



**In re: Report of Suffolk County District Attorney Rachael Rollins  
On Findings in the May 22, 2017 Shooting Death of Kelly Pastrana**

I have reviewed the investigation of former Suffolk County District Attorney Rachael Rollins regarding the May 22, 2017 shooting death of Kelly Pastrana. Her report contains detailed findings of fact and analysis of the applicable law.

After a comprehensive review of the findings, I concur fully with the conclusion that no criminal charges are warranted in connection with the conduct of any law enforcement officer in this case.

Kevin Hayden  
District Attorney



**OFFICE OF SUFFOLK COUNTY  
DISTRICT ATTORNEY RACHAEL ROLLINS**

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**Report of Suffolk County District Attorney  
Rachael Rollins On Findings in the  
May 22, 2017 Shooting Death of Kelly Pastrana**

The Suffolk County District Attorney's Office has concluded its investigation into the May 22, 2017, police-involved shooting death of Kelly Pastrana on Warren Avenue in the City of Chelsea. Our investigation has revealed that after an argument with his wife in the couple's home at 80 Warren Avenue, Mr. Pastrana punched and choked her, pursued her when she and their ten-year-old daughter sought refuge in a neighbor's house across the street, and fired gunshots at them while they hid in their neighbor's house. Mr. Pastrana then returned to his house, and fired multiple shots at a Chelsea police officer who was responding to multiple 911 calls for a man with a gun. He then set fire to his home while inside it. While his house was burning, Mr. Pastrana continued to fire shots at a second officer, who returned fire. Mr. Pastrana ultimately died in the blaze that he started. Under these facts and circumstances, I find that both officers who fired their weapons did so in a lawful and proper exercise of self-defense. They came upon the violent scene after receiving 911 calls; Mr. Pastrana had physically attacked his wife in front of his child; he had shot at and attacked a neighbor; and, while the police attempted to confront and detain him, he shot at them multiple times. The police returned fire to end the violent assault Mr. Pastrana was waging on his neighborhood and on them. Based on a thorough investigation into the facts and circumstances surrounding the death of Mr. Pastrana, I have determined that no criminal charges are warranted. Although my findings address directly the lawfulness of specific police officers' actions, I am critically aware of the tragedy of this day and the trauma and loss suffered by Mr. Pastrana's family, in particular his wife and young daughter, in its aftermath.

The Suffolk County District Attorney has the statutory duty and authority pursuant to M.G.L. Ch. 38, § 4 to direct and control all death investigations in Suffolk County. As District Attorney, I promised the public that should an incident such as this take place in Suffolk County, an independent investigation would occur and an outside committee would review the evidence and our investigation. In keeping with

that promise, the Discharge Integrity Team (“DIT”) was formed in 2019. The DIT is comprised of a member of the community, a retired superior court judge, a criminal defense attorney, and an active member of the law enforcement community. I am the fifth member of the DIT and personally attend, participate in, and oversee every meeting.

This outside independent team is led by my First Assistant District Attorney, Daniel Mulhern. The DIT conducts regular monthly meetings in person at a location outside of the District Attorney’s Office or by telephonic conference. First Assistant Mulhern coordinates the presentation to the DIT with the assigned senior lawyer from my office with no staff outside of the investigation present. During these meetings, the DIT is presented with the status of the investigation and the evidence in the case. There is an active question and answer protocol throughout the presentation, and potentially a request for further investigation in identified areas. Because this death occurred in Chelsea, the Massachusetts State Police is the law enforcement entity tasked with conducting the investigation.

## **I. The Scope of the Investigation**

The investigation included extensive review of: recorded interviews of police officers who responded to the scene;<sup>1</sup> recorded interviews of family members, the tenant, neighbors, and civilians at the scene; 911 calls and other police radio transmissions; ballistics analyses of officers’ weapons; significant amounts of charred or burned physical evidence from the scene; photographs of the scene; “shotspotter” recordings of the incident; and the autopsy report and all supporting documentation issued by the Office of the Chief Medical Examiner.

## **II. Prelude to the Police Encounter**

At the time of this incident, Kelly Pastrana was thirty-eight (38) years old and lived at 80 Warren Avenue in the City of Chelsea with his wife, Wenda Aquino, their ten-year-old daughter Zuahey, and a tenant named Franklin Maldonado. The section of Warren Avenue where Mr. Pastrana lived is entirely residential. The row of homes on the even side of Warren Avenue is surrounded in the rear by a dense wooded area. Beyond that wooded area is Prescott Avenue, which runs parallel to Warren Avenue.

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<sup>1</sup> Officers from the Chelsea Police Department, the Revere Police Department, the Everett Police Department, and the MBTA Transit Police Department were interviewed.

The events that precipitated Mr. Pastrana's assault on the police began in the early evening of May 22, 2017. Ms. Aquino was at home with her daughter Zuahey. She was growing concerned because her husband, Mr. Pastrana, was scheduled to work that night and was nowhere to be found. Fearing that Mr. Pastrana would be late for work, Ms. Aquino attempted numerous times to reach him on his cell phone. She eventually got through to Mr. Pastrana, who admitted that he was at a bar. Ms. Aquino became angry and told Mr. Pastrana that he could lose his job, which a family member had helped him obtain.

When Mr. Pastrana returned home shortly before 9:00 pm, he and Ms. Aquino argued about his drinking. At some point Ms. Aquino pointed at Mr. Pastrana and said to Zuahey, "That's your dad," in an apparent attempt to highlight Mr. Pastrana's intoxication. The couple continued to argue before Mr. Pastrana punched Ms. Aquino in the face and attempted to choke her. Zuahey jumped on Mr. Pastrana's back to defend her mother, who yelled for Zuahey to call for help. Zuahey ran across the street to the home of William and Kathleen Clark at 73 Warren Avenue. Mr. and Mrs. Clark resided at that address with their twenty-three-year-old (23) son Philip.

Zuahey banged on the Clarks' front door and pushed her way into the house, screaming, "He's going to kill my mommy." Mr. Clark ushered Zuahey into his house and went outside to investigate. There, he encountered Ms. Aquino running out of 80 Warren Avenue. Mr. Clark instructed Ms. Aquino to go to his house. Seconds later, Mr. Pastrana exited 80 Warren Avenue. Mr. Clark grabbed Mr. Pastrana and cursed at him while yelling words to the effect of "What are you doing? You can't be doing that." Mr. Pastrana pulled away from Mr. Clark and went to the back seat of a pickup truck parked in the driveway of 80 Warren Avenue. After rummaging through the backseat, Mr. Pastrana emerged with a gun, which he pointed at Mr. Clark's chest. Mr. Pastrana ordered Mr. Clark to back up and then proceeded towards Mr. Clark's house at 73 Warren Avenue. He fired the weapon into the house. Mr. Clark screamed to his wife and son that Mr. Pastrana was approaching and that he was armed. Mrs. Clark, who was at the front door, ran terrified outside of her house. Mr. Pastrana entered the Clarks' home.

Once inside the home, Mr. Pastrana fired at least two (2) more shots, striking a closed bedroom door and the wall outside of a bedroom.<sup>2</sup> After firing those additional

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<sup>2</sup> Police later located and collected two (2) spent projectiles from the house.

shots while inside the house, Mr. Pastrana exited and ran back to his home at 80 Warren Avenue.

### **III. The First Police Encounter**

After Mr. Pastrana ran back to his home, Chelsea Police Officer Robert Hammond arrived at Warren Avenue in response to radio calls for a man with a gun at 73 Warren Avenue. En route to the scene, Officer Hammond heard updates that included “shotspotter” information and additional radio calls for shots fired. Officer Hammond drove up Warren Avenue with the odd-numbered houses on his right (passenger) side. He eventually parked in front of 63 Warren Avenue and got out of his police cruiser. As he walked further up the sidewalk toward 73 Warren Avenue, Officer Hammond encountered Mr. Clark, who said, “He’s got a gun! He’s got a gun! He’s shooting his gun!” Officer Hammond kept moving forward, passing Mr. Clark’s white Kia Optima sedan, which was parked in front of 73 Warren Avenue.<sup>3</sup> As Officer Hammond passed the Optima, Mr. Pastrana opened the front door to his house at 80 Warren Avenue and fired a shot across the street at Officer Hammond. Officer Hammond dove to the ground and took cover on the driver’s side of the Optima. Mr. Pastrana continued to fire additional shots in Officer Hammond’s direction. After broadcasting over his radio that shots had been fired, Officer Hammond got to his feet and, seeing Mr. Pastrana with his firearm raised, returned fire at him three (3) times with his department-issued .40 caliber semiautomatic handgun.<sup>4</sup> Mr. Pastrana quickly retreated into the house, slammed the door closed, and turned out all of the lights. Alerted by Officer Hammond that there was an active shooter, numerous police units from multiple jurisdictions began to arrive in the area.

### **IV. The Second Police Encounter**

Police officers from numerous agencies – including members of the Chelsea Police Department, Everett Police Department, Revere Police Department, and MBTA Transit Police – responded to the call for shots fired on Warren Avenue. Officers took up various tactical positions around Mr. Pastrana’s house. This was done to prevent an attempted escape and to guard against any surprise attack by Mr.

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<sup>3</sup> The Optima was parked facing Officer Hammond’s cruiser, with the driver’s side of the Optima facing the Clarks’ house and the passenger side facing the street and Mr. Pastrana’s house.

<sup>4</sup> Three (3) cartridge casings matching Officer Hammond’s department-issued .40 caliber semiautomatic pistol were recovered from the area of the white Kia Optima that Hammond was using for cover.

Pastrana. In particular, one group of officers approached the rear of 80 Warren Avenue from Prescott Avenue, which runs parallel to Warren Avenue. A dense thicket of trees formed a natural screen between the rear of the houses on Prescott Avenue and the rear of the houses on Warren Avenue.

Other officers took up positions at 122 Warren Avenue, a triple-decker house that was next door to 80 Warren Avenue.<sup>5</sup> These officers were on the front porch and on the first and second floor rear porches of 122 Warren Avenue.<sup>6</sup>

After retreating into his house, Mr. Pastrana warned his tenant Mr. Maldonado to get out, because “something bad is about to happen.”<sup>7</sup> Mr. Pastrana then went to the second floor, where he opened a window at the rear of the house, pushed out the screen, and fired shots into the tree line behind 80 Warren Avenue. Officers who were approaching the rear of 80 Warren Avenue through the wooded area came under fire from these shots. As this was occurring, Lieutenant David Callahan of the Chelsea Police Department was on the first floor porch of 122 Warren Avenue. He witnessed Mr. Pastrana’s arm extend through the window and fire multiple shots into the tree line.<sup>8</sup>

MBTA Transit Police Officer James Davie and his partner Officer Brian Harer also responded to the scene.<sup>9</sup> After arriving on Warren Avenue, officers Davie and Harer met several members of the Revere Police Department. As the officers conferred in the street, Officer Davie heard three (3) gunshots.<sup>10</sup> Officer Davie

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<sup>5</sup> If one were facing 80 Warren Avenue, 122 Warren Avenue is on the right hand side. The houses were separated by a yard.

<sup>6</sup> The rear porches could be accessed by an external set of stairs.

<sup>7</sup> Mr. Maldonado fled the house and subsequently provided a statement to police.

<sup>8</sup> Although Lt. Callahan did not see Mr. Pastrana’s face, the evidence shows that Mr. Pastrana was the only person in the house at this time. No remains, other than those of Mr. Pastrana, were found after fire destroyed the home. The only other occupants of the home – Mr. Pastrana’s wife, daughter, and tenant – were all outside the home during this violent encounter.

<sup>9</sup> Officer Davie has been assigned to the Transit Police SWAT team since 2004. Officer Davie was armed that night with a Sig Sauer .45 caliber semiautomatic pistol and a 5.56 caliber Bushmaster XM15 assault rifle, both department-issued weapons.

<sup>10</sup> Based on the various accounts of the officers who responded, these were likely the shots Mr. Pastrana fired from the second story back window of 80 Warren Avenue into the tree line.

broadcast information about the shots fired and then made his way to the rear of 122 Warren Avenue. There, he saw Lt. Callahan on the first floor porch.

After talking to Lt. Callahan,<sup>11</sup> Officer Davie went up to the second floor porch of 122 Warren Avenue, which offered a better vantage point. Once in position, Officer Davie aimed his rifle at an enclosed back porch of 80 Warren Avenue.<sup>12</sup> Officer Davie could hear officers moving in the wooded area behind 80 Warren Avenue and radio transmissions of the officers who were on the porch directly below him. From one radio transmission, Officer Davie learned that Mr. Pastrana appeared to be setting fire to the garage. As this transmission was made, Officer Davie heard another shot fired from 80 Warren Avenue. Seconds later, Officer Davie saw a shirtless Mr. Pastrana exit the door to the back porch. Officer Davie aimed a flashlight that was attached to his rifle in Mr. Pastrana's direction. From the porch doorway, Mr. Pastrana then fired two shots at Officer Davie, who estimated that he fired five (5) to six (6) rounds in return. As Officer Davie returned fire, Mr. Pastrana retreated back into the house and slammed the back porch door shut. Office Davie then observed a muzzle flash just inside of the porch door. Believing that Mr. Pastrana was firing at him again, Officer Davie fired back at the porch door.<sup>13</sup> Mr. Pastrana was not seen alive again.

## V. The Fire, Body Recovery, and Autopsy

The fire that Mr. Pastrana had initially set in his garage soon engulfed and destroyed large sections of his house, including the back porch where he was eventually discovered.<sup>14</sup> His body was badly charred, with the exception of his back. This finding suggests that Mr. Pastrana was relatively motionless on his back during the fire. The autopsy further revealed that Mr. Pastrana sustained a single gunshot

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<sup>11</sup> Lt. Callahan recounted to Officer Davie that he saw Mr. Pastrana firing into the tree line from a second story window at the rear of 80 Warren Avenue.

<sup>12</sup> The door to the porch faced the side of 122 Warren Avenue.

<sup>13</sup> Officer Davie estimated that the second volley of shots he fired numbered four (4) to five (5). A total of seven (7) cartridge casings from Officer Davie's rifle were recovered from the scene.

<sup>14</sup> The gun that Mr. Pastrana used to shoot at officers was never recovered. The compromised structural integrity of the house prevented a thorough search for his weapon and other ballistic evidence. Damaged projectiles, however, were recovered from the driveway, wall, and closet floor of the Clarks' residence at 73 Warren Avenue. Additionally, two (2) .380 caliber cartridge casings were recovered from the rear porch of 80 Warren Avenue. Those cartridge casings were not consistent with the calibers of the department-issued weapons that were fired by Officers Davie and Hammond.

wound. The entrance to the wound was on his right side. The projectile traveled in a linear direction – from right to left, slightly from front to back, and slightly downward. The projectile was recovered in the muscle of the lower left back. During its path through Mr. Pastrana’s body, the projectile struck Mr. Pastrana’s spinal cord, which, in quick measure, would have rendered Mr. Pastrana unable to move or walk. The cause of death was determined to be the gunshot wound to his back and inhalation of the products of combustion.<sup>15</sup>

The only officers who discharged their weapons that night were Officers Davie and Hammond. Neither officer was able to confirm whether any of the shots they fired actually struck Mr. Pastrana. The projectile recovered from Mr. Pastrana at autopsy was subsequently compared to a test fire from Officer Davie’s assault rifle. Although no definitive conclusion could be drawn, a ballistics comparison revealed that the projectile recovered from Mr. Pastrana shared “discernible class characteristics” with test fires from Officer Davie’s rifle, but there was “insufficient agreement in quantity and quality of microscopic marks to determine [whether] they were fired by the same source weapon.”

## **VI. The Legal Standard and Conclusion**

Our legal analysis as to whether the actions of the involved officers could constitute criminal acts was guided by applicable case law and legal precedent on the use of force by law enforcement. To be lawful, an officer’s use of deadly force must be objectively reasonable in light of all of the facts and circumstances confronting the officer. Whether such actions were reasonable is evaluated from the perspective of a reasonable officer at the scene rather than the 20/20 vision of hindsight. As the United States Supreme Court has explained, “[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, 396-397 (1989), and that “if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.” *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2016 (2014). The Massachusetts Supreme Judicial Court has also noted, “a police officer has an obligation to protect his fellow officers and the public at large that goes beyond that of an ordinary citizen, such that retreat or escape is not a viable option for an

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<sup>15</sup> Without treatment, Mr. Pastrana could have died from the gunshot wound alone. The amount of carbon monoxide in his body – 75% – would have also been fatal by itself.



on-duty police officer faced with a potential threat of violence.” *Commonwealth v. Asher*, 471 Mass. 580, 589 (2015).

After a careful consideration of the facts and the law, I conclude that Officers James Davie and Robert Hammond acted reasonably and lawfully. The facts establish that while responding to reports that a man with a gun had physically assaulted his wife and shot at her and their ten-year-old daughter, both Officers – at different locations and at different times – were also fired upon by Mr. Pastrana. Every bullet fired by Mr. Pastrana was a violent and potentially fatal act that put the lives of police officers as well as neighbors at significant risk. Accordingly, under these circumstances, I find that Officer Hammond’s and Officer Davie’s decisions, respectively, to return gunfire, after being shot at by Mr. Pastrana, were lawful and reasonable exercises of self-defense and defense of others. Accordingly, I have determined that criminal charges are not warranted.

Rachael Rollins



District Attorney