

COMMONWEALTH of VIRGINIA



OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF PORTSMOUTH



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For Immediate Release
Portsmouth, Virginia

REPORT – WALTER J. BROWN III

The Office of the Commonwealth's Attorney has reviewed the Virginia State Police reports, video evidence, witness statements, forensic reports and the medical examiner's report in the above-referenced matter and finds the facts to be as followed:

The events leading up to this shooting began in the parking lot of the Save & Save Supermarket located at 1000 7th Street, Portsmouth, Virginia. Surveillance video from the Save & Save shows that on March 24, 2015 at 1:45p.m., Walter J. Brown, III stopped his silver Chevrolet Malibu sedan in the Save & Save parking lot, where a pedestrian approached the driver's side window and interacted with him. Shortly afterwards, Mr. Brown parked his vehicle in the vacant gas station parking lot next door and remained in his vehicle.

At 2:25p.m., a white unmarked Suburban, occupied by three Portsmouth Police Department Detectives with the Special Investigations Unit, parked next to Mr. Brown's vehicle which was still parked in the vacant parking lot. Detectives R. Aguilar, M. Hunter, and J. Whitson, explained that the silver Chevrolet sedan appeared to be suspicious because it was parked in a vacant gas station parking lot, with no other vehicle surrounding it, and there were several pedestrians loitering in the area. Detective Whitson recalled that a pedestrian was standing at the corner of the Save & Save and appeared to be acting as a lookout.

The three detectives approached the vehicle occupied by Mr. Brown and a passenger. After speaking with the passenger, who was in the front passenger's seat, Detective Whitson could smell an odor of marijuana coming from the vehicle.

Detective Whitson retreated to the rear of Mr. Brown's vehicle and attempted to quietly ask detectives Hunter and Aguilar if they smelled it. Detective Hunter, who was speaking with the driver at the time, stated that Mr. Brown was close enough to have heard Detective Whitson mention an odor of marijuana in the vehicle. Detective Hunter asked Mr. Brown to step out of the vehicle. A struggle ensued as Detective Hunter was attempting to pull Mr. Brown out of the car while Mr. Brown was attempting to put the keys in the ignition to start the car. At the same time, the passenger exited the vehicle and Detectives Aguilar and Whitson moved to the passenger's side to apprehend him.

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As the passenger was exiting the vehicle, Mr. Brown was able to start his vehicle and pull away. The security camera shows Mr. Brown accelerate over a small curb that separates the parking lots and drive off in a rapid manner.

Sergeant G. Smith and Sergeant N. Hawes, Portsmouth Police Department, Community Service Unit, were stationary in their unmarked silver police vehicle in the Southside Gardens neighborhood. After Mr. Brown fled from the parking lot, it was broadcast over the radio that a vehicle was running from police in the area of 7th Street. Sergeants Smith and Hawes were able to observe the vehicle shortly after the radio broadcast and began to pursue Mr. Brown.

A lengthy pursuit ensued as Mr. Brown made his way to Interstate 264 Westbound and then exited at Portsmouth Boulevard. After exiting at Portsmouth Boulevard, Mr. Brown proceeded through the Alexander's Corner intersection. He eventually turned right onto Shea Street and then left onto Colin Drive South.

All of the Portsmouth Police personnel who were involved in the pursuit recalled that Mr. Brown operated his vehicle in a reckless manner. This included driving well above the posted speed limit, disregarding traffic control devices, running off of the paved portion of the road, and swerving in and out of traffic.

After turning onto Colin Drive South and jumping the curb in front of 19 Colin Drive South, Mr. Brown parked his vehicle in the front yard. At this time, Lieutenant (Lt.) T. Thursby was directly behind Mr. Brown's vehicle when it came to a stop in the yard. Mr. Brown exited his vehicle and ran towards the front door. As Mr. Brown entered the residence, Lt. Thursby deployed his taser, striking Mr. Brown in the back. Mr. Brown then began to swipe at his back as if he was trying to pull the two taser prongs out. Lt. Thursby ordered Mr. Brown to "show me your hands." However, Mr. Brown was able to get to his feet and proceed down the hallway.

As Mr. Brown was moving down the hallway, Lt. Thursby again deployed his taser, which had a two shot capacity. Lt. Thursby was not sure if Mr. Brown was actually struck as the second deployment seemed to have no effect on Mr. Brown. Mr. Brown was able to enter the first bedroom down the hallway. As soon as Mr. Brown entered the room, he went towards a dresser on the right and began fumbling around, apparently looking for something. Mr. Brown's wife had been in the bed and was sitting up.

After fumbling around on the dresser, Lt. Thursby was able to wrestle Mr. Brown down to the ground. While doing this, Lt. Thursby attempted to drive stun Mr. Brown with his taser. However, this did not appear to affect Mr. Brown, and Lt. Thursby's taser was knocked from his hand during the struggle.

As Lt. Thursby continued his efforts to detain Mr. Brown, Officer S. Daugherty entered the room and immediately began to assist him. While on the ground, Mr. Brown was able to gain control of Lt. Thursby's taser, but he did not deploy it on the officers.

Officer M. Rotolo entered the bedroom and witnessed the struggle taking place. Officer Rotolo heard Mr. Brown's wife saying something, but he could not understand her, as she was hysterical. Officer Rotolo informed Officer Daugherty and Lt. Thursby that he was going to deploy his taser on Mr. Brown. After deploying the taser, Mr. Brown rolled slightly to his side and grunted.

With Officer Daugherty and Lt. Thursby on top of Mr. Brown near the foot of the bed, Mr. Brown was able to raise up and move from the foot of the bed, back towards the dresser. As Mr. Brown moved towards the dresser, Lt. Thursby was separated from Mr. Brown. Mr. Brown and Officer Daugherty fell to the ground, with Mr. Brown lying on his left side.

While none of the three officers knew where the gun came from, each stated that Mr. Brown displayed a gun at this point. Officer Daugherty first saw the gun when it was in Mr. Brown's right hand. He then heard a click, as if the safety was taken off. He then saw the gun pass right in front of his face as Mr. Brown raised it to his own head. Officer Daugherty recalled seeing the red dot on the gun indicating it was ready to fire.

Officer Rotolo saw Mr. Brown reach on top of the dresser as if he was looking for something just before he saw the gun in his hand. Mr. Brown then immediately put it to his own head. While his vision was partially blocked, Officer Rotolo recalled seeing Officer Daugherty grab Mr. Brown's arm and pull it towards the floor. Soon after, he heard the gunshots.

Lt. Thursby first saw the gun when it was in Mr. Brown's hand. Lt. Thursby saw Mr. Brown point the gun towards Officer Daugherty and then towards him. He could see that Officer Daugherty was struggling with Mr. Brown's arm. Mr. Brown was lying on his left side when Lt. Thursby shot him four times in his torso area. After the first four shots were fired, Lt. Thursby stated the gun was still raised, so he shot one more time in Mr. Brown's head.

Prior to the shooting, one of the officers yelled "gun, gun!" Four gunshots were then heard; followed by a pause, and then one final gunshot. After the gunshots, Portsmouth Police dispatch was notified of the shooting and the officers attempted to render aid to Mr. Brown.

Portsmouth paramedics were dispatched to the residence. Two paramedics checked Mr. Brown's vital signs and determined the he was deceased. He was pronounced dead at 2:40 p.m. Both of the paramedics recall seeing a gun in or near Mr. Brown's left hand. The paramedics asked the officers in the room to move the gun so they could assess Mr. Brown. One of the paramedics stated the gun appeared to be cocked and ready to fire.

While at the Portsmouth Police Department on the day of the shooting, Mr. Brown's wife was in a conference room that contained audio and video recording. On at least three occasions, Mrs. Brown can be heard saying that her husband grabbed his gun from the dresser and put it to his head. These statements were made without detectives in the room.

The Medical Examiner's report concluded that Mr. Brown was shot by police during a struggle that also involved attempts to stun with a conducted energy device (CED). CED probes were

found in the right upper back and in the left hip and buttock, separated by less than 2". Eight ballistic injuries were identified representing between five and eight bullets. The most significant injury was a gunshot wound to the head. Additional close-range gunshot wounds caused injuries which would have been significant if there had been survival.

LEGAL ANALYSIS

The issue presented is whether the officers acted in a justifiable manner by using deadly force against Walter J. Brown III. The law in this area is quite settled and was spelled out by the Court of Appeals in the 2008 case of *Caison v. Commonwealth*:

"To justify the use of deadly force, the defendant must have reasonably feared death or serious bodily injury from his victim, and there must have been an overt threat." *Peeples v. Commonwealth*, 30 Va. App. 626, 634, 519 S.E.2d 382, 386 (1999) (en banc). "[T]he amount of force used must be reasonable in relation to the harm threatened." *Diffendal v. Commonwealth*, 8 Va. App. 417, 421, 382 S.E.2d 24, 26, 6 Va. Law Rep. 69 (1989). Furthermore, an individual's right to self-defend "begins where the necessity begins and ends where it ends." *Thomason v. Commonwealth*, 178 Va. 489, 498, 17 S.E.2d 374, 378 (1941).

Caison v. Commonwealth, 663 S.E.2d 553, 561, 52 Va. App. 423, 440, 2008 Va. App. LEXIS 361, *20-21 (Va. Ct. App. 2008)

In the present case, there was overwhelming evidence to show that Mr. Brown was an immediate threat to law enforcement and other persons in the dwelling. This opinion is supported by the following: Mr. Brown, after being tased at least two times, continued to fight with police in the bedroom of his residence; Mr. Brown struggled to search for something in the dresser of his bedroom; and, Mr. Brown ultimately wielded a gun while fighting with the police officers.

Therefore, it is the conclusion of the Office of the Commonwealth's Attorney for the City of Portsmouth that the officers involved in the shooting of Walter J. Brown III were justified in their use of force and that no criminal charges will be pursued against them.

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