeant Jessie's shots and Officer McKay and Camacho's shots, Dusingberre is shown to still be standing.⁵ Officers then approach and render medical aid. Body camera footage shows the weapon on the ground near Dusingberre upon approach.

A crime scene report shows that Dusingberre's weapon was determined after the fact to be a BB gun.

LEGAL ANALYSIS

When a police officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to that officer or 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

⁵ In a later interview, Officer Camacho indicated that from his view across the parking lot, Dusingberre was still standing after Jessie's and McKay's shots. He was concerned that the firearm was still in Dusingberre's hand because he could no longer see Dusingberre's hand from his perspective. Only one second elapsed between Officer McKay's and Officer Camacho's shots, according to body camera video.

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 Therefore, we analyze the circumstances by considering what Sergeant Jessie, Officer McKay, and Officer Camacho would have reasonably believed in the moments just prior to discharging their firearms.

On October 14, 2024, Newport News Police were dispatched to check the welfare of Aaron Dusinger. Upon arrival, Officers McKay and Reiner consensually encountered Dusinger in an intoxicated state, threatening self-harm. Once Dusinger pulled out a weapon, Officers McKay and Reiner then withdrew their duty weapons. The officer interaction with Dusinger then falls under the community caretaking doctrine, which states,

[t]he duty of the police embraces the function of maintaining public order and providing necessary assistance to persons in need or distress. An officer who harbors a reasonable and articulable suspicion, based upon observed facts or a credible report, that a citizen is in distress or in need of assistance, may lawfully effect an appropriately brief and limited seizure for the purpose of investigating that suspicion and rendering aid.

Commonwealth v. Waters, 20 Va. App. 285, 289 (1995) (citing *Barrett v. Commonwealth*, 18 Va. App. 773, 778 (1994)). Here, Dusinger repeatedly told officers that he was going to die that night and pointed the weapon under his chin. Dusinger's level of emotional distress and intoxication is evident in his presentation on the body worn camera. Therefore, the police

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

officers were lawfully engaged with Dusinger at the time that they interacted with him. Eventually Dusinger moved toward the officers and raised the weapon, causing Sergeant Jessie to discharge his duty weapon. At the time of discharge, it was reasonable for Sergeant Jessie to fear for both his safety and the safety of the other officers in the line of sight of Dusinger's weapon. Dusinger's weapon itself bore enough resemblance to an actual handgun that it would be difficult for an officer to ascertain whether the weapon was lethal or non-lethal. In addition, the manner in which Dusinger was using the firearm and the earlier repeated lack of response regarding the type of weapon were sufficient to raise alarm in the reasonable person. Officer McKay discharged his duty weapon just after Sergeant Jessie, at a time when Dusinger was still standing with the weapon in his hand in a matter that could still be a potential threat to officer safety. Finally, Officer Camacho discharged his shotgun with the concern that Dusinger was still standing, and it could not be determined if he had yet dropped the firearm and could still be a threat to Officer McKay, Sergeant Jessie, and other officers in the line of sight of Dusinger's weapon. All shots were fired within a four to six second timeframe, with one to two second between the shot from Officer McKay and the shot from Officer Camacho.

Based on the totality of the facts as it applies to the law, it was reasonable for officers to believe that Aaron Dusinger posed an imminent threat of serious physical harm to multiple police officers on scene. Therefore, Sergeant Jessie, Officer McKay, and Officer Camacho were all justified in the use of deadly force in the fatal shooting of Aaron Dusinger.

Appendix A

