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Press Release

District Attorney Morrissey issues Ruling on Braintree Police shooting

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Norfolk District Attorney Michael W. Morrissey has completed his investigation into the June 4, 2021 fatal shooting of Andrew Homen, age 34, of Brockton, in an incident that seriously wounded two Braintree Police Officers and took the life of Braintree Police K-9 Kitt.

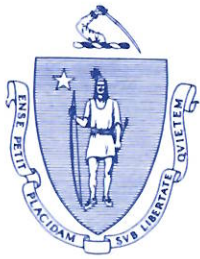
"I have reviewed all of the available testimonial and physical evidence in this matter, including the recently completed ballistics and autopsy reports. I have assessed all of that evidence in light of the factors necessary for police use of force to be justified," District Attorney Morrissey said, concomitantly releasing the letter detailing his findings to the Braintree Police Chief on the matter, along with associated materials. "I am satisfied that Braintree Police were justified in their use of force when Andrew Homen began firing at them, wounding two and killing their search dog."

The District Attorney's ruling is detailed in the (attached) letter sent to Chief Dubois today. The associated elements posted at the link below are 1. The death certificate listing cause and manner of death; 2. Massachusetts State Police Ballistics Report; 3. The extended 911 call summoning police to the scene; 4. Radio transmissions among Braintree

Police responding to the scene, through the evacuation of the wounded.

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Please note that limited redactions were made to materials provided with this report, including personal identifying information of civilian witnesses, medical information, and to comport with M.G.L. c. 41, §97D.



The Commonwealth of Massachusetts

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December 1, 2021

Chief Mark Dubois
Braintree Police Department
282 Union Street
Braintree, MA 02184

RE: District Attorney's final determination on officer use of force on June 4, 2021

Dear Chief Dubois:

The following is a statement of facts, standard of review, and findings relative to the June 4th incident near Braintree village involving Braintree Police use of force.

On Friday, June 4, 2021, at approximately 12:44 p.m., a resident of Braintree Village contacted Braintree 911 Emergency Services and reported that she had been physically assaulted. (See Exhibit 1 – 911 Call). Multiple Braintree Police officers responded to the victim's home on McCusker Drive in Braintree, located in a large residential complex called Braintree Village Apartments. Braintree Police officers arrived approximately 4 minutes later and were informed that the suspect, Andrew Homen, had fled the scene and was in the possession of two firearms. Officers entered the victim's residence and found the apartment in complete disarray with evidence of broken furniture and household items destroyed or damaged. Police obtained an initial description of the suspect from the victim, who indicated that she had been subject to physical and verbal assaults that occurred over a 24-hour period. The victim informed police that Homen had two (2) firearms, a black and silver semi-automatic handgun and a revolver, stating that she had seen, touched, and had the revolver pointed at her the previous day. Braintree Police also learned that Andrew Homen had active arrest warrants.

A more complete interview of the victim was later conducted later at Milton Hospital, where she had been brought for treatment for her injuries, by the Massachusetts State Police; the victim further confirmed that Homen had held the barrel of a gun to her forehead.

Additional Braintree Police, including detectives, continued to arrive on scene. Police learned that the apartment complex had recently been equipped with high-quality video surveillance

cameras. From the victim, detectives were able to obtain the description of Homen as being a light-skinned Portuguese male, wearing a black UMass sweatshirt, dark-colored jacket, and carrying a gray backpack. Detectives obtained video footage, which showed Homen leaving 45 McCusker Drive at approximately 12:45 p.m. and walking in the direction of the wooded area in the rear of the residential complex, which abuts the MBTA commuter railroad tracks. The area is adjacent to Commercial Street and the Monatiquot River.

Having confirmed the defendant's description and direction of flight as captured on video, Braintree Police established a perimeter around the densely wooded area where Homen was last seen traveling on foot. Braintree Police personnel, including officers working details, responded to assist in the effort to locate and apprehend Homen. The East Braintree Middle School, which is located near Braintree Village Apartments, was placed in lock down in response to the present danger of an armed gunman at-large in the area. Officers determined that the difficulty of the densely wooded terrain, the proximity of the middle school, the densely populated residential area, and the suspect's reported possession of two firearms, made deployment of a K-9 to locate the subject advisable. Braintree Officer William Cushing and his K-9 partner, Kitt, arrived at the scene and met with Officer Richard Seibert, who is also a trained K-9 officer, to establish a track to locate Homen in the wooded area. It was decided that, due to the dense overgrowth of the area, a third police officer would enter the woods.

Officer Matthew Donoghue, who had been dispatched from the station to be part of the perimeter guard, volunteered to enter the woods along with Officer Cushing, Seibert, and K-9 Kitt. (See Officer Donoghue statement). The three officers and K-9 Kitt entered the wooded area and began the search. Officer Cushing was working Kitt on a long leash, approximately 15 feet in length, in front of him. Officer Seibert had obtained his patrol rifle from his vehicle. Officer Donoghue was armed with his Sig Sauer 45-caliber semi-automatic department-issued handgun. According to the officers, K-9 Kitt responded and began to demonstrate that he was on to the trail of the fleeing Homen. Officer Seibert, also an experienced K-9 officer, was working closely with Officer Cushing, both providing cover and radio communications to officers monitoring the Braintree Police channel – including the direction and approximate area being searched. At approximately 1:28 p.m., the officers observed K-9 Kitt signaling that he was getting close to locating Homen. Officer Cushing said as K-9 Kitt got closer, he saw someone concealed behind a rock. The rock was only a few feet from the officers. Officer Cushing began yelling commands: "show me your hands, show me your hands." As K-9 Kitt advanced toward Homen, the subject fired three rounds in quick succession (see Officer Cushing statement). The initial ambush resulted in K-9 Kitt being fatally wounded.

Officer Seibert reported that he heard the commands "Drop the gun. Drop the fucking gun" and then saw and heard a muzzle flash from the suspect. He saw Officer Cushing go down and heard K-9 Kitt, who was leaping up, yelp and saw him fall over backwards. Seibert, armed with the rifle, returned fire. He initially fired 8-10 rounds and heard Officers Donoghue and Cushing yelling that they were hit. Officer Seibert resumed firing, shooting an additional 8-10 rounds. Then everything stopped and went quiet (See Officer Seibert statement).

Officer Cushing said he could tell by the sound the dog made, followed by silence, that K-9 Kitt was fatally wounded or dead. At that time, the suspect stood up and pointed the black and silver firearm directly at Officer Cushing. Officer Cushing returned fire. Officer Cushing believed Homen was hit but was still standing. Officer Cushing had emptied his magazine in the exchange, causing his pistol to lock open as designed, but he was unable to reload because, as he stated, "when I looked down at my arm, it looked like it was blown off." Officer Cushing said he believes he was hit by an additional round fired by Homen and fell to the ground. Officer Cushing Officer Seibert stepped over him and Officer Cushing said that all he could hear was the sound of gun fire from Seibert's rifle (See Officer Cushing statement).

Officer Donoghue (with the other officers) advanced through the woods with his gun drawn due to the present danger. He reported that he was cognizant that K-9 Kitt was on the scent and could hear Officer Cushing giving commands prior to shots being fired. Officer Donoghue confirmed Officer Cushing and K-9 Kitt were at point, followed by Officer Seibert and himself, who were staggered behind Officer Cushing. The thick brush impeded sightlines, according to Officer Donoghue, and he reported that he had his "head on a swivel" scanning for Homen. Officer Donoghue was also watching behind them to make sure they did not overlook anything. In his statement, he said, "there were multiple commands, and then, as I was turning in that direction to see what was going on, I heard gunshots, um, and I saw K-9 Kitt going towards a certain location." Officer Donoghue saw the silhouette of a person behind heavy brush, then saw the muzzle flash of a gun firing in his direction and returned fire in the direction of the muzzle flash. Officer Donoghue then advanced toward the others. He provided cover for Officer Seibert as he advanced toward Officer Cushing and the area where Homen was located.

Officer Seibert was still giving commands as he advanced and Officer Donoghue provided cover as Officer Seibert rendered first-aid to the wounded Officer Cushing, who was lying on the ground. Officer Donoghue said that they reported officers shot and K-9 down over the radio, which is reflected in captured radio transmissions. Shortly after that, they could hear voices of fellow officers, but because of the heavy brush, they could not see anyone. They kept yelling so the other members of the Department could locate them. A number of officers had crossed the Monaquot River behind Homen to reach the wounded officer. Other officers were coming from the parking lot and housing area of Braintree Village Apartments. Braintree Officers Donoghue and Cushing suffered gunshot wounds and needed immediate medical attention in order to survive their injuries. Officer Seibert had significant military experience including in battlefield first-aid and provided the necessary immediate treatment. Officer Seibert triaged Officer Cushing first and then Officer Donoghue. Braintree officers entering the area then placed Officer Cushing on a backboard and carried him and assisted Officer Donoghue to awaiting ambulances.

Officers approached Homen and observed multiple gunshot wounds. He was evacuated from the wooded area, received first-aid treatment from Braintree Police at the scene, and was

transported to South Shore Hospital by ambulance. He was pronounced deceased at South Shore Hospital.

Officer Seibert also confirmed that K-9 Kitt had succumbed to the gunshot wounds and was dead at the scene.

AUTOPSY:

The autopsy of Andrew Homen was performed by Dr. Rebecca Erin Dedrick on June 5, 2021, including a toxicology screen. Dr. Dedrick concluded that, upon examination, she identified a combined 19 entrance and exit wounds on the body. She was unable to ascertain or differentiate whether the various identified wounds were entrance or exit wounds. Further, the medical examiner was not able to identify whether individual wounds were caused by a handgun or rifle. The autopsy report by Dr. Dedrick indicates that the cause of death was multiple gunshot wounds, shot by others. The death was ruled it a homicide, indicating the death of one individual at the hands of another. The District Attorney's Office, with the assistance of the Medical Examiner and State Police, must determine whether the actions of the Braintree police were justified under the circumstances. (See Death Certificate.)

BALLISTICS REPORT:

The Massachusetts State Police assigned to the District Attorney's Office contacted State Police Crime Scene Services. Lieutenant John H. Conroy of the Firearms Identification Section performed a ballistics examination and report of the weapons used and fired in the incident in Braintree. Lieutenant Conroy examined Officer Cushing's department-issued .45-caliber Sig Sauer P320 handgun. The weapon holds nine rounds in a magazine and one in the chamber, for a total of ten shots. Officer Donahue was also armed with a department-issued .45-caliber Sig Sauer P320 on the date of the incident. Officer Seibert was armed with a department-issued .45-caliber Sig Sauer P320 and his patrol rifle¹. The analysis by state police ballistics found that Officer Cushing's gun, when examined, was completely empty. Officer Donahue's weapon, when examined, was found to contain eight live cartridges in the weapon, and an empty magazine was present in the area where Officer Donahue was returning fire. It was ascertained by interviews and evidence that Cushing's gun was completely empty, and he had fired up to ten rounds. Officer Donahue had emptied one magazine during the initial fire fight of ten rounds and had reloaded and fired an additional one round from the reloaded weapon. Officer Cushing stated that he was unable to reload due to his injuries. Officer Donahue stated that he fired and reloaded. Those statements comport with the ballistics report.

Officer Siebert's department-issued .45-caliber contained a full magazine and one in the chamber, for a total of ten rounds and had not been fired during the exchange. Officer Siebert had fired his Bushmaster patrol rifle, which contained 30 rounds. Lt. Conroy's examination found that the magazine contained nine live rounds, indicating he may have fired up to 21

¹ This rifle, the Bushmaster XM15, is referred to in some interviews as an M4, the military version of the weapon.

rounds during the exchange with Homen. This is proximate to Siebert's stated recollection of "about 20 rounds."

The police had received initial information that Homen was armed with two different weapons. One was a Smith and Wesson SD .40-caliber handgun. The weapon could potentially hold up to 14 rounds in its magazine and one additional round in the chamber, for a total of 15. The ballistics report found that there was one round still in the magazine and one in the chamber when examined after the incident. Homen also was armed with a Smith and Wesson long caliber Hopkins & Allen Arms Company .32-caliber, hammer-style revolver. The ballistics review indicated a recovery of six live cartridges, either in the gun or at the scene, which was consistent with its capacity. Lt. Conroy opined that it appeared that no bullets had been fired from the revolver. (See the ballistics report of Lieutenant John H. Conroy, Mass State Police.)

STANDARD OF REVIEW & FINDINGS

Graham V. Connor, 49 U. S. 386 (1989) established the "objective reasonableness" standard for police use of force. The case provides that an officer's use of force is judged based upon the totality of the circumstances, from the perspective of the officer, on the scene, at the moment force is used, without the benefit of hindsight, in circumstances that are tense, uncertain, and rapidly evolving. The so-called "Graham factors" used to determine reasonableness, as set forth in the case: 1) The severity of the crime; 2) Whether the subject was an immediate threat to the officer's or others; 3) Was the subject was actively resisting arrest or how the subject was attempting to evade the arrest by flight. Graham, 490 U. S. at 396.

NORFOLK DISTRICT ATTORNEY FINDINGS

1. Andrew Homen was involved in a domestic altercation with a resident of the Braintree Village Apartments on the night of June 3 and morning of June 4, 2021.
2. Homen had physically and verbally assaulted the victim, attempted to choke her, and held a gun to her head during the domestic dispute.
3. The victim was able to get to a phone and call Braintree 911, expressing her concern that Homen would continue to hurt her or kill her or himself.
4. Once Homen realized the victim had called Braintree Police, he fled the apartment and entered the heavily wooded area adjacent to Braintree Village Apartments and bordered by the MBTA Commuter Rail tracks and Commercial Street.
5. The victim told Braintree Police that Homen was armed with two firearms when he fled the apartment.
6. Braintree Police immediately locked down the adjacent East Middle Junior High School in response to the present danger of an armed assailant in the vicinity.

7. Braintree Police gathered intelligence information, including video evidence of the description of Homen, and identified where he entered the wooded area in the rear of Braintree Village Apartments.

8. Braintree Police set up a security perimeter and designed a plan to track and attempt to apprehend Homen in the heavily wooded area.

9. The Braintree Police track was led by Officer Bill Cushing and K-9 Kitt, with additional support from Officers Seibert and Donaghue.

10. Officer Cushing and his partner, K-9 Kitt, led the group, with Kitt working on-leash 15 feet in front of the 3 Braintree officers as they entered the wooded area to look for the armed suspect, Andrew Homen.

11. At approximately 75 to 100 yards into the heavily wooded area, the officers recognized signals from K-9 Kitt that he had detected a strong scent and was getting close to finding Homen in the heavy underbrush.

12. K-9 Kitt approached an area where Homen was seen behind a rock area and advised to show his hands and come out. Suddenly and without warning, Homen began firing his weapon as K-9 Kitt advanced on his position.

13. K-9 Kitt was mortally wounded by the first rounds of gunfire, and Braintree Officers Cushing and Donaghue were wounded while exchanging gun fire with Homen. Officer Seibert also fired rounds from his patrol rifle during the exchange.

14. Homen fired his weapon first and was also struck numerous times by bullets from the Braintree Police who returned fire. Braintree Police returned fire after being fired upon, without warning, in response to their verbal commands.

15. Hearing gunfire, Braintree Police Officers who had formed the containment perimeter around the wooded area rapidly entered the woods and rendered aid and assistance to the wounded suspect and two wounded officers.

16. Homen and the two wounded officers were transported to area hospitals, where Homen was determined to be deceased. Officers Donaghue and Cushing were treated for extensive gunshot injuries.

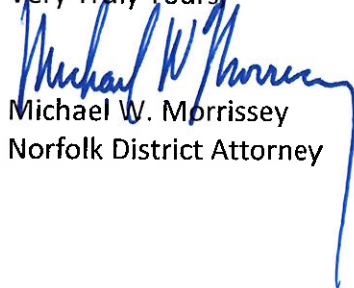
In light of the consistent narrative of events emerging from law enforcement interviews, video footage, recordings, and civilian witnesses, I find that the three Braintree Police Officers' use of force while discharging their weapons when fired upon in Braintree on June 4, 2021 was objectively reasonable and justified, according to the factors delineated in Graham v. Connor. I

find that Homen was involved in a series of violent crimes and presented an immediate threat to the officers or others, including the children in the East Middle School.

I also find that Homen fled, was armed, and was actively resisting arrest, failed to follow instructions to disarm himself or show his hands when requested to, was attempting to evade arrest by flight into the adjacent wooded area, and discharged his weapon at the police and K-9 Kitt.

In light of all these findings, the Norfolk District Attorney's Office will take no further action relative to these three Braintree Police Officers and find they were justified in their use of force in the performance and execution of their duties when they returned fire on the armed Andrew Homen on June 4, 2021, in the town of Braintree.

Very Truly Yours,



Michael W. Morrissey
Norfolk District Attorney