Virginia State Police Use of Force Opinion Letter  

Overview

In the very early morning of April 22, 2020, Officer Timothy Brooke of the Town of Bedford Police Department attempted to conduct a traffic stop on a vehicle. That vehicle disregarded the audio and visual signals from Brooke's patrol car and accelerated well beyond the speed limit. A pursuit began that continued into Bedford County, where Bedford Sheriff's deputies and troopers from the Virginia State Police assisted. The driver continued to ignore the signals to stop his vehicle even after spike strips were deployed and after losing most, if not all, of two of his tires. As two troopers' vehicles attempted to box the vehicle in for what is referred to as a rolling road block, the vehicle took further evasive maneuvers and appeared to purposefully strike the two troopers' vehicles. Subsequently, the driver lost control of his vehicle and it ran off the right side of the road and came to a stop. The sole occupant, Daniel Ira Newman, exited the vehicle and he immediately pointed what resembled a firearm at Virginia State Trooper D. M. Walls. Trooper Walls fired multiple shots at Newman in response. As soon as law enforcement officers secured the apparent firearm, they began to provide Newman with medical assistance. The following report provides an overview of the incident and the legal conclusions reached after analysis of the investigation's findings.

Timeline of Events

The following summary of facts are based upon an exhaustive investigation by Special Agents of the Virginia State Police unaffiliated with Trooper D. M. Walls. The extent of this investigation is reflected in Attachment 1 associated with the opinion. The facts recited in this letter are based upon cross-referencing and comparing multiple statements from law enforcement officers from three separate departments or agencies. The officers' statements are further corroborated by body cam, in car video, dispatch call records, physical evidence, and citizen witness interviews.

In addition, the training records, use of force policies, and firearms policies of the law enforcement agencies that were involved were obtained and reviewed. This was not done to determine whether or not the officers followed their department policies on the date under consideration. It was for the limited purpose of putting their actions into context for the criminal
realm and ultimately the reasonableness of their preparations and actions when facing the situation as it unfolded on that date.

On April 22, 2020 at approximately 12:30 A.M., Officer Timothy Brooke of the Town of Bedford Police Department attempted to have contact with an individual, later identified to be Daniel Ira Newman, who was seated in a red Chrysler Sebring and parked in a private parking lot. As the officer attempted to make contact the vehicle left the parking lot. Subsequent to an alleged traffic violation, Officer Brooke attempted to initiate a traffic stop.

For the purposes of this opinion letter, further detail of this portion of the incident will not be revealed. Mr. Newman may face criminal and/or traffic charges in relation to his actions. Conclusions of law or fact made by the Commonwealth in a public opinion letter may negatively impact Mr. Newman's presumption of innocence in the future.

Upon the initiation of the officer's lights and siren, the vehicle appeared to disregard these signals and attempt to accelerate away. At this point, a vehicle pursuit began which lasted between eighteen and nineteen minutes. The pursuit quickly entered into Bedford County and led to assistance by both Bedford County deputies and Virginia State Police troopers. During this time, the vehicle was continuously noted to be exceeding the posted speed limit, sometimes by more than twenty miles per hour. Additionally, two officers, Officer Brooke and Sergeant Marks (BCSO), reported the suspect vehicle traveling on the wrong side of the marked road on three distinct occasions (approximately seven minutes into the pursuit, eight minutes, fifteen seconds into the pursuit, and at the sixteen minute mark). Eight minutes and forty-five seconds into the pursuit, Newman's vehicle struck spike strips set out by the Virginia State Police. Newman's vehicle continued to disregard law enforcement signals for approximately eleven more minutes after hitting the spike strips, although his speeds slowed to between thirty and forty miles per hour. Roughly two minutes after the spike strips were deployed, Newman's vehicle lost two tires, but continued to evade the pursuing officers. Throughout the pursuit, law enforcement noted very little, if any, other vehicles on the road. Thus they made the decision that the public was not being endangered by the continued pursuit.

Fifteen minutes into the pursuit, Sergeant Marks inquired if the troopers assisting in the pursuit, Trooper Walls and Trooper Kessee, were certified to conduct a "pit maneuver." He was advised that they were not, but approximately three minutes later one of the troopers suggested that they could conduct a "rolling road block." In such a maneuver, the law enforcement vehicles gets both in front and behind the pursued vehicle and coordinate a slow and measured decreasing of speed in an attempt to bring the offending vehicle to a stop. Approval to this suggestion was given and the troopers attempted to get into position. Trooper Kessee attempted to pass Newman's vehicle. Kessee reported later that Newman's vehicle swerved hard to keep him from passing and rammed his vehicle after Kessee had successfully passed him. Trooper Walls indicated that the suspect vehicle tried to block Kessee from getting in front and then Newman's vehicle struck Walls' vehicle. Sergeant Marks, now third-in-line, observed that both Virginia State Police vehicles were driven as though they had been struck. Multiple in-car cameras show Newman's' vehicle moving in a different manner than prior to the troopers' attempts to get in place for the rolling road block. There was obvious, observable contact with at least one of the State Police vehicles. To maintain the integrity of Mr. Newman's presumption of innocence for potential assault on law enforcement charges, I decline to conclude in this letter that Newman knowingly and intentionally struck a State Police vehicle or vehicles. I do however determine and find that both Trooper Walls and Trooper Kessee could easily conclude that they had been intentionally struck by the fleeing suspect as it comes to their state of mind, the subsequent use of force, and their perceived risk of being injured or killed.

Immediately subsequent to contact between Newman's vehicle and Trooper Walls' vehicle, the Newman vehicle appears to lose control and leave the roadway coming to rest
entirely off the left side of the road's surface. Within three to four seconds of the vehicle coming completely to rest, Newman opens the driver's side door and attempts to exit his vehicle. As he does so, Officer Brooke's in car camera clearly shows a dark or black object in Newman's right hand. It is at this time that Trooper Walls discharges his firearm multiple times striking Newman. A screen shot of this action by Newman is attached to this report as Attachment 2. Participants and eye witnesses to this action give similar statements concerning this sudden incident. Trooper Walls advised, during the course of the investigation, that he observed the suspect with a gun in his right hand attempting to turn it towards him (Walls). Sergeant Marks stated that he could see that the suspect had a gun in his hand and that he swung around with the gun towards the trooper. Deputy D. Gardner, also assisting in the pursuit, stated that he was able to see the suspect point a firearm at Virginia State Police. Newman, however, interviewed later while hospitalized stated, "I don't remember nothing. Honest to God, I don't know."

After Newman was shot, law enforcement converges on him. After determining he was no longer armed, they began to immediately render life saving measures on Mr. Newman. Recovered by those initial officers, in close proximity to Mr. Newman, was a pellet gun with a small flashlight taped to it. This gives the pellet gun the appearance of a tactical weapon and there are no distinguishing marks to differentiate from a true firearm. A photograph of this item is included as Attachment 3. At least one family member or associate of Newman's, interviewed in the subsequent investigation, made statements further linking this item to Mr. Newman.

**Legal Analysis**

The use of potentially lethal force in Virginia, by either law enforcement or a private citizen, is controlled by well established laws of self defense and defense of others. The first determination as to whether the use of deadly force is permissible by law is whether or not the person who used such force was in some way legally at fault in bringing about the incident. In this instance, the trooper was assisting in the pursuit of an individual apparently actively violating the felony eluding statute, Virginia Code Section 46.2-817, as amended. Multiple officers from several agencies observed Newman's continuous high rate of speed and disregard of traffic regulations to include driving on the wrong side of a marked highway.

In the review of law enforcement use of force incidents, a primary consideration should be the possibility that less deadly forms of subduing an individual could have been used. This review of an event has the advantage of hindsight and cannot take place with the same stress, potential of danger, and emotion that existed that the officers faced during that time. Such thoughtful consideration and reflection, however, can help dictate policy and training for future incidents in which law enforcement will once again face stress-filled decisions.

Less aggressive methods were used to attempt to get Mr. Newman to comply, after lights and sirens, were ignored. These methods included the use of spike strips to disable his vehicle and a rolling road block to slowly and safely bring the pursuit to an end. Instead of complying, Mr. Newman continued to elude officers by driving after hitting the spike strips and by actively attempting to block troopers' attempts to box him in. Consequently, law enforcement was not at fault in bringing about the incident. Since the law enforcement officers were not at fault, the law of justifiable self defense controls. With justifiable self defense, or justifiable use of potentially deadly force, a person without fault may use deadly force to subdue an attacker if they are reasonably in fear of imminent death or serious bodily injury. They are not required to retreat. McCoy v. Commonwealth 125 Va 771 (1919) Gilbert v. Commonwealth, 28 Va. App. 466 (1998). Jackson v. Commonwealth, 96 Va 107 (1898). This same right extends to the right to defend others who you reasonably fear to be at risk of death or great bodily injury, so long as that other party had not helped to bring about the incident at hand. Lamb v. Commonwealth, 141 Va
Thus, an officer who reasonably believes that his, her, or another officer's life is in imminent danger may use deadly force against the attacker. (See Criminal Offenses and Defenses by Ronald J. Bacigal).

When Newman emerged from his vehicle he was holding what was immediately apparent to resemble a firearm. The fact that the weapon was later determined to be a pellet gun was not known by the Trooper or other officers at the time, nor were those officers required to verify whether or not the weapon that is pointed at them is, in fact, an operable firearm. To wait for such verification could have deadly consequences for any of those officers once a weapon is brandished. Law enforcement cannot be held to a standard to determine whether a firearm pointed at them is loaded before they use force to defend themselves. Legally, and practically, they must use force when force is threatened against them.

Trooper Walls had a reasonable belief, at the time that Newman brandished his weapon, that he, or his fellow officers, were at risk of death or great injury. The individual had previously actively disregarded less intrusive attempts to stop him. Additionally, it was perceived by multiple officers that he had struck, or attempted to strike, one or more law enforcement officers' vehicles with his own vehicle. The immediate perceived threat allows and justifies the use of potentially deadly force in these circumstances.

Thus, it is the final decision of the Bedford County Commonwealth Attorney's Office that Trooper D. M. Walls acted appropriately and with justifiable use of lethal force against Daniel Ira Newman on April 22, 2020. There will be no charges sought against the trooper for the actions that he took during the performance of his duties on that date.

W. Wesley Nance,  
Commonwealth's Attorney for  
Bedford County  
123 E. Main Street  
Bedford, VA 24523  

5/27/2020  
Date