

OFFICE OF THE COMMONWEALTH'S ATTORNEY – CITY OF RICHMOND

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USE OF FORCE INVESTIGATION AND ANALYSIS

INTERSTATE 95 SHOOTING – MAY 14, 2018

FOR PUBLIC RELEASE

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I. INTRODUCTION

A. Factual Overview

At approximately 5:35 p.m. on Monday, May 14, 2018, Mr. Marcus-David Peters was shot and killed by Richmond Officer Michael Nyantakyi (the officer) near the on-ramp to Interstate 95 at Chamberlayne Avenue in the City of Richmond. As of the date of the incident, Mr. Peters was 24 years old and primarily employed as a full-time high school biology teacher at Essex High School in Tappahannock, Virginia. At the time of his death, Mr. Peters was completely nude and unarmed, but behaving quite erratically. The officer was assigned to patrol and had been employed by the Richmond Police Department (RPD) for ten (10) years. To our knowledge, and according to the officer, the two were unacquainted.

B. Purpose of Review

As Commonwealth's Attorneys, our office is responsible for reviewing all incidents involving RPD's use of deadly force within City limits. Reviews of lethal force are customarily handled by a team of experienced prosecutors, including the elected commonwealth's attorney. The sole purpose of this review is to determine whether the use of deadly force by the officer was justified under applicable law, or whether he is criminally liable for Mr. Peters' death. It is not the responsibility of our office to determine whether the officer's actions were in compliance with RPD policies or other non-criminal law standards. Upon information and belief, RPD will conduct its own administrative investigation. Our review is done through a criminal lens to determine whether the matter should be submitted to a grand jury for indictment.

C. Materials Reviewed

The investigation was conducted by the Force Investigation Team (FIT) of RPD. The focus of FIT team investigations is the use of force by officers. It reports directly to the Chief of the

department, and our office reviews its findings to determine criminal liability. It does not investigate citizen misconduct, even if it arises from the same transaction. Thus, it operates independently or parallel to routine police investigations. In order to conduct a thorough review, we reviewed the following written and recorded materials provided by the FIT:

- Force Investigation Team (FIT) Final Report
- Body Worn Camera (BWC) footage from Officer Nyantakyi, as well as several other RPD officers who arrived on scene after the shooting
- Video surveillance footage from the Jefferson Hotel
- Video surveillance footage from Essex High School where Mr. Peters was employed
- Video surveillance footage from VCU/UCI which showed the initial traffic crash at N. Belvidere St. and W. Franklin St.
- Witness statements from citizens who observed the initial Hit & Run at N. Belvidere St. and W. Franklin St.
- A video recording captured by a citizen witness of some of the events preceding the shooting
- Recorded interview of Officer Nyantakyi
- Recorded interview of Virginia State Police Trooper M. Roser
- Recorded interview of RPD Officer T. Bailey
- Recorded interview of RPD Officer T. Clark
- Recorded interview of RPD Officer C. Sanborn
- Recorded interview of RPD Officer T. Soongnarata
- Recorded interviews of several citizen witnesses who were nearby and observed the shooting
- Witness statements from employees and/or citizens present at the Jefferson Hotel
- Witness statements from Peters' coworkers, friends and family
- Autopsy and toxicology reports from the Office of the Chief Medical Examiner (OCME)
- Cell phone analysis of Mr. Peters' phone
- Physical evidence recovered at the scene, to include, but not limited to, a round count of Officer Nyantakyi's service weapon
- Physical evidence recovered from Mr. Peters' car
- Crime Stoppers tips
- Visual depictions of the scene
- 911 Calls/Radio Transmission
- Hit & Run (IBR) Report #20180514-0541
- Police Crash Reports
- Shooting Timeline
- Certificate of Analysis – Ballistics Report
- Trace DNA Statement

In addition to the items described above, we interviewed the officer in person on August 8, 2018, and we met with members of Mr. Peters' family on August 28, 2018.

II. LEGAL STANDARD

Absent evidence of clear misconduct by the officer, and where there is evidence of provocation or threat by the deceased, police shooting reviews involve some analysis of self-defense. The principles governing self-defense in Virginia are well-defined. The Supreme Court of Virginia has held that if a person reasonably feared, under the circumstances as they appeared to him, that he was in imminent fear of death or serious bodily injury, he may use deadly force in self-defense. *See e.g. Commonwealth v. Cary*, 271 Va. 87 (2006); *Commonwealth v. Sands*, 262 Va. 724 (2001). However, there must be some overt act indicative of imminent danger at the time. *See e.g. Vlastaris v. Commonwealth*, 164 Va. 647 (1935); *Yarborough v. Commonwealth*, 217 Va. 971 (1977). In the context of self-defense, "imminent danger" is widely understood as "the danger resulting from an immediate threatened injury sufficient to cause a reasonable and prudent person to defend himself or herself." Black's Law Dictionary 399 (8th ed. 2004) (case citations omitted). In order for imminent danger to exist, "there must be ... some act menacing present peril... [and] the act ... must be of such a character as to afford a reasonable ground for believing there is a design ... [to] do some serious bodily harm." *Cary*, 271 Va. at 99 (citing *Sands*, 262 Va. at 729).

There is no precise formula for a reasonable belief of imminent harm. However, the Supreme Court of the United States has held that, in the context of the use of deadly force by law enforcement, "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989) (citing *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968)). "The 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*, 490 U.S. at 396-97. Stated differently, the issue is whether the actual belief of the person in danger was reasonable in light of the circumstances as he or she perceived them. *Harper v. Commonwealth*, 196 Va. 723 (1955). The facts and circumstances of each case, including, (1) the severity of the crime, (2) the degree of immediate threat to officers or others, and (3) resistance or flight, must be considered. *Graham*, 490 U.S. at 396. By contrast, lethal force is not authorized to prevent damage or theft of property, nor is it authorized to apprehend a fleeing suspect who does not pose an imminent threat of (or has not caused) death or serious bodily harm to others. *See Tennessee v. Garner*, 471 U.S. 1 (1985).

“The diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted.” *Armstrong v. Pinehurst*, 810 F. 3d 892 (2016) (internal citations omitted.) “The problems posed by, and thus the tactics to be employed against, an unarmed, emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily different from those involved in law enforcement efforts to subdue an armed and dangerous criminal who has recently committed a serious offense.” *Id.* We accept that the governing standard of “objective reasonableness” must be applied in consideration with Mr. Peters’ apparent diminished mental state.

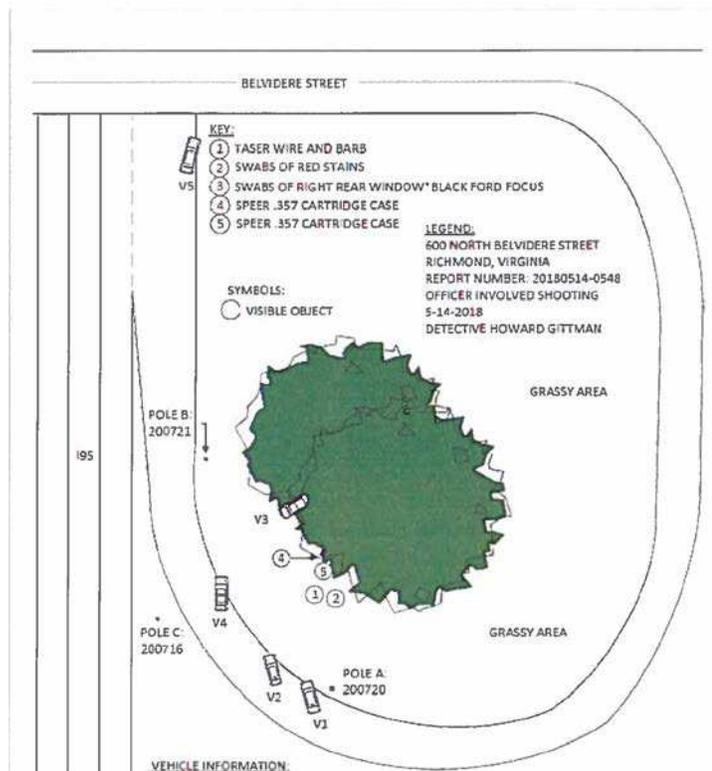
III. FACTUAL FINDINGS

A. Encounter Between the Officer and Peters

At approximately 5:30 p.m. the officer observed a Mercury Grand Marquis strike a vehicle near the intersection of N. Belvidere Street and W. Franklin Street. The impact was strong enough to force the struck vehicle off the road and into a tree and sign post. The Grand Marquis did not stop at the scene of the crash; instead, it continued northbound on N. Belvidere Street. The officer

activated his lights in pursuit to make a felony traffic stop for hit and run, and possibly other charges. The suspect vehicle continued northbound driving recklessly and swerving around other vehicles. It exited N. Belvidere Street onto the on-ramp of Interstate 95 North, struck two additional vehicles, veered off of the roadway and came to rest in a tree lined area in the center of the ramp. (V3 in the diagram below).

SCENE OVERVIEW



Body worn camera (BWC) footage of the incident site creates the illusion that the area is larger than it, in fact, is. That said, the footage revealed that the officer exited his police vehicle and approached the stalled vehicle on foot. With his service weapon drawn, he commanded the driver, later identified as Mr. Peters, to remain inside of the vehicle. Mr. Peters can be seen and heard yelling, flailing his arms around, and moving his head fervently from side to side. He was so active that his movements caused the vehicle to rock from side to side. In his interview, the

officer explained that he feared that Mr. Peters might be reaching for a weapon because he could see him reaching to the passenger side of the cabin. The officer radioed the Department of Emergency Communications (DEC) that the subject inside of the vehicle appeared to be mentally unstable. [The officer had previously undergone Crisis Intervention Training] The officer appeared to move away from Mr. Peters' vehicle and reposition himself closer to his police vehicle. He later explained that this was a precaution against potential gunfire because he could not safely observe inside the vehicle.

Despite the officer's commands, Mr. Peters exited his vehicle on his stomach, feet first, and through the driver side window. [The front driver's side door was later found to be operable.] He did not acknowledge the officer's presence; instead, he ran completely nude toward Interstate 95 during heavy rush hour traffic. He entered the right travel lane and was struck by a car. The officer explained that it appeared to him that Mr. Peters tucked his shoulder, as if bracing for impact. He considered that Mr. Peters may have been trying to kill himself. [We could not confirm this observation in our review of the footage.] After being struck by the car, Mr. Peters got up immediately, but then laid back down in the travel lane for several seconds where he repeatedly rolled over in a tumbling motion. He then moved to the shoulder of the roadway, where he again laid on the ground moving his arms and legs as if making snow angels. Mr. Peters can be heard talking to himself while he thrashed and rolled on the shoulder of the travel lane. For several seconds, he rolled and tumbled on the pavement. At one point he stopped, laid flat on his back, then sat up suddenly and said "I figured it out – I'm living the dream." By this point, the officer had already notified DEC that Mr. Peters had been struck, and he had again requested additional units. In his interview, the officer explained that Mr. Peters seemed unaffected by the vehicle impact or the abrasive conditions of the roadway.

The officer further explained that he holstered his firearm and drew his yellow Taser as he moved closer to observe and check on Mr. Peters. Suddenly, Mr. Peters stood and faced the officer who was standing some feet away. He appeared agitated and yelled at the officer to “Back the fuck up.” The officer backed up as Mr. Peters advanced. He explained to us that he was attempting to maintain distance between them and to stall in hopes that other units would arrive. Mr. Peters then yelled “Put that Taser down or I’ll kill you.” The officer warned that he would deploy the Taser, but Mr. Peters continued to advance on the officer while yelling, “Die motherfucker.” The officer deployed his Taser striking Peters with one prong, but it had no effect.

Nude and unarmed, Mr. Peters advanced closer and lunged at the officer with his arms extended in what appeared to be an effort to grab him. In his interview, the officer acknowledged that Mr. Peters was unarmed, but he indicated that by this point, it was “an all-out fight between the two” of them to gain control over his firearm. The officer further explained that he was wary of engaging hand to hand with Mr. Peters because of his erratic behavior, his unresponsiveness to pain, and fear that Mr. Peters might land on top of him. Using his left arm to repel him, the officer explained that he “bladed” his body to shield his firearm from Mr. Peters. As Mr. Peters continued to charge in apparent attack, the officer fired at least twice. It is unclear whether Mr. Peters actually made contact before the shots were fired; although, in the footage he was certainly well within arm’s length.

The final autopsy report issued by the OCME indicated that Peters suffered three gunshot wounds – two penetrating wounds to the abdomen, from which two bullets were recovered, and one perforating wound to the left forearm. No bullet was recovered from the left forearm because the wound was through and through. We believe a round traveled through his forearm and into his abdomen.

Mr. Peters collapsed, and the officer notified DEC that shots had been fired. BWC showed the Taser in the officer's left hand and his service weapon drawn in his right hand. Within seconds, a Virginia State Trooper and several other RPD officers arrived on scene. Mr. Peters continued to behave erratically as he lay on the ground saying strange things such as "I'll kill you," and trying to grab or strike one of the officers as they attempted to secure him. Once he was secured, the Richmond Ambulance Authority (RAA) responded and transported him to Virginia Commonwealth University Medical Center (VCUMC) where he succumbed to his injuries.

Several citizen witnesses who observed the altercation confirmed that there was physical contact between the officer and Mr. Peters prior to the shooting. One witness described Mr. Peters lunging and charging the officer and then the two of them "tussling." Another said Mr. Peters began a physical altercation with the officer. The third indicated that the officer and Mr. Peters "tussled" after the Taser had no effect. Photographs of the officer's uniform reveal blood in the areas where Mr. Peters appeared to make contact. No witness to the shooting described the officer firing from any distance other than a close distance, and no witness characterized Mr. Peters' behavior as other than aggressive.

B. Trace DNA Testing

The officer's uniform could not be analyzed for trace DNA. Trace DNA Analysis is a test used to determine whether a person touched a particular surface and deposited DNA at the site. DNA is found in blood, and the state lab cannot distinguish between DNA deposited by touch and DNA transferred or derived from blood. Because Mr. Peters' blood was deposited on the officer's shirt during the struggle, his DNA would certainly be present. Its mere presence, however, would not be probative of physical contact by hand touch. Moreover, there would be no way to ensure that sites tested for trace DNA had not been "contaminated" by Mr. Peters' blood.

C. Toxicology Results

The Certificate of Analysis outlining the results of toxicology tests was received by our office on August 14, 2018. While the identity or presence of illicit substances or medication is the subject of intense speculation, the results of the analysis actually have little bearing on the ultimate issue. The relevant question is whether a reasonable officer, based on Mr. Peters' behavior, demeanor and appearance, would have believed he posed an imminent risk of death or serious injury. Mr. Peters lost a tremendous amount of blood, and he received several blood transfusions while at the hospital. Subsequent examination of his liver revealed Fentanyl at a concentration of 0.013 mg/kg and THC at a concentration 0.038 mg/kg. Upon information and belief, the Fentanyl was administered at VCUMC during efforts to save him. Also present, however, was Methylphenidate (sometimes referred to as Ritalin). At the time of his death, Mr. Peters had not been issued a prescription for any formulation of Ritalin.

D. Number of Shots Fired

The FIT team responded to the scene. As with all homicides, forensics detectives processed the scene and collected evidence. Two (2) shell casings were recovered. A forensic technician, in the presence of two other detectives, conducted a round count of the officer's police-issued handgun magazines at police headquarters. She determined that the officer fired his handgun twice. There has been speculation that the officer fired three times because Mr. Peters suffered wounds to three areas of his body. The distinction is not material given the sequence of events on BWC, which revealed that the shots fired were fired at close range and in rapid succession. Notably, Mr. Peters' was not struck in the rear of his torso or head.

IV. BACKGROUND INFORMATION

Although our analysis focuses primarily on the behavior and circumstances confronting the officer at the time of the shooting, we are also providing details of Mr. Peters' actions shortly before the encounter. We believe they offer context, and they suggest that Mr. Peters' decline began long before the tragic encounter on Interstate 95.

A. Accomplished History

We learned from his family that Mr. Peters graduated from VCU with a major in biology and a minor in Spanish. He had only been a teacher at Essex HS for a short time, but was highly regarded by the school's administration. In fact, Mr. Peters was excited about plans with the school to develop a program for him to mentor at-risk teens. He was a volunteer with Habitat for Humanity, was passionate about fitness, and known widely for his positive attitude and humor. Mr. Peters' behavior on May 14, 2018 was certainly out of character.

B. Other Prior Behavior

Detectives spoke to a number of Mr. Peters' coworkers, family and friends. Some of the information constitutes hearsay and is uncorroborated. As in any other homicide investigation, however, we consider the information potentially valuable. Witness accounts seem to suggest that his decline started one to two weeks prior.

A close friend of Mr. Peters (W1) recalled that he had been acting "a little bit weird" for roughly a week and a half prior to his death. The witness reportedly heard about strange behavior at the school where Mr. Peters taught and where his sister was employed as the Assistant Principal. The witness believes Mr. Peters' family gathered on Mother's Day to express their concerns that he was "in over his head."

A colleague at Essex High School indicated to investigators that Mr. Peters may have been given someone else's prescription medication. A different witness (W2) admitted to investigators that he or she gave Mr. Peters a pill bottle of generic Ritalin in the weeks preceding his death. Detectives located text messages between W2 and Mr. Peters, in which W2 suggested that Mr. Peters visit a pediatrician located in Henrico County who would prescribe the medication without doing an evaluation.

W1 indicated to police that Mr. Peters admitted taking non-prescribed generic Ritalin. W1 indicated that the physician's name on the pill bottle may have been the same as the one suggested by W2 in the text messages. W1 believes Mr. Peters may have taken 2 pills per day for the two days prior to his death and 2 on the day of his death. W1 notified one of Mr. Peters' family members about the pill bottle in his apartment, and W1 reportedly planned to assist family members in confronting him about using non-prescribed medication. After Mr. Peters' death, a family member admitted to police that they retrieved the pill bottle and disposed of it. We found this behavior inexplicable.

C. The Jefferson Hotel

In addition to his position at Essex High School, he was employed part-time at the Jefferson Hotel located at 101 Franklin Street in the City of Richmond. According to W1, Mr. Peters arrived home from work at Essex High School at approximately 4:30 p.m. on May 14, 2018. That same witness advised that Mr. Peters changed clothes, and that they smoked some marijuana before he left to see a co-worker at the Jefferson Hotel. The witness recalled that Mr. Peters left his apartment at approximately 5:00 p.m. and planned to return by 7:00 p.m. Cell phone analysis of Mr. Peters' iPhone 7 revealed he was last auto-connected to his home Wi-Fi at 4:46 p.m.

Surveillance footage at the Jefferson Hotel captured Mr. Peters' arrival in the blue Grand Marquis at approximately 5:22 p.m. This is corroborated by cell phone records which showed he last auto-connected to the Jefferson Hotel's Wi-Fi at 5:22 p.m. The arrival footage is unremarkable, as he appeared to exit the vehicle and walk calmly into the hotel. Once inside, however, he removed his shirt in the main lobby, dropped it on the floor and walked around topless before going downstairs to the security office.

Surveillance footage at the security office showed him topless talking to someone behind a counter, but then engaging in what appeared to be a brief but tense exchange with another employee who backed away. Other witnesses advised that he went into the employee locker room where he could be heard yelling. He appeared to exit the hotel onto the Jefferson Street side. Mr. Peters is next seen running nude and yelling on W. Franklin Street before getting into his vehicle and driving away from the hotel. VCU surveillance footage showed him traveling west on Main Street, then left on Belvidere Street, and finally rear ending the first of three vehicles. We regard all of this behavior as abnormal and consistent with a compromised or deteriorating mental state.

V. CONCLUSION

After a comprehensive review of all of the information obtained through the investigation, we conclude that the officer killed Mr. Peters in an act of justifiable homicide. The use of deadly force was reasonable and necessary given the unique circumstances of the encounter. Mr. Peters' altered mental state, his nudity and the fact that he was unarmed are all mitigating factors. However, there should be little question that the officer reasonably feared that Mr. Peters' aggression and apparent insensitivity to pain foreclosed lesser interventions and therefore constituted an imminent threat of death or serious bodily injury.

Regardless of the cause of Mr. Peters' behavior, whether it was the result of a mental health crisis or whether it was drug induced, he was acting erratically and dangerously. In no way are we suggesting that individuals suffering from mental illness should be killed by law enforcement. Indeed, like most Richmonders, we are very disturbed by the outcome, particularly because Mr. Peters was an accomplished young man devoted to public service. However, under certain circumstances, individuals in a compromised or deteriorated mental state may pose an imminent risk of death or serious bodily injury to an officer, which may justify the use of deadly force. In those situations, officers should appreciate the signs of underlying mental illness, but they must nevertheless respond to hazards they reasonably perceive.

There have been several commentaries on the incident suggesting that the officer should have taken other, less lethal steps. One suggestion was that he should have maintained the *status quo* until help arrived and avoided a confrontation with Mr. Peters. We do not believe that the officer could have simply observed Mr. Peters until other units arrived for several reasons. First, he had an obligation to check on Mr. Peters' condition after he had been struck by the vehicle. Second, he had to get close enough to him to appreciate any further deterioration in his behavior. Third, the officer had to ensure that Mr. Peters did not pose a threat to the occupants of the vehicles on Interstate 95, either as a traffic impediment or by attempting to gain access to a vehicle. Finally, the officer properly did not go onto the roadway in an effort to contain Mr. Peters because the introduction of a firearm into an unstable and potentially violent situation would have posed an unacceptable risk to the many cars and bystanders.

Citizens may question why the officer did not fire "warning shots" or "shoot to wound." In fact, rarely, if ever, are these practices sanctioned or authorized. They are creatures of media depiction (shots in the air or to the arm or leg) that seem to make sense at first blush. But from a

more practical standpoint, police officers are trained to fire their weapons only in response to imminent threats of death or serious bodily injury. And as indicated above, the long-standing law governing the use of deadly force authorizes its use only in response to imminent threats. Officers are trained, and the law demands, that they fire their weapons only to end a lethal threat. They are therefore trained to fire at center mass because it is the largest part of the human body. Not even the most accurate marksmen can hit moving arms and legs with any degree of reliability. Moreover, “warning shots” and shots to “wound” would be scrutinized on a very slippery slope, because it would be virtually impossible to prescribe the circumstances warranting such measures. Finally, the shots would be unsafe to the immediate surroundings.

There is no requirement that a law enforcement officer use all feasible alternatives to avoid a situation where deadly force may be required. *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7th Cir. 1994). For example, the Seventh Circuit, in *Ford v. Childers*, 855 F.2d 1271, 1276 n. 8 (7th Cir. 1988), refused to impose a requirement that a warning shot be fired before deadly force can be used. The discharge of a handgun is deadly force, and the law imposes no duty on the officer to attempt to use such force in a less-than-lethal manner (shots in the air or to the arm or leg). *See Plakas*, 19 F.3d at 1149. Once a person [officer] is entitled to use deadly force in self-defense, there exists no obligation to attempt to wound or disable one’s adversary short of killing him. *See id.* Moreover, “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*, 572 U.S. 134 S. Ct. 2012 (2014).

In summary, it is clear from the evidence, and corroborated by numerous citizen witnesses, that Mr. Peters was dangerously unstable. After observing Mr. Peters flee the scene of the first accident, drive recklessly, strike two other vehicles on the exit ramp and behave erratically in the

stalled vehicle, the officer was justified in drawing his service weapon. Noncompliance with verbal commands and his nude and erratic behavior on Interstate 95 supported the officer's decision to closely monitor and deploy his Taser, a lesser degree of force, as the officer considered mental instability. The nature of the encounter changed for the worse when Mr. Peters yelled at the officer to "Back the fuck up, back the fuck up," "Put the Taser down or I'll kill you," and "Die motherfucker" as he charged aggressively toward the officer. The encounter evolved rapidly, as only seven (7) to ten (10) seconds elapsed between the officer's Taser deployment and shots being fired. The officer reasonably regarded Mr. Peters as a direct threat to his life and to the safety of those around him. A reasonable officer in this scenario would have believed that Peters was capable of overcoming the officer, taking control of the firearm and using it to harm the officer and others. Thus, the totality of the circumstances tragically warranted the use of lethal force.

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