



Report of Suffolk County District Attorney Kevin R. Hayden On Findings in the August 4, 2019 Shooting Death of Oscar Ventura

This Office has concluded its investigation into the August 4, 2019 officer involved shooting of Oscar D. Ventura-Gonzales in Revere. The investigation revealed that Everett Police Officer Alex Vieira discharged a single round at Mr. Ventura when, after ignoring multiple requests to stop, Mr. Ventura drove his motor vehicle directly at Officer Vieira nearly striking him. Before the fatal encounter, Mr. Ventura had led uniformed Everett Police Department officers in a dangerous high-speed pursuit through busy residential and commercial streets in Everett, Malden and Revere that ended at the intersection of Washington Avenue and Fuller Street in Revere. As he sped along the densely populated portion of Washington Avenue in Revere near the intersection with Fuller Street, Mr. Ventura suddenly locked his brakes nearly causing a collision with a marked Everett cruiser directly behind him.

As Officer Vieira arrived at the intersection after the near collision between Mr. Ventura and the other Everett Police cruiser, he attempted to maneuver around Mr. Ventura's motor vehicle to box him in and end the pursuit. When Officer Vieira stopped his cruiser in front of Mr. Ventura, Mr. Ventura rammed Officer Vieira's cruiser from behind. Officer Vieira then exited his cruiser and ordered Mr. Ventura to stop. Mr. Ventura disengaged his vehicle from the back of Officer Vieira's cruiser and drove directly at Officer Vieira. Fearing that he would not be able to get out of the way of Mr. Ventura's vehicle, Officer Vieira backed up and fired a single round at Mr. Ventura striking him in the torso. Mr. Ventura's vehicle rolled a short distance from the intersection and came to rest in the front yard of a home on Washington Avenue. Other officers removed Mr. Ventura from his vehicle and provided immediate medical attention. Mr. Ventura died later that morning at Massachusetts General Hospital.

Under the circumstances, Officer Vieira's decision to discharge his weapon was justified as a lawful and proper exercise of self-defense. Therefore, based on a thorough investigation into the circumstances surrounding the shooting death of Mr. Ventura, I have determined that criminal charges will not be filed against Officer Vieira.

SCOPE

The Suffolk County District Attorney has the statutory duty and authority to direct all death investigations in Suffolk County, including fatalities related to the use of force by law enforcement officers. The primary goal of this investigation, therefore, was to determine whether any person bears criminal responsibility for Mr. Ventura's death. Pursuant to the authority to direct this and

all death investigations in Suffolk County, former District Attorney Rachael Rollins assigned the Chief of the Office's Homicide Unit, Assistant District Attorney Edmond Zabin, to direct this investigation in consultation with her. Detective Lieutenant Robert Murphy, who at the time was the Commander of District Attorney Rollins' State Police Detective Unit and a member of District Attorney Rollins' Discharge Integrity Team led the investigation.

The investigation included a review of the materials compiled by the Massachusetts State Police Detective Unit assigned to the Suffolk County District Attorney's Office. The evidence included: recorded statements of the involved officers and civilian witnesses; video surveillance footage; police radio transmissions; recordings of 911 calls; ballistics analysis of the involved officer's weapon and ammunition; physical evidence from the scene, including glass from the window of Mr. Ventura's motor vehicle, the shell casing from the bullet discharged from Officer Vieira's firearm, Officer Vieira's damaged marked police cruiser, and Mr. Ventura's damaged motor vehicle; Massachusetts State Police Collision Analysis and Reconstruction (CARS) analysis; the autopsy report with supporting documentation and photographs; scene photographs; reports of prior interactions between Mr. Ventura and law enforcement; a Use of Force Review report received on January 4, 2021 from use of force expert Officer Cameron Deane a Use of Force Analyst and Senior Instructor for the Municipal Police Training Committee of Massachusetts; and input from District Attorney Rollins' Discharge Integrity Team. The investigation was completed prior to my taking office.

OFFICER VIEIRA

On August 4, 2019, Alex Vieira was a City of Everett police officer with the rank of patrol officer. Prior to joining the Everett Police Department, Officer Vieira was a veteran of the United States Marine Corps. Upon his honorable discharge from the USMC, Officer Vieira began his service with the Everett Police Department in 2016 after he successfully completed the mandated (G.L. Ch. 41 sec. 96B) Municipal Police Training Committee Recruit Officer Course at the Reading Massachusetts Police Academy in Reading Massachusetts.¹ According to the Everett Police Department, Officer Vieira has not had a single sustained citizen's complaint against him.² In 2017, Officer Vieira filed a report pursuant to Everett Police Department policy documenting that he drew, but did not discharge, his firearm while searching a home for a potential suspect in the course of investigating a domestic assault allegation. There were no citizens' complaints reported

¹ ADA Zabin and Detective Lieutenant Murphy consulted with Cambridge Police Officer Cameron Deane as an expert on use of force and the Use of Force Continuum. Officer Deane is a senior instructor for the MPTC responsible for training recruits at MPTC academies as well as mentoring, evaluating, and certifying MPTC instructors on defensive tactics. Officer Deane was the lead Defensive Tactics instructor at the MPTC Reading Police Academy when Officer Vieira attended. Officer Deane has no specific memory of teaching Officer Vieira at the Academy, but he provided the course materials that he used while instructing Vieira's recruit class on the MPTC standards on use of force. Officer Deane presented his findings to DA Rollins' Discharge Integrity Team.

² According to the Everett Police Department, Officer Vieira has not been the subject of any Internal Affairs investigations.

in conjunction with that incident. This investigation has not revealed, and it has never been alleged, that Officer Vieira had any interaction with Mr. Ventura prior to August 4, 2019.

OSCAR VENTURA-GONZALEZ

Mr. Ventura was 32-years-old, born in El Salvador, with a last known address of 34 Sargents Ct. in Lynn. His last Board of Probation entry was seven years earlier reflecting a domestic assault charge and a restraining order in Somerville District Court. Mr. Ventura's driver's license was active as of August 4, 2019.

On May 23, 2019, Mr. Ventura's sister filed a missing persons report with the Lynn Police Department. She reported that Mr. Ventura left his residence on that day after quitting his job at Pro-Tech Towing and Recovery where he worked as a tow-truck driver. She also reported that Mr. Ventura was "a danger to himself [and] suffers from mental illness" which she described as "anxiety [and] depression." On May 25, 2019, the Lynn Police noted that Mr. Ventura returned home. A review of Mr. Ventura's text messages reveals some corroboration of his struggle with mental illness, but no disturbing or bizarre messages of note. The postmortem toxicology report documented that Mr. Ventura had alcohol and marijuana in his system.

THE INITIAL PURSUIT

On August 4, 2019, Officer Vieira was working the 9:00 PM to 7:00 AM shift in uniform and in a marked Everett Police Department cruiser (#148) – a Ford Explorer SUV. Shortly after midnight, Officer Vieira was alone in his marked cruiser and was approaching a traffic light at the intersection of Broadway and Hancock Streets in Everett when he observed a black Honda SUV turn onto Broadway and drive past him in the opposite direction. Although Officer Vieira did not know his identity at that time, Mr. Ventura was the operator of the black Honda SUV. Officer Vieira took note that Mr. Ventura's vehicle was driving at a "high rate of speed," its engine was "loud," and his "cruiser even moved a little bit from the momentum" as Mr. Ventura's vehicle raced up Broadway toward Revere.

In response, Officer Vieira activated his lights and sirens, reversed direction, and began to pursue Mr. Ventura. Undeterred, Mr. Ventura continued to drive at a high rate of speed on Broadway - at times swerving into oncoming traffic. During the initial pursuit, Officer Vieira lost sight of Mr. Ventura's vehicle when Mr. Ventura turned off Broadway – travelling the wrong way on a one-way residential street. Officer Vieira eventually located Mr. Ventura near Burditt Street in Everett. As he continued to pursue Mr. Ventura, Officer Vieira observed Mr. Ventura's vehicle "bobbing" as he negotiated the turn onto Ferry Street.

Mr. Ventura eventually pulled over on Ferry Street near the intersection of Shute Street in the Glendale Place section of Everett. With his lights and sirens still activated, Officer Vieira parked his marked cruiser a few feet behind Mr. Ventura's vehicle. Officer Vieira provided the license plate of Mr. Ventura's vehicle to the Everett Police Department dispatcher via his police radio. Officer Vieira noted that other than the unidentified driver, there were no other people inside Mr.

Ventura's vehicle. Before Officer Vieira received any information from Everett Police dispatchers, and before he could exit his cruiser, Mr. Ventura sped off initiating a second high speed pursuit.

As he pursued Mr. Ventura through Everett, Malden, and Revere, Officer Vieira was in constant communication with the Everett police dispatcher. Mr. Ventura continued to flee at a high rate of speed, swerving into oncoming traffic, and driving in a dangerous and reckless manner. Officer Vieira intended to apprehend Mr. Ventura for failing to stop, reckless operation, and related motor vehicle offenses. Officer Vieira did not receive any information from the Everett police dispatchers or any other source identifying Mr. Ventura as the driver of the vehicle he was pursuing or any other information relative to the vehicle or the registered owner.³

As a result of Officer Vieira's radio calls, other Everett Police Department officers joined the pursuit. Those officers also observed Mr. Ventura's driving as "erratic" and "dangerous" as Mr. Ventura continued to lead police on a high-speed chase through densely populated streets in Everett, Malden, and Revere while ignoring oncoming traffic, stop signs, and traffic lights. Officer Vieira told investigators that he believed that Mr. Ventura was going to "kill someone."

Officer Vieira was the lead officer during the pursuit until Mr. Ventura reached a service station at the corner of Beech and Wesley streets in Revere. There, with Officer Vieira and several marked Everett cruisers behind him, Mr. Ventura suddenly took a sharp turn through the service station between the building and the gas pumps in a dangerous evasive maneuver. As Officer Vieira tried to avoid a collision with the gas station building, Everett Police Officer Steven Sabella maneuvered his cruiser directly behind Mr. Ventura. Officer Sabella was also driving a marked Everett Police Department cruiser with his lights and sirens activated. Mr. Ventura drove through the service station and onto Washington Avenue in Revere. Officer Vieira followed Officer Sabella and Mr. Ventura onto Washington Avenue.

Washington Avenue in Revere is a winding densely settled residential street. Mr. Ventura continued to flee the pursuing officers at a high rate of speed. As he approached a traffic light at the intersection of Washington Avenue and Fuller Street with Officer Sabella's marked cruiser directly behind him, Mr. Ventura suddenly locked his brakes and came to a complete stop. Officer Sabella braked suddenly to avoid a rear end collision with Mr. Ventura. As Officer Vieira approached the intersection where Officer Sabella and Mr. Ventura had stopped, he swerved around the two vehicles in an attempt to get in front of Mr. Ventura's vehicle to "box him in" and

³ Officer Vieira was in constant communication with the Everett PD dispatcher, and at no time did a supervisor intervene to terminate the pursuit. When asked by investigators to describe his understanding of the Everett PD motor vehicle pursuit policy, Officer Vieira responded that the responsibility for deciding whether to terminate a vehicle pursuit lies with the shift commander. That is not entirely correct, as the Everett PD Vehicular Pursuit Policy authorizes the pursuing officer to terminate a dangerous pursuit even if a supervisor does not intervene (Everett PP 1.043.e.). Nonetheless, Officer Vieira's decision to initiate and continue pursuing Mr. Ventura was lawful.

end the pursuit.⁴ Officer Vieira angled his cruiser a few feet from the front of Mr. Ventura's front bumper to prevent Mr. Ventura from driving away.

Before Officer Vieira was able to get out of his marked cruiser, Mr. Ventura rammed the rear of Officer Vieira's cruiser with enough force to throw Officer Vieira forward and cause considerable front-end damage to Mr. Ventura's vehicle. Officer Vieira got out of his cruiser, drew his department issued firearm, and approached Mr. Ventura to order him out of his vehicle. Mr. Ventura continued, however, to ram his vehicle into the right rear quarter panel/rear bumper of Officer Vieira's cruiser, scraping and grinding his vehicle against the rear bumper and causing the cruiser to rise and fall in a rolling motion. Despite Officer Vieira's commands to Mr. Ventura to stop, Mr. Ventura revved his engine and attempted to drive away. With his weapon drawn, Officer Vieira moved towards the driver's side of Mr. Ventura's vehicle intending to remove him from the vehicle. Officer Vieira was in uniform, with a vest indicating he was a police officer.

Before Officer Vieira was able to clear the rear of his cruiser, however, Mr. Ventura's vehicle disengaged from the rear bumper of the cruiser and Mr. Ventura steered at Officer Vieira. Realizing that he was not going to be able to get out of the path of Mr. Ventura's vehicle and fearing that Mr. Ventura was going to run him over, Officer Vieira reversed direction and backed up against the side of his cruiser. As he did so, he fired a single round through the passengers' side window at Mr. Ventura striking him in the upper torso.⁵

Mr. Ventura's vehicle rolled across Washington Avenue, crossed the center line over a sidewalk, and came to rest in the vicinity of 375 Washington Avenue approximately 220 feet north of the intersection at Fuller Street.⁶ Officer Vieira continued to run alongside of Mr. Ventura's vehicle while shouting commands to stop. Neither Officer Vieira nor any other of the officers who arrived on scene shortly thereafter fired additional rounds.

Other Everett and Revere police officers responded to the scene and removed Mr. Ventura from his vehicle and provided immediate medical attention. Emergency medical personnel rushed Mr.

⁴ The distance from Shute and Ferry streets in Everett to the intersection of Washington Avenue and Fuller Street in Revere where the pursuit ended is approximately 2.5 miles.

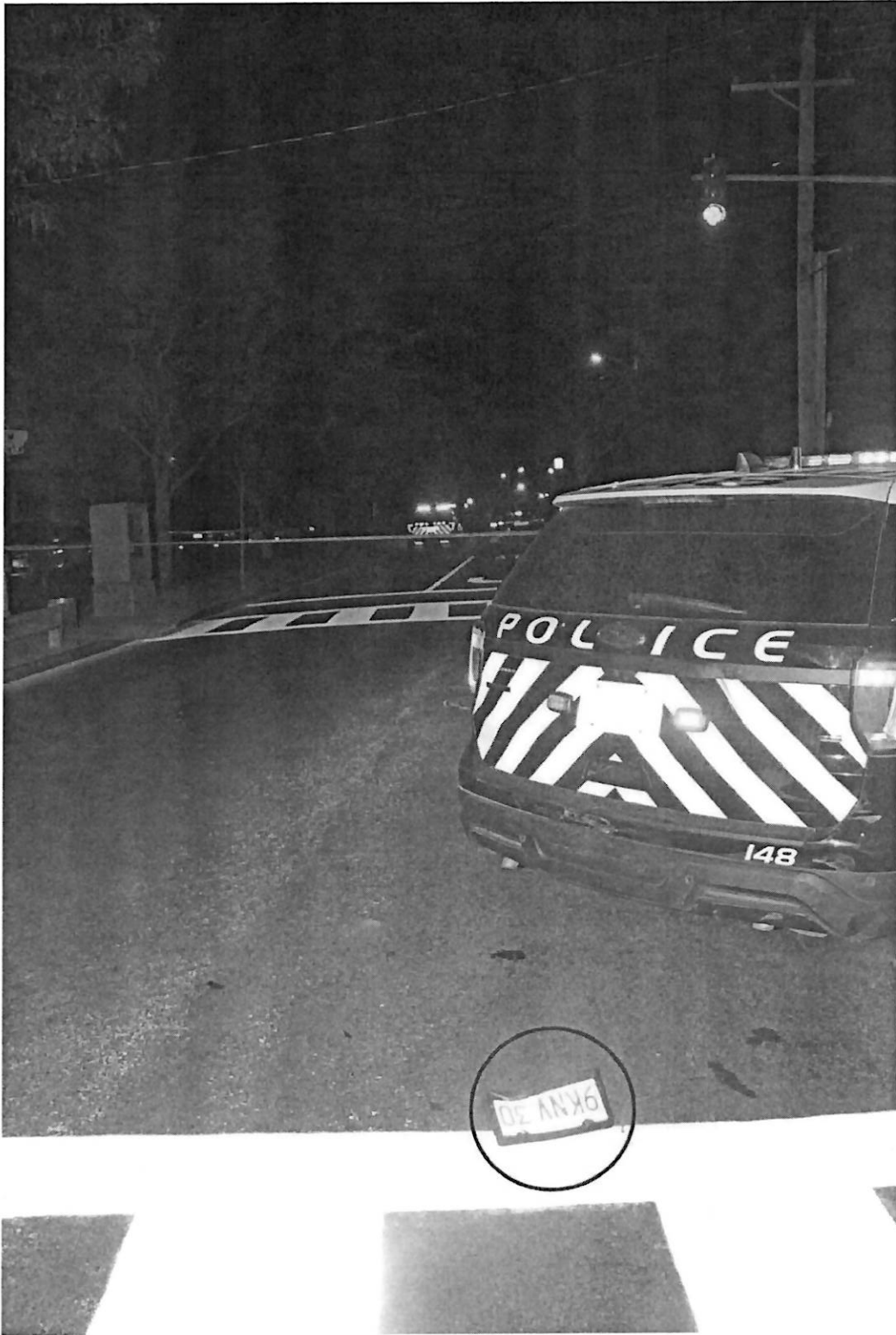
⁵ Glass from Mr. Ventura's vehicle and a shell casing from the round that Officer Vieira fired came to rest approximately forty feet from the area where Officer Vieira was standing when he fired his weapon. Trooper John Cronin of the Massachusetts State Police Collision Analysis and Reconstruction Section opined that if Mr. Ventura's vehicle was moving at the time that it was struck by the bullet from Officer Vieira's gun, the momentum of the moving vehicle would have carried the glass and other debris with it.

⁶ After clearing the rear bumper of Officer Vieira's cruiser, Mr. Ventura veered into the lane of oncoming traffic striking the rear bumper of a vehicle coming from the opposite direction. The second vehicle sustained minimal damage. The driver of the second vehicle stopped a short distance from the intersection and spoke with both responding Revere Police officers and was later interviewed by MSP detectives. He reported that he saw police cruisers chasing a vehicle and that that vehicle rammed the rear of a police cruiser at the intersection of Fuller and Washington Avenue before crossing into his lane of traffic. Despite being so close to the intersection at the time of the shooting, the driver reported that he did not see any police officers outside of their vehicles or hear any gunshots.

Ventura urgently to Massachusetts General Hospital where he was pronounced. The cause of death was a single gunshot wound to the torso. Mr. Ventura was unarmed.



Mr Ventura's vehicle at rest near 375 Washington Avenue. Note the missing front license plate and extensive front end damage. The intersection of Washington Avenue and Fuller Street is approximately 220 feet (northbound) from the rear of Mr. Ventura's vehicle.



View southbound on Washington Ave at the intersection of Fuller Street showing Officer Vieira's cruiser. The front license plate of Mr. Ventura's vehicle is visible on the street in the crosswalk. Mr. Ventura's vehicle came to rest approximately 220 feet (southbound) from this intersection.

LEGAL STANDARDS AND CONCLUSION

My legal analysis as to whether the actions of the involved law enforcement officials 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 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. The United States Supreme Court has explained that, "[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). 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 on-duty police officer faced with a potential threat of violence." *Commonwealth v. Asher*, 471 Mass. 580, 589 (2015). Moreover, Massachusetts law recognizes that a police officer is justified in using deadly force to effectuate a felony arrest where the officer reasonably believes that the crime for which the arrest is being made "involves conduct that include[s] the use or threatened use of deadly force" or "there is a substantial risk the person being arrested will cause death or serious bodily harm if his or her apprehension is delayed." Massachusetts Superior Court Criminal Practice Jury instructions sec 5.14.1; *Commonwealth v Klein*, 372 Mass. 823, 830-831 (1977) (adopting Model Penal Code sec 3.07).⁷ Here, Officer Vieira's use of deadly force was justified as a valid exercise of self-defense, or more precisely, the Commonwealth could not sustain its burden to disprove self-defense beyond a reasonable doubt.

⁷ Section 3.07. Use of Force in Law Enforcement.

(1) Use of Force Justifiable to Effect an Arrest. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) Limitations on the Use of Force.

(a) The use of force is not justifiable under this Section unless:

(i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(ii) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(b) The use of deadly force [emphasis supplied] is not justifiable under this Section unless:

(i) the arrest is for a felony; and

(ii) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and

(iii) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(iv) the actor believes that:

(1) the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or

(2) there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed."

*See American Bar Association Prosecution Function Standard 3-4.3 Minimum Requirements for Filing and Maintaining Criminal Charges.*⁸

Officer Vieira's pursuit of Mr. Ventura was justified. Mr. Ventura was driving in a reckless and dangerous manner through traffic in densely populated urban neighborhoods. Officer Vieira's description of Mr. Ventura's driving is corroborated by the video surveillance footage collected along the pursuit route. Moreover, Officer Vieira was aware that Mr. Ventura's driving was so dangerous and reckless, that his actions represented a significant risk to the public of death or serious bodily injury. Officer Vieira's statement to investigators that he thought that Mr. Ventura was "going to kill somebody, a family or somebody" was a reasonable conclusion. Given Mr. Ventura's dangerous driving, Officer Vieira had had probable cause to pursue and stop Mr. Ventura for the crimes of reckless operation, and other criminal motor vehicle offenses.

Officer Vieira's use of deadly force on Washington Avenue was justified by Mr. Ventura's response to Officer Vieira's attempt to apprehend him. Specifically, Mr. Ventura's act of ramming Officer Vieira's cruiser and then driving directly at him justified the use of deadly force in self-defense. Just before the fatal confrontation at Fuller and Washington, Officer Vieira observed Mr. Ventura swerve wildly between the gas pumps and the gas station building at Beech and Wesley Street and then speed down Washington Avenue, a dark and winding residential street. When Mr. Ventura locked his brakes at Fuller Street, Officer Vieira attempted to end the pursuit by positioning his cruiser directly in front of Mr. Ventura's vehicle. When he did so, Mr. Ventura accelerated and violently rammed Officer Vieira's cruiser from behind throwing Officer Vieira forward and causing considerable damage to his vehicle. At this point, Officer Vieira had probable cause to arrest Mr. Ventura not only for reckless operation of his motor vehicle, but for a felonious assault by means of a dangerous weapon.


Officer Vieira did not immediately apply deadly force to apprehend Mr. Ventura. Instead, he exited his cruiser, drew his firearm, and issued verbal commands to stop. Despite the clear directive to stop driving from a uniformed police officer in a marked police cruiser with lights and sirens activated, Mr. Ventura continued to ram Officer Vieira's cruiser.

When Mr., Ventura was able to release from the rear bumper of Officer Vieira's cruiser, he turned his vehicle directly at Officer Vieira who was trying to gain a safe position to order Mr. Ventura out of the car. At that point, Mr. Ventura revved his engine and drove directly at Officer Vieira who was standing only a few feet away. Realizing that if he continued to the opposite side of the street Mr. Ventura would run him over, Officer Vieira backed away to evade the oncoming vehicle. As he did so, he raised his weapon and fired one round into the passenger compartment

⁸ Standard 3-4.3 "A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice."

striking Mr. Ventura in the torso.⁹ ¹⁰ Officer Vieira only had a small space between his cruiser and Mr. Ventura's oncoming vehicle to retreat. As a result of the gunshot, Mr. Ventura's vehicle slowed and eventually came to rest when it rolled into the sidewalk further up Washington Avenue. At that point, Officer Ventura realized that Mr. Ventura was no longer a threat and did not fire additional rounds.

Officer Vieira's view that Mr. Ventura was trying to run him down was reasonable. Officer Vieira's decision to fire a single round at Mr. Ventura was, therefore, legally justified as an act of self-defense.¹¹ Therefore, criminal charges are not warranted.



KEVIN R. HAYDEN
DISTRICT ATTORNEY

⁹ The Everett Police Department Use of Force Policy does not prohibit firing at a moving or fleeing vehicle if the "occupant is using or threatening to use deadly force" so long as the vehicle is an "imminent threat." Everett Police Department Policy and Procedure No. 1.01 D – Use of Force. Everett Police Department's Vehicular Pursuit Policy prohibits shooting at a moving vehicle that is "fleeing" or "going away from an officer" unless the vehicle is an "immediate threat." Everett Police Department Policy and Procedure No. 1.04, I 6.b.– Vehicular Pursuit

¹⁰ The fact that Officer Vieira fired through the passenger side window suggests that at the time he fired his weapon, Officer Vieira was no longer directly in front of Mr. Ventura's vehicle. Deane's assessment and his calculation of reaction time factors is instructive here. Given the reaction time lag aggravated by the stress of the unexpected event, it is unlikely that once Officer Vieira made the decision to fire as Mr. Ventura's car was driving at him, he would have been able to stop himself as he was moving to evade the oncoming vehicle.

¹¹ The facts also suggest that Officer Vieira's actions would be justified to prevent the escape of a person whose felonious conduct constituted a substantial risk to public safety. Arguably, shooting at a fleeing vehicle could constitute a violation of the Everett Police Vehicular Pursuit Policy 1.04. That determination would likely turn on whether allowing Mr. Ventura to flee constituted "an immediate threat" given his reckless driving, his assault on Officer Vieira and the near head on collision with another vehicle on Washington Avenue on Fuller Street. That determination would not, however, be dispositive on the question of whether firing at Mr. Ventura to prevent his escape after the felonious assault on Officer Vieira was justified. *See Klein*, 372 Mass. At 830-831. If this Office were to initiate a prosecution of Officer Vieira for homicide, he would be entitled to a jury instruction that would require that a jury or grand jury evaluate his conduct in light of the defense that the use of deadly force was justified to effect a felony arrest under *Klein*. In any event, Officer Vieira's decision to fire at Mr. Ventura as Mr. Ventura was driving directly at him was justified as a reasonable exercise of self-defense.