



***OFFICE OF THE COMMONWEALTH'S ATTORNEY - CITY OF ALEXANDRIA***

**Use of Force Investigation and Analysis**

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***FOR PUBLIC RELEASE***

## Table of Contents

1.0	Introduction .....	3
2.0	The Scope of this Review.....	4
3.0	Statement of the Facts .....	6
A.	Background .....	6
B.	The Suspect.....	8
C.	The Initial Stages of the Active Shooting Incident .....	10
D.	U.S. Capitol Police Agents Engage the Suspect with Return Fire.....	12
E.	The Alexandria Police Department Arrives on the Scene.....	18
F.	The Threat Is Neutralized .....	23
4.0	Firearms Evidence.....	26
A.	Alexandria Police Officer Jensen .....	26
B.	Alexandria Police Officer Jobe.....	27
C.	Alexandria Police Officer Battaglia.....	28
D.	U.S. Capitol Police Agents Griner and Bailey.....	28
E.	The Suspect.....	31
5.0	The Applicable Legal Standard.....	35
6.0	Findings.....	37
7.0	Conclusion.....	39

## 1.0 *Introduction*

At a little before 7 a.m. on the morning of June 14, 2017, a group comprising members of Congress and congressional staff members met for baseball practice in the City of Alexandria, Virginia. The group was preparing to represent the Republican party in the annual Congressional Baseball Game to be held at Nationals Stadium. The practice was held at a baseball diamond that is part of the Eugene Simpson Stadium complex. The Simpson complex is located in the Del Ray neighborhood of Alexandria. The weather was clear and fair that morning.

Unbeknownst to the baseball players, the suspect, James T. Hodgkinson, was planning to attack them by opening fire on the team with a lawfully purchased SKS-style semi-automatic assault rifle and a 9mm semi-automatic handgun.

Shortly after 7 a.m. the suspect approached the baseball field from the west. He was carrying the assault rifle. Without warning, the suspect opened fire on the group of baseball players. Three players were shot. United States Capitol Police agents, who were already on the scene as part of a protective detail for the Majority Whip of the House of Representatives, immediately engaged the suspect with return fire. Both agents were injured by gunfire, one seriously. Alexandria Police Department officers responded to the scene and engaged in the pitched gun battle. No Alexandria officer was injured.

During the gun battle, the suspect fired a total of at least 70 rounds: 62 7.62x39mm rounds fired through the assault rifle and 8 9mm rounds fired through

the semi-automatic handgun. In aggregate, the agents and police officers fired a total of at least 40 rounds.

During the firefight, the suspect was shot several times by the officers. Despite immediate life-saving efforts by officers and medics, he succumbed to his wounds later that morning. While the shooting victims suffered serious and in some cases life-threatening injuries, all survived.

My review of this incident leads me to conclude that United States Capitol Police agents and Alexandria Police Department officers fired their weapons in lawful and proper exercise of self-defense and the defense of others. I therefore conclude that the use of deadly force in this case was legally justified.

## **2.0 *The Scope of this Review***

As the elected Commonwealth's Attorney for the City of Alexandria, I am tasked with reviewing all incidents that occur in the City in which law enforcement officers employ deadly force. The sole purpose of my inquiry into this matter is to determine whether the use of deadly force by members of the United States Capitol Police and the Alexandria Police Department was legally justified in light of the applicable law of the Commonwealth of Virginia. It is important to note that my review is independent from any internal police investigation.

I am not tasked with opining on tangential issues such as whether the agents and officers followed departmental policy or whether different tactics could or should

have been employed by the officers. These types of questions should properly be directed to the command staffs of the respective agencies involved.

Finally, I note that it is my sworn duty to review and analyze any use of deadly force by law enforcement officers that occurs in the City, and the simple fact that a review was conducted is not evidence that anything improper occurred during the incident.

The investigation into the Simpson Field Shooting was an immense undertaking. Dozens of eyewitnesses were interviewed. During three days of crime-scene operations over 200 items of physical evidence were recovered and logged. The victims gave statements, some while still in their hospital beds. Each of the law enforcement officers who engaged the suspect that morning gave detailed statements, and all, except for Special Agent Griner, participated in walk-throughs of the crime scene with investigators.<sup>1</sup>

The criminal investigation was jointly conducted by the Federal Bureau of Investigation, the Alexandria Police Department, and the United States Capitol Police. These agencies deserve recognition for the efficient and effective cooperation and coordination they displayed in this matter. All three agencies were cooperative with my review of the use of deadly force and provided all necessary documents, reports, and analyses so that I might conduct a thorough review of the incident.

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<sup>1</sup> The injuries Special Agent Griner received during the incident prevented her from conducting a walk-through.

### ***3.0 Statement of the Facts***

#### **A. Background**

The Congressional Baseball Game for Charity is an annual, bipartisan event in which members of Congress from both political parties compete against each other to raise money for charity. The game raises money for local charities such as The Boys and Girls Clubs of Greater Washington, the Washington Nationals Dream Foundation and the Washington Literacy Center. The Game is over 100 years old, with the first game being played in 1909 during the term of President William Howard Taft.

In preparation for this year's game, the Republican team had been holding regular morning practices at Simpson Field in the City of Alexandria. A practice was scheduled for 6:00 a.m. on the morning of June 14, 2017. The team usually held practices at that time on days when Congress was in session because it was most convenient for the players' schedules. While the time and location of the practices was not actively publicized, the team had held many practices at the same place and time in the preceding weeks and there was no attempt to conceal or obfuscate the fact that the practices were occurring or that members of Congress were participating.

Eugene Simpson Stadium Park is located at 426 East Monroe Avenue, in the City of Alexandria. The 10-acre park features one regulation-size baseball field with bleachers, dugouts, and a press box, another smaller 60-foot baseball field, a basketball court, a dog park, a playground, tennis courts, a community garden, and public restrooms. The park is bordered to the north by East Duncan Avenue, to the

west by the parking lot of the YMCA of Alexandria, to the south by East Monroe Avenue, and to the east by the Potomac Yards Soccer Fields. (See Figure 1).



*Figure 1.*

On the morning of June 14, Republican members of Congress, and their staffers, friends, and family members began arriving at the baseball field around 5:30 a.m. By about 6:15 a.m. the practice was in full swing. It was a warm, sunny morning, and as the players began to practice the park started to fill with other citizens going about their usual weekday-morning routines. People walked their dogs, jogged, stopped for coffee across the street, and arrived at the YMCA for exercise classes. About 25 to 30 people were either participating in or observing the baseball

practice. Some players were taking batting practice as the incident began and others, such as Representative Scalise, were manning positions in the field.

## **B. The Suspect**

The suspect, James T. “Tom” Hodgkinson, was 66-years old on the date of the shooting. Hodgkinson was 5’6” tall and weighed approximately 200 pounds. Hodgkinson suffered from diabetes and was supposed to take medicine to control the disease.

For most of his life, Hodgkinson resided in Illinois. He was married with children and was the proprietor of a home inspection business. By late 2016, he had stopped working and was experiencing some financial distress. Additionally, Hodgkinson was increasingly making vague statements about how he would “not be around much longer” to family members. Hodgkinson held strong political opinions and was very unhappy about the outcome of the 2016 presidential election. He spent a significant amount of time on social media, using it to express his political views, such as his strong support for Senator Bernie Sanders’ presidential campaign.

People who knew Hodgkinson described him as “hot-tempered” but did not believe him to be violent. Hodgkinson had never been convicted of any crime. Therefore, he was not prohibited by law from purchasing or possessing firearms.

In March of 2017, Hodgkinson unexpectedly announced to his family that he was going to travel to Washington, D.C. to “protest” and “talk about taxes.” He drove his white Ford conversion van to Washington, D.C., and ended up in the Alexandria area. He was apparently living out of his van. He frequented a local bar and joined



the YMCA on Monroe Avenue, adjacent to Simpson Field – not to work out, but to use the showers. He also rented a small storage unit at a facility just outside of the City where he apparently stored his firearms and ammunition.

After the incident had occurred a citizen called police and reported that on June 10 he observed the suspect exit his van and walk around Simpson Field. There was no baseball practice occurring at the time. The citizen found the suspect's behavior odd, and after hearing of the shooting, believed the suspect had been “casing” the field. Furthermore, at least one member of the Republican baseball team remembered seeing the suspect sitting in the Simpson Field stands and watching the team practice on the morning before the incident, June 13.

Media files recovered from the suspect's phone show video of Simpson Field that was recorded in April 2017. After the incident, several witnesses came forward and reported seeing the suspect walking around Simpson Field in May 2017. From these facts, it may be inferred that the suspect had already selected Simpson Field as a potential target as early as April 2017.

After arriving in the Alexandria area, Hodgkinson remained in semi-regular contact with family in Illinois via phone and social media. On June 12, 2017, two days before the incident, he indicated to a family member that he intended on returning to Illinois, but he never made the trip.

The investigation revealed that Hodgkinson legally purchased the Century Arms International SKS-style 7.62x39mm semi-automatic assault rifle used in the incident from a licensed firearms dealer in Illinois on March 9, 2003. He legally

purchased the Smith & Wesson M&P Shield 9mm semi-automatic pistol used in the incident from a different licensed firearms dealer in Illinois on November 14, 2016. There was nothing in his background that would have legally prevented these sales and no evidence that the firearms dealers did anything illegal in selling the firearms to Hodgkinson.

### **C. The Initial Stages of the Active Shooting Incident**

On the morning of June 14, the suspect was seen at the Monroe Avenue YMCA shortly after 5:30 a.m. Investigation revealed that he visited his storage unit and entered it twice, once at 6:23 a.m. and once at 6:35 a.m. It is likely that he stored the firearms in the unit and was retrieving them during this time frame.

At some point before 7 a.m. the suspect had returned to the YMCA parking lot and parked next to the third-base line of Simpson Field. From his parked van, the suspect would have been able to observe the baseball practice and load his firearms in privacy.

At about 7:02 a.m., the suspect approached two members of the baseball team who were preparing to leave the practice early. The two members were near their car, which was parked in the Monroe Avenue parking lot near the third-base line of Simpson Field. The suspect asked them whether the practice was for the Republican or Democratic team. They responded that it was for the Republican team. The suspect said “ok, thanks” and walked away.

The suspect then went to his nearby van and retrieved the black SKS-style assault rifle. The assault rifle was loaded with 40 rounds of 7.62x39mm ammunition

in a “banana”-style magazine. The suspect concealed another loaded, 40-round magazine on his person.

The suspect also retrieved the black Smith & Wesson 9mm semi-automatic pistol. The pistol was loaded with 8 rounds of 9mm ammunition in the magazine. The suspect carried an additional magazine, loaded with 6 rounds of ammunition. The pistol was stowed in a soft holster the suspect wore clipped to his waistband.

At about 7:06 a.m., the suspect approached Simpson Field from the west, third-base side. About 20 to 25 people were practicing on Simpson Field, taking batting practice and shagging flies. Representative Steven Scalise (R-La.), the House Majority Whip, was playing the field near second base.

Simpson Field is bordered by a high chain-link fence. On the third-base side there is a gate in the fence just north of the third-base dugout. By chance, on the morning of the incident the gate was padlocked. This simple fact likely saved lives by preventing the suspect from walking onto the baseball field as he fired.

Eyewitnesses saw the suspect approach the fence on the third-base side. He appeared calm and did not say anything. The suspect stood near the third-base gate, pointed the rifle toward the Republican team members, and without warning fired a single round towards the players on the baseball field. (*See Figure 2.*)



*Figure 2.*

#### **D. U.S. Capitol Police Agents Engage the Suspect with Return Fire**

The United States Capitol Police have the responsibility of protecting members of Congress and provide a protection detail for members of the Congressional leadership. Rep. Scalise, as the House Majority Whip, is a member of the House leadership. On the morning of the incident, Special Agent Crystal Griner and Special Agent David Bailey of the United States Capitol Police (USCP) were at Simpson Field, serving as Scalise's protective detail. Griner and Bailey were dressed in plain clothes. Both were armed with .40 caliber Glock semi-automatic pistols.

The agents drove a black, unmarked, Chevrolet Suburban SUV. After picking up Rep. Scalise, they arrived at Simpson Field around 6:20 a.m. Upon arriving, Special Agent Griner pulled the Suburban up to the opening in the fence next to the first-base dugout to allow Rep. Scalise to exit and unload his baseball equipment. She then backed the vehicle onto the grassy area about 20 feet from the first-base entrance to the baseball field. The vehicle was parked facing north, which gave Special Agent Griner and Special Agent Bailey a view of the baseball field where the practice was being held.

The agents were sitting in their vehicle, with the windows down when they heard the first shot. Initially unsure of what the sound was or where it was coming from, they listened intently and looked around for the source of the sound. Within seconds, additional shots were fired and the agents immediately realized that an active shooter was firing at the baseball players. Both agents exited the black Suburban SUV and began scanning the field, looking for the suspect.

Many of the players, and other eyewitnesses, also heard the first shot but did not immediately realize what was happening. As they looked around for the source of the sound, several eyewitnesses spotted the suspect standing at the third-base fence pointing the rifle toward the field. They then saw the suspect approach the fence and resume firing. At least one witness saw the barrel of the rifle extend through the chain-link fence.

Multiple players shouted warnings that there was a shooter. Some dropped down onto the field. Others ran for an exit in the chain-link fence on the first-base side of the field. Others dove into the dugouts.<sup>2</sup>

Matthew Mika, a current lobbyist and former Republican staffer, was on the baseball field, near first base, when the shooting began. At the time of the shooting Mr. Mika recalled Rep. Scalise standing at second base, and multiple members of Congress and coaches near home plate. Rep. Scalise was struck in the hip by a bullet and went down near second base. Mr. Mika was shot in the chest and went down. Other players assisted Mr. Mika off the field and he lay down near Special Agent Griner, behind the black Suburban SUV. The evidence is consistent with Rep. Scalise being the first person shot by the shooter.

Zachary W. Barth, a legislative correspondent for Representative Roger Williams (R-Tx.), was in center field when he heard a loud noise. At first, he was not sure what the noise was. He then heard repetitive, loud bangs and saw other team members running towards the first-base dugout. Some were yelling that there was a shooter. Mr. Barth ran to the warning track on the right-field side but found there was no exit through the chain-link fence in that area. Mr. Barth then lay prone on the ground to avoid being struck by the bullets that were being fired in his direction. As he lay, Barth sensed bullets impacting the ground around him. One bullet struck

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<sup>2</sup> Several players suffered scrapes, sprains and other minor injuries while fleeing from the shooting.

him in his left, lower leg. In fear for his life, and despite his injury, Mr. Barth got up and ran to the first-base dugout where he took shelter until it was safe.

Special Agent Bailey observed that players on the baseball field were running. Some of the players were pointing in the direction of the third-base dugout, telling SA Bailey that someone was shooting from that direction.<sup>3</sup> SA Bailey saw Rep. Scalise fall to the ground after being struck by a bullet and he ran onto the field to go to the Congressman's aid; however, he began taking gunfire as he entered the field, hearing bullets go past his head. He saw the suspect firing from his position near the third-base dugout.

SA Bailey, standing near the first-base dugout, returned fire with his Glock pistol. Later, the investigation would reveal that SA Bailey fired a total 10 rounds from that position toward the suspect. These rounds likely caused the suspect to lose focus and become less accurate as he fired. They also caused the suspect to change position in an attempt to engage the agents and therefore drew his attention from the players on the field.

As the gunfire began, numerous citizens began calling the Alexandria Department of Emergency Communications to report the shooting. At least 6 phone calls were received between 7:09 a.m. and 7:12 a.m. Initially, 5 Alexandria police units were dispatched to make an emergency response to the call, but the number

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<sup>3</sup> Throughout this report, the title "Special Agent" is abbreviated "SA."

and urgency of the calls soon convinced the dispatcher to send all available police units.

The suspect fired 33 rounds from his position at the fence near the third-base dugout. After taking fire from SA Bailey, the suspect ducked behind the third-base dugout. He walked south behind the dugout and then the wooden press-box behind home plate. Still armed with the assault rifle, he emerged south of the field between a blue, cinder-block storage building painted with the T.C. Williams High School logo and the wooden press-box behind home plate.

Meanwhile, after hearing the additional gun shots, Special Agent Griner remained near the black Suburban SUV, utilizing the front driver's side door for cover. SA Griner heard more gunshots and saw members of the baseball team fleeing the field and pointing back towards the third-base line. At that point, she did not have a view of the suspect. She then saw some team members assisting Mr. Mika off the field, and she saw that he was seriously wounded. Mr. Mika lay on the ground on the rear passenger's side of the Suburban, and SA Griner left her position and took cover on the rear passenger's side of the black SUV staying close to Mr. Mika. Griner talked to Mika in an attempt to keep him lucid until medics could attend to him.

At that point, SA Griner saw the suspect come into view from behind the wooden press-box behind home plate. She called out to SA Bailey, who had returned to the vehicle. They observed that the suspect was still armed with the assault rifle as he moved toward the blue storage building located to the rear of the home-plate area. The suspect pointed the assault rifle at the agents and fired at them.



From her position on the passenger's side of the black Suburban SUV, SA Griner engaged the suspect with gunfire. This action allowed SA Bailey to retrieve more loaded magazines from inside the black SUV. SA Bailey re-loaded and then again began firing at the suspect.

By this time, the suspect had repositioned himself on the south side of the blue storage building. Agents Griner and Bailey continued to exchange gunfire with the suspect from behind the cover provided by the black SUV. SA Griner was standing with her left leg extended past the rear of the vehicle and she took a direct hit from the suspect in her left ankle. The injury rendered her unable to stand, and she went to the ground. She continued to try to engage the suspect from the ground by shooting at him from beneath the vehicle, but she did not have a clear line of sight from that position. The distance from the black SUV to the suspect's location behind the storage shed was approximately 30 yards, or about 100 feet.

The suspect continued to return fire and SA Griner was forced to take cover behind the right rear tire of the black SUV. SA Griner propped herself up against the tire and attempted to triage Mr. Mika. SA Bailey saw his partner go down and he continued to engage the suspect. Later investigation revealed that the two agents fired a total of 25 rounds from their position behind the black SUV. The effect of these rounds was to "pin down" the suspect behind the blue storage building and to keep his attention from returning to the unarmed baseball players.

### **E. The Alexandria Police Department Arrives on the Scene**

At about 07:12 a.m., Alexandria Police Department Officer Kevin Jobe was the first Alexandria officer to arrive on the scene. Officer Jobe has been an officer with the Alexandria Police Department for thirteen years, and he is a certified firearms instructor. On the date of the incident, Ofc. Jobe was assigned to the Field Operations Bureau, B-Side, early daylights shift. He came on duty at 6:00 a.m., attended morning roll call, and was on patrol in a marked police cruiser by approximately 6:45 a.m. Ofc. Jobe was wearing his department-issued uniform and was displaying his badge of authority. He was armed with a department-issued .40 caliber Glock 22 pistol.

Ofc. Jobe was at the corner of Madison Street and North Patrick Street, in the Northside neighborhood of Old Town Alexandria, when the calls for an active shooter incident were relayed by police dispatch. Jobe immediately drove north on North Patrick Street, made a right turn onto Main Line Boulevard, and then made a right turn onto East Monroe Avenue. Traveling west on Monroe, Jobe approached the scene, arriving at about 7:12 a.m. He saw people running away from the direction of the baseball field. Ofc. Jobe called out to some bystanders and they pointed him toward the baseball field. At that time, Jobe heard multiple gun shots coming from the direction of the YMCA but his view of the scene was obscured by some shrubbery.

Ofc. Jobe parked his police cruiser on East Monroe Avenue near the soccer fields east of the baseball field. He clearly heard gunshots coming from the west, so he drew his Glock pistol and proceeded on foot so as to be less conspicuous.

As Jobe approached the Simpson basketball court, more bystanders called out to him, saying, “he’s behind the shed!” Jobe continued to advance west, along the sidewalk, and he continued to hear shooting.

As he got closer to the shooting, Jobe left the sidewalk and proceeded down a short embankment into the grassy area between the basketball court and the parking lot. At that point Jobe saw the agents’ black SUV parked in the grass. He saw SA Griner on the ground by the right rear tire and he saw SA Bailey braced across the SUV’s hood, behind the engine block. SA Bailey was facing away from Jobe and Jobe could see that he was shooting in the direction of the blue storage building. Jobe correctly assumed that the suspect was concealed behind the building.

Ofc. Jobe could see Alexandria police units approaching from the west on Monroe Avenue. Given the location of the suspect, Jobe was concerned that these units would become easy targets for the suspect. Jobe used his radio to advise the Alexandria units to stop where they were.

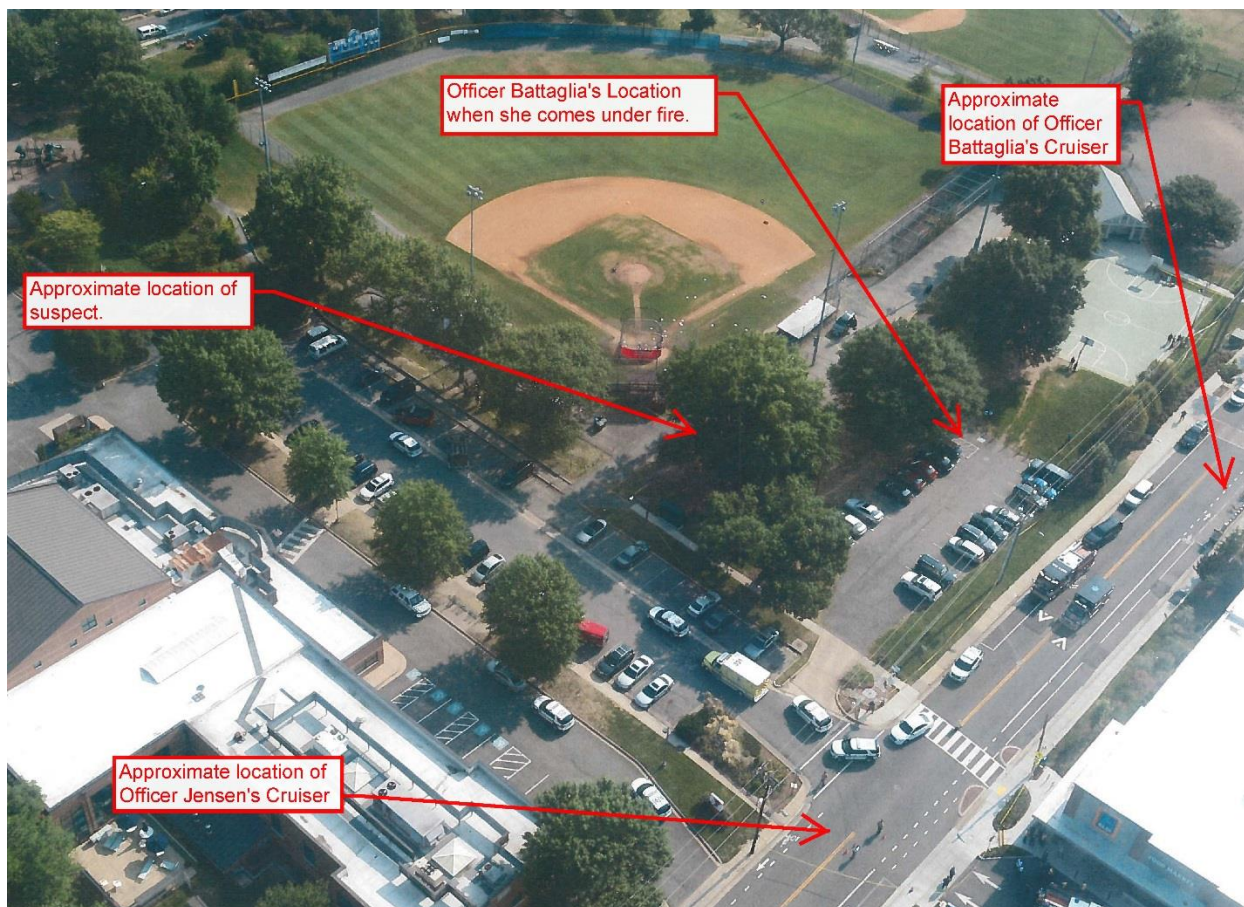
Alexandria Police Officers Alexander Jensen and Nicole Battaglia were each in separate marked police cruisers approaching on East Monroe Avenue from the west when they heard Jobe’s radio transmission to stop their cruisers. Ofc. Battaglia’s cruiser was in front of Ofc. Jensen’s. Battaglia stopped her cruiser adjacent to the parking lot located between East Monroe Avenue and the baseball field. Jensen stopped his cruiser on East Monroe Avenue, near the entrance to the YMCA parking lot. (*See Figure 3.*)

Ofc. Jensen has been a police officer with the City of Alexandria for two years and was assigned to the Field Operations Bureau, A-Side, late midnight shift. His shift had begun at 8:30 p.m. on June 13 and was scheduled to end at 8:00 a.m. on June 14. Officer Jensen was wearing his department-issued uniform and was displaying his badge of authority. Inside of his police cruiser, Jensen carried a department-issued Bushmaster semi-automatic rifle.

Ofc. Jensen was in his marked police cruiser in the parking lot of Cora Kelly Elementary School, in the 3600 block of Commonwealth Avenue, monitoring the morning school traffic when the calls for “shots fired” came in. Jensen immediately began driving south on Commonwealth Avenue, toward Simpson Field, with his lights and sirens engaged. As he approached the intersection of Commonwealth Avenue and East Reed Avenue he saw another Alexandria Police cruiser, driven by Ofc. Battaglia, approaching the intersection on East Reed Avenue. Jensen let Battaglia proceed ahead of him and then followed her south on Commonwealth Avenue. Both officers turned eastbound onto East Monroe Avenue.

As he neared the scene, Jensen heard Jobe come over the radio and report that he was on the scene and could hear shooting coming from the area of the baseball field. Ofc. Jensen, still traveling east on East Monroe Avenue, came within sight of the baseball field. It was at this point that he heard Jobe’s radio message to stop his vehicle. Upon hearing that transmission, Jensen immediately stopped on Monroe with his vehicle facing north, toward the YMCA parking lot and the baseball field. (*See Figure 3.*) He purposefully parked his cruiser in a position to prevent civilian

traffic from turning into the YMCA parking lot. Jensen saw that Battaglia parked her cruiser just a little ahead of him on East Monroe Avenue. Jensen then exited his cruiser. Jensen and Battaglia arrived on the scene at approximately 7:13 a.m.



*Figure 3.*

Jensen could see the suspect standing behind the blue storage building located in the area behind home plate. (See *Figure 4.*) Jensen saw that the suspect was holding a rifle with the stock against his shoulder. He observed the rifle resembled an AK-47-style assault rifle. Jensen saw that the suspect was aiming to the east (towards the black SUV from which the Capitol Police agents were returning the suspect's fire). Jensen exited his cruiser and took cover behind its engine block. He

transmitted over the radio that he could see the suspect, and relayed the suspect's location to other responding units. Ofc. Jensen then heard a burst of 5 or 6 rapid-fire gunshots coming from the suspect's rifle.

Ofc. Jobe heard Jensen's radio transmission that he had could see the suspect. Jobe continued to approach the suspect, using the black Suburban SUV as cover, in order to gain a position with a clear shot at the suspect. (*See Figure 4.*)



*Figure 4.*

After parking her cruiser, Ofc. Battaglia drew her Glock pistol and started to run in the direction of the blue storage building. She saw the black Suburban SUV parked on the grass. She could also see Special Agents Bailey and Griner behind the SUV. Battaglia advanced to the edge of the parking lot between East Monroe and the

baseball field. As she approached a Lexus parked in the northwest corner of the parking lot, the suspect came around the south side of the blue storage building and opened fire at her. The burst of 5-6 shots Ofc. Jensen heard were the shots fired by the suspect directly at Battaglia. Ofc. Battaglia quickly took cover behind the engine block of the parked Lexus. Multiple rounds struck the Lexus. Battaglia communicated over the radio that she was taking fire.

#### **F. The Threat Is Neutralized**

After hearing the burst of 5-6 shots from the suspect's location, Ofc. Jensen looked over the hood of his cruiser and saw that the suspect was still holding his assault rifle in the firing position. Noting the suspect's attention was not directed towards him, Jensen retrieved his Bushmaster rifle from his cruiser. Ofc. Jensen checked to make sure no bystanders were downrange of the suspect, aimed his rifle at the suspect, and attempted to fire a round. He pulled the trigger but his rifle did not fire. Officer Jensen realized his rifle was still in "cruiser safe" mode, meaning no cartridge was in the firing chamber. He again took cover behind the front of his vehicle and chambered a round. At that point Jensen heard Battaglia say that she was taking fire over the radio.

Jensen then came up from behind cover, aimed his rifle and fired one round at the suspect. The evidence establishes that this round did not hit the suspect. Jensen saw the suspect turn and look in his direction in response to the shot, so he ducked behind his cruiser again. Aware that the suspect may have seen him take cover behind the front of his cruiser, Jensen repositioned himself behind its rear. From

that position, Jensen looked and saw the suspect still pointing his assault rifle in the direction of the black Suburban SUV. Jensen aimed and fired a second round at the suspect. The evidence establishes that this round hit the suspect in the right hip.

Jensen ducked down and repositioned again, this time by moving towards the front of his cruiser.

After being struck by Jensen's round, the suspect partially collapsed to the ground and dropped the assault rifle in the process. He then retrieved his 9mm pistol from his holster and stood up. He walked towards the north side of the blue storage building and began firing the pistol at Bailey and Jobe.

From his position behind the black Suburban SUV, SA Bailey had seen Ofc. Battaglia approaching on his left, and he saw the suspect fire at her from the south side of the blue storage building. With the suspect's attention drawn to Battaglia, SA Bailey was able to get a better view. He reloaded his pistol and continued to fire at the suspect. SA Bailey then heard what sounded like a bullet being fired from behind him and to the right. Bailey turned his head toward where the sound had originated and he observed Ofc. Jobe in a firing stance.

SA Bailey noticed that the suspect had dropped the assault rifle and transitioned to his 9mm pistol, which he fired at Bailey, Griner and Jobe from the north end of the blue storage building. Jobe began to close the distance to the suspect, firing 4 rounds as he did so. SA Bailey saw that Ofc. Jobe was firing at the suspect, and he fired at the suspect as well.



The suspect now began to come out from behind the blue storage building, still firing the 9mm pistol. Ofc. Jobe issued clear commands at the suspect to “get back” and “get down” on the ground. Jobe also heard SA Bailey ordering the suspect to get on the ground. The suspect did not obey these repeated commands and instead continued firing. Bailey and Jobe returned fire and the evidence establishes that at this juncture, one of Bailey’s rounds hit the suspect in the chest, slightly to the left of the midline of the suspect’s chest. The force of this round caused the suspect to rotate counter-clockwise away from Bailey, placing his left side in Jensen’s line of fire.

At the same time Jobe and Bailey engaged the suspect from the front, Ofc. Jensen steadied himself at the front of his cruiser, aimed, and fired a third rifle round at the suspect. The evidence establishes that this round also hit the suspect, this time in the left hip. The suspect dropped the pistol and collapsed to the ground a second time.

SA Bailey and Ofc. Jobe observed the suspect go down in the area just to the north of the blue storage building. Jobe and Battaglia approached the suspect, who was trying to get up and was making motions towards his pistol which he had dropped after being struck by Bailey’s and Jensen’s rounds. Ofc. Jobe placed the suspect in handcuffs. Jobe saw the suspect’s assault rifle and 9mm pistol on the ground nearby. He searched the suspect, and found a partially-loaded 9mm magazine in his pocket.

Soon after Jensen fired his third round, he heard Jobe transmit over the radio that the shooter was in custody. This transmission was made at about 7:15 a.m., or

just three minutes after Jobe arrived on scene – and just 6 minutes after the first citizen call reporting the active shooter incident.

Additional Alexandria officers arrived on the scene and immediately started to perform life-saving measures on the suspect. After quickly determining that there were no other suspects involved in the incident, medics were allowed on scene. The suspect was transported by helicopter to the George Washington University Hospital where, despite the efforts of doctors, he died from his gunshot wounds.

#### **4.0 *Firearms Evidence***

Because the suspect targeted active members of Congress, the Federal Bureau of Investigation took the primary investigative role in this matter. The FBI was closely assisted by the Alexandria Police Department, the U.S. Capitol Police, and the Bureau of Alcohol, Tobacco and Firearms.

Crime scene technicians with the FBI's Washington Field Office's Evidence Recovery Team (ERT) investigated and processed the crime scene. ERT recovered a total of 110 fired cartridge cases from the scene, as well as a significant number of bullets and bullet fragments.

##### **A. Alexandria Police Officer Jensen**

Officer Jensen was armed with a department-issued .40 S&W caliber Model 22 Glock semi-automatic pistol and a department-issued .223 Remington caliber 5.56x45mm Bushmaster Model XM15-E2S semi-automatic rifle. Jensen did not fire his Glock pistol during the incident.

The Bushmaster rifle was loaded with 28 .223 caliber cartridges contained in the weapon's magazine. While the magazine has a capacity of 30 rounds, Alexandria Police Department policy is to issue only 28 rounds of .223 ammunition to officers qualified to fire the Bushmaster. This reduces tension on the magazine's spring and thereby reduces the possibility of a malfunction. When carried in the police cruiser, the rifle is made safe by not charging a round into the firing chamber. In other words, in order to fire the Bushmaster rifle, Jensen had to remove it from the cruiser, charge a round into the chamber and then fire.

ERT recovered three spent .223 cartridge cases in close proximity to where Jensen stopped his cruiser during the incident. The spent cartridge cases were approximately 65 yards from where the suspect was located when he was shot, meaning that the suspect was approximately 200 feet from Jensen when Jensen fired.

Subsequent to the incident, Jensen's Bushmaster rifle was determined to contain 25 rounds of ammunition. One round was located in the firing chamber and 24 remained in the magazine.

In totality, the evidence establishes that Jensen fired 3 rounds from the Bushmaster rifle, two of which hit the suspect.

#### **B. Alexandria Police Officer Jobe**

Office Jobe was armed with a department-issued .40 S&W caliber Model 22 Glock semi-automatic pistol loaded with 16 department-issued Winchester .40 caliber S&W cartridges. Jobe carried his pistol "charged" and his magazine "topped off." "Charged" means that the firearm has a round in the firing chamber and can be fired

simply by pulling the trigger. “Topping off” means inserting a fully loaded magazine into a firearm, charging one round from the magazine into the firing chamber, removing the magazine and inserting an additional round into the magazine to replace the charged round. “Charged” and “topped off”, Jobe’s pistol had one round in the firing chamber and 15 in the magazine.

ERT recovered a total of four Winchester .40 caliber S&W fired cartridge cases from the crime scene. All 4 of the cartridge cases were located in the area adjacent to the black Suburban SUV. This was the same area where Ofc. Jobe stated he was located when he fired at the suspect.

Subsequent to the incident, Jobe’s Glock pistol was determined to contain 12 rounds of ammunition, one in the firing chamber and 11 in the magazine.

In totality, the evidence establishes that Jobe fired 4 rounds from his Glock pistol, none of which hit the suspect.

### **C. Alexandria Police Officer Battaglia**

Officer Battaglia was armed with a department-issued .40 S&W caliber Model 22 Glock semi-automatic pistol loaded with 16 department-issued Winchester .40 caliber S&W cartridges. As Battaglia approached the scene, she was pinned down by the suspect’s fire. In totality, the evidence establishes that Battaglia did not fire her firearm during the incident.

### **D. U.S. Capitol Police Agents Griner and Bailey**

Special Agent Bailey was armed with a department-issued .40 caliber Model 23 Glock semi-automatic pistol loaded with department-issued Speer Gold Dot .40

caliber S&W cartridges. Special Agent Griner was armed with a department-issued .40 caliber Model 22 Glock semi-automatic pistol, also loaded with department-issued Speer Gold Dot .40 caliber S&W cartridges.

SA Griner's Glock 22 was a slightly larger model of Glock .40 pistol than Bailey's Glock 23. Griner's magazine had a capacity of 15 rounds. Griner carried her pistol "charged" and "topped off", meaning that it was loaded with 16 rounds: one in the firing chamber and 15 in the magazine.

SA Bailey's slightly smaller Glock .40 pistol had a magazine with a 13-round capacity. He also carried his pistol "charged" and "topped off", with 14 rounds of ammunition: 13 rounds in the magazine and one in the firing chamber. Both agents stated to investigators that they fired their pistols as the suspect.

ERT recovered a total of 33 Speer .40 caliber S&W fired cartridge cases from the crime scene. An additional Speer fired cartridge case was accidentally hidden in Bailey's clothing and located after the incident, for a total of 34 fired Speer rounds. Since the Capitol Police agents were the only law enforcement officers using Speer ammunition, the evidence establishes that collectively the two agents fired these 34 rounds. Because SA Bailey and SA Griner were both armed with similar Glock pistols and were firing identical ammunition it was not possible to forensically determine which cartridge cases were fired by which agent. However, the totality of the evidence establishes how many rounds each agent fired.

A total of 10 Speer .40 caliber S&W fired cartridge cases were recovered near the entrance to the first-base line of the baseball field. Those cartridge cases were located close to the east end of the first-base dugout.

The evidence establishes that these 10 rounds were fired by SA Bailey at the outset of the incident. Bailey, hearing gunshots, entered the baseball field and fired toward the suspect on the third-base side of the field as the suspect stood and fired from that position.

A total of 23 Speer .40 caliber S&W fired cartridge cases were located in the immediate vicinity of the black Suburban SUV and another fired Speer cartridge case was recovered from Bailey's clothing for a total of 24 fired Speer cases. Both SA Bailey and SA Griner fired at the suspect from their position near the black SUV.

After the incident, SA Griner's Glock pistol was determined to contain 7 rounds of ammunition, one in the firing chamber and 6 in the magazine. Griner did not reload her pistol. In totality, the evidence establishes that Griner fired 9 rounds from her Glock pistol, none of which hit the suspect.

SA Bailey's Glock pistol was also examined after the incident, and was determined to contain one round of ammunition in the firing chamber. His 13-round magazine was empty. Bailey reloaded one time. In totality, the evidence establishes that while near the black SUV Bailey fired 16 rounds from his Glock pistol, one of which hit the suspect.

Bailey originally had 14 rounds in his pistol. He fired 10 of these rounds on the baseball field, leaving 4 rounds in the pistol. Bailey moved to the area of the black

SUV, where he fired these 4 rounds. His pistol now empty, Bailey reloaded with a fresh, 13-round magazine, charged his pistol and engaged the suspect again. He fired 12 of the rounds in the second magazine at the suspect.

The ammunition count of the agents' firearms establishes that collectively they fired 25 rounds of .40 Speer ammunition from their position behind the black SUV. However, only 24 fired cartridge cases were recovered. This discrepancy is not unexpected; cartridge cases are small and may be ejected, moved, kicked, or, in some instances, even blown by the wind for significant distances. Therefore, it is not unusual for a cartridge case to be unaccounted for after an incident, particularly one in which a significant number of rounds were fired.

#### **E. The Suspect**

Immediately after neutralizing the threat from the suspect, Jobe handcuffed him. Jobe and Bailey approached and began to provide first-aid to the suspect. The suspect was medically evacuated by helicopter to the George Washington University Hospital where he succumbed to his wounds.

The suspect was armed with a Century Arms International SKS-style 7.62mm semi-automatic assault rifle. He carried two magazines for the assault rifle, one inserted into the rifle and a spare on his person. Each magazine had a 40-round capacity. The evidence establishes that the suspect did not "top off" his magazines after charging his weapons. This meant that, fully loaded, the suspect carried 80 rounds of 7.62x39mm ammunition. After the incident, one empty magazine was recovered from the ground near the blue storage shed, while the second magazine

was located, partially loaded and inserted into the assault rifle. The location of the empty rifle magazine establishes that the suspect reloaded while he was behind the blue storage shed.

After the incident, ERT recovered 33 fired 7.62x39mm cartridge cases from the third-base side of the baseball field, and another 29 fired cartridge cases from the area around the blue storage shed, for a total of 62 fired 7.62x39mm cartridge cases. ERT also discovered a total of 18 unfired 7.62x39mm rounds: 16 in the second magazine of the assault rifle, one on the ground on the third-base side and one in the suspect's pocket, for a total of 80 7.62x39mm rounds.

The suspect was also armed with a Smith & Wesson 9mm semi-automatic pistol. He possessed two magazines for the pistol, one inserted into the firearm and one in his pocket. Each magazine had an 8-round capacity. After the incident, ERT located the pistol in a "locked-back" condition and with an empty magazine. This condition indicates that the pistol was fired until the magazine was empty, causing the slide to "lock back." The second magazine was located in the suspect's pocket after the threat was neutralized. Although it had an 8-round capacity, this magazine was only partially loaded with 6 rounds of 9mm ammunition.

After the incident, ERT recovered 8 fired 9mm cartridge cases from the area around the blue storage shed. Thus, the evidence establishes that the suspect did not "top off" his 9mm magazine and that he fired a total of 8 rounds of 9mm ammunition at the law enforcement officers.



Later on June 14, and after the suspect was pronounced dead, the District of Columbia's Office of the Chief Medical Examiner performed an autopsy on the suspect's body. Three bullets were recovered from the body during the autopsy. The three bullets were transported to the FBI Laboratory in Quantico, Virginia, where they were forensically examined by a forensic firearms examiner.

Two of the three bullets recovered from the suspect's body were forensically identified as .223 caliber copper-jacketed bullets. Forensic analysis established that these two bullets were fired from Ofc. Jensen's Bushmaster rifle.

One of these .223 bullets entered the rear of the suspect's right hip. The autopsy revealed that this bullet traversed the suspect's body, traveling slightly upward and back to front. The bullet came to rest in the soft tissue of the right lower abdomen and did not enter the abdominal cavity. In totality, the evidence establishes that this was the first round to strike the suspect. The wound was serious enough to cause the suspect to drop to the ground, but was not immediately incapacitating.

The second of these .223 bullets entered the rear of the suspect's left hip. The autopsy revealed that this bullet traversed the suspect's body, travelling slightly downward and left to right. This bullet did enter the abdominal cavity and cause significant injury to internal organs. In totality, the evidence establishes that this was the third and final round to strike the suspect

The third recovered bullet was forensically identified as a .40 caliber copper-jacketed, hollow-point bullet. The totality of the evidence established that this round

was a Speer Gold Dot .40 S&W bullet and was therefore fired by one of the U.S. Capitol Police agents.

Despite a thorough forensic examination, the forensic scientist who examined the third bullet could not identify which of the agent's firearms fired it due to a lack of sufficient microscopic markings on the bullet. However, by the time the suspect was shot, SA Griner had been seriously wounded and knocked out of the firefight. This fact, along with the timing of the suspect dropping to the ground, establishes that SA Bailey fired the .40 caliber round that struck the suspect.

This .40 bullet entered the suspect's upper abdomen, just below the sternum and slightly to the left of the body's midline. The bullet traversed the suspect's body front-to-back and slightly upward, coming to rest just under the skin. In totality, the evidence establishes that this was the second round to strike the suspect.

It is impossible to determine the order in which the rounds struck the suspect from physically examining the bullets. However, the totality of the evidence suggests that Jensen fired the first round that struck the suspect in the right hip, hitting him from the right rear and causing him to drop the assault rifle and partially fall to the ground. The suspect then recovered and regained his feet, transitioning to his 9mm pistol. At this point, Bailey shot the suspect from the front, striking the suspect in the upper abdomen and causing him to rotate to his torso to his left, in a counterclockwise motion. Shortly thereafter, Jensen fired again from the right rear, striking the suspect in his now-exposed left hip. The combined force of Bailey's round

and Jensen's second round effectively neutralized the threat and caused the suspect to drop the handgun and fall to the ground where he was taken into custody.

### *5.0 The Applicable Legal Standard*

In Virginia, the law of self-defense provides that if a person reasonably fears, under the circumstances as they appear to him, that he is in imminent danger of being killed or of being subject to great bodily harm, he may use deadly force in self-defense. There is no general rule concerning what constitutes a reasonable belief of imminent harm. That question is determined by the facts and circumstances of each particular case.

Furthermore, in certain circumstances, a person is justified in using deadly force in defense of another person. *See, e.g., Foster v. Commonwealth*, 13 Va. App. 380 (1991). Where a person reasonably apprehends death or serious bodily harm to a third-party, the person is privileged to use force in defense of the third-party to the same extent that the third-party would be privileged to use force to defend himself. *See Foster*, 13 Va. App. at 385-86 (describing the right to defend another as "commensurate with self-defense." (internal citation omitted)).

The person acting in defense of the third-party must have a reasonable belief, based on the totality of the circumstances, that the third party was without fault in provoking the attack. *Id.* at 386. Furthermore, the level of force the person uses to defend the third party must be reasonable in relation to the harm threatened to the third party. *Id.*

Stated differently, the law of self-defense allows the use of deadly force when a person perceives an imminent threat of death or serious bodily injury to himself or to a third-party. The law of self-defense is the law of necessity. *McGhee v. Commonwealth*, 219 Va. 560, 562 (1978); *Green v. Commonwealth*, 122 Va. 862, 871 (1918).

An imminent threat of death or serious bodily injury from deadly force may be met with deadly force. Less than deadly force must be met with a proportionally reduced response. *Cook v. Commonwealth*, 219 Va. 769 (1979). There is no requirement that a law enforcement officer use all feasible alternatives to avoid a situation where deadly force may be required. *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7th Cir. 1994). Furthermore, the law imposes no duty to attempt the use of deadly force in a less-than-lethal manner. Once a person is entitled to use deadly force in self-defense, there exists no obligation to attempt to wound, disable or disarm one's adversary short of killing him.

The test of reasonableness is based on the circumstances as they reasonably appeared to the person in danger. *See generally Fortune v. Commonwealth*, 133 Va. 669 (1922). The issue is whether the actual belief of the person in danger was reasonable in light of the circumstances as he perceived them. *Harper v. Commonwealth*, 196 Va. 723 (1955).

The Supreme Court of the United States has noted that the "reasonableness of a particular 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... (t)he calculus of

reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain and rapidly evolving — about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

## **6.0 Findings**

The evidence in this case establishes beyond a reasonable doubt that the suspect, fueled by rage against Republican legislators, decided to commit an act of terrorism as that term is defined by the Code of Virginia. *See* Va. Code §18.46.4.<sup>4</sup> The suspect, using a lawfully-purchased assault rifle and handgun, ambushed a peaceful assembly of people practicing baseball and began to fire indiscriminately in an effort to kill and maim as many people as possible.

As the suspect began to shoot at the people practicing, he was almost immediately engaged by SA Bailey, who entered the baseball field and returned fire at risk to his own safety. Bailey's courageous act helped avert disaster by "pinning down" the suspect and apparently causing him to alter his plans.

The suspect then walked south towards the area behind home plate to engage and to try to neutralize SA Bailey and SA Griner. The suspect continued to fire his assault rifle at Bailey and Griner from behind a position of cover. However, Griner and Bailey continued to engage the suspect, preventing him from freely moving

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<sup>4</sup> In pertinent part, the Code of Virginia defines an "Act of Terrorism" as "an act of violence... committed with the intent to (i)intimidate the civilian population at large or (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation."

about. Even after being seriously wounded, Griner managed to return fire and to help an injured person, Mr. Mika, who was lying next to the black SUV. Griner and Bailey willingly and courageously drew the suspect's fire towards their position and thereby prevented him from focusing on the unarmed people hiding on the baseball field and in the dugouts. Griner and Bailey's heroic actions also bought time for Alexandria Police to arrive on the scene and join the firefight.

Officer Jobe approached from the east and joined the firefight from roughly the same position as Bailey and Griner. The suspect continued to fire at the law enforcement officers, shooting a burst at Ofc. Battaglia as she approached. As Jobe got into firing position, he encountered a determined suspect who continued to fire. Numerous commands to "get on the ground" were ignored by the suspect.

Ofc. Jensen approached from the west. Soon after he arrived on scene, he observed the suspect firing at the officers and agents to the east and heard the burst of gunfire targeting Battaglia. As Jensen got into firing position with his rifle, the suspect continued to actively fire at officers.

The agents and police officers who engaged the suspect were confronted with a suspect who determinedly and repeatedly engaged in deadly force against a group of innocent, unarmed baseball players. When engaged by the agents and the responding Alexandria Police officers, the suspect trained his fire on them. The suspect's intent, which can be clearly inferred from his conduct, was to shoot the agents and officers so that he could return to killing and maiming the unarmed people on the baseball field.

On these facts, the agents and officers were justified in reasonably fearing for their lives and the lives of the people on the baseball field. Therefore, it was reasonable – indeed it was necessary – for them to use deadly force in order to repel the assault and neutralize the threat. The agents and officers reasonably used deadly force until the threat was neutralized, and then, to their credit, they immediately approached the suspect and rendered first-aid.

For the reasons stated above, the use of deadly force by SA Griner, SA Bailey, Ofc. Jobe and Ofc. Jensen in this case was justified by the doctrine of self-defense as that doctrine is outlined by the law of Virginia. I decline to bring any criminal charge against the agents and officers.

## **7.0 Conclusion**

The facts presented in this case are so clear-cut and so obviously required the agents and officers to use deadly force that one might question why my office even conducted this review. The answer is self-evident: the facts cannot be considered “clear-cut” until their totality is known and sufficiently analyzed.

Furthermore, as the elected Commonwealth’s Attorney, it is my duty to review every law-enforcement use of deadly force regardless of whether it appears justified at first glance. And it is axiomatic that each use-of-force investigation must be conducted in substantially the same way and not “pre-judged” by what the facts may appear to be. Initial media reports are always incomplete and sometimes inaccurate. Finally, it is important that the citizens of Alexandria be given a detailed factual

accounting of any law-enforcement shooting in as transparent and expeditious a manner as the circumstances allow.

I note that the time-frame in which this report was produced and publicly released was significantly truncated by two factors that may not present themselves in future use-of-force reviews: first, the suspect was killed as a result of the use-of-force and, therefore, obviously could not be prosecuted for any criminal offense and second, the facts of this case, while horrifying, were relatively straightforward and corroborated by both many eyewitnesses and the available physical evidence.

I note that if the situation were different, and had criminal charges been brought against any person, the ethical rules applicable to attorneys would have prohibited me from making any public comment on the facts or evidence of this case outside of a courtroom. Indeed, the rules would have specifically prohibited the public release of this report until after the attendant criminal charges had been adjudicated in a court of law.<sup>5</sup> Since no criminal prosecution is warranted in this case, I may release this report and discuss its contents publicly.

The actions of Special Agents Griner and Bailey indisputably prevented the suspect from completing his planned attack and, therefore, prevented innumerable deaths and serious injuries. Their actions also “pinned down” the suspect and created time for the Alexandria police to respond and join the gun battle. The actions of

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<sup>5</sup> Va. Rule of Professional Conduct 3.6(a) holds that “a lawyer participating in... the investigation or prosecution... of a criminal matter that may be tried to a jury shall not make or participate in making an extrajudicial statement... that the lawyer knows, or should know, will have a substantial likelihood of interfering with the fairness of the trial by a jury.”



Officers Jensen, Jobe and Battaglia helped neutralize the threat presented by the suspect without further injury to innocent people.

The agents and officers should be commended for their bravery and service. As others ran from the suspect, they engaged him and ran towards the danger. The agents and officers are the paradigm of what law-enforcement officers should be and are true stewards of the public trust inherent in their respective offices.

This case did not present a close call. To the contrary, not only were the actions of the agents and officers reasonable, they were obligatory in light of the overwhelming and determined force employed by the suspect.

A handwritten signature in black ink, appearing to read 'B. Porter', with a long horizontal stroke extending to the right.

Bryan L. Porter  
Commonwealth's Attorney  
City of Alexandria, Virginia  
October 6, 2017