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COMMONWEALTH OF VIRGINIA



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July 7, 2021

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Colonel Gary T. Settle
Virginia State Police
PO Box 27472
Richmond, VA 23261

RE: In-custody Death of Coleman Sample

Dear Colonel Settle:

I have completed my review and investigation of the in-custody death that occurred on August 11, 2020 in the City of Virginia Beach and enclosed is my final report. In short, it is clear that the troopers were not the proximate cause of the fatal gunshot that took Mr. Sample's life. Based upon the law and the substantial evidence in this matter, it is my opinion that the troopers were within their legal authority and were justified in the use of force in the situation as it presented itself. Therefore, no charges will be prosecuted by this office against the troopers for the death of Coleman Sample.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Colin D. Stolle', is written over the word 'Sincerely,'.

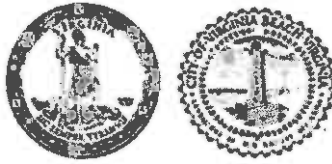
Colin D. Stolle
Commonwealth's Attorney

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Enclosure

Cc: Captain Timothy Reibel – VSP-BCI

Report of the Commonwealth's Attorney



City of Virginia Beach

In Regards to the In Custody Death of Coleman Sample

The Office of the Commonwealth's Attorney for the City of Virginia Beach has completed its review of the Virginia Department of State Police's investigation into the in-custody shooting of Coleman Sample. The review of this matter came at the request of the Virginia State Police.

It is important to clarify that the Office of the Commonwealth's Attorney is responsible for the review, investigation and prosecution of matters that are criminal in nature. This office does not have the authority, in its review, to determine any potential civil liability of any Trooper involved or police agency. That means that this office does not determine the appropriateness of any police policy, procedure, or tactic. Instead, the purpose of this review is solely to determine if a criminal act, as defined in the Code of Virginia, was committed in the death of Mr. Sample.

The investigation into this matter consists of extensive reports containing numerous interviews, diagrams, photos, multiple videos and other pertinent information prepared by Special Agent D. Weymouth-German of the Virginia State Police. Additionally, this office reviewed the Death Investigation conducted by the Office of the Chief Medical Examiner related to Mr. Sample, as well as evidence reports from the Department of Forensic Science. After reviewing all of the information in these investigations, it is clear that Mr. Sample was shot by his own firearm, which was in his exclusive possession and control at the time of the shooting. At the time of the shooting, Trooper Turner and Trooper Holmes were struggling with Mr. Sample in an effort to gain control of him and his weapon. Based upon the law and the substantial evidence in this matter, it is my opinion that the troopers were within their legal authority and were justified in the use of force used in an attempt to arrest Mr. Sample prior to his fatal shooting. Therefore, no criminal charges will be brought against Trooper Turner or Trooper Holmes for the death of Coleman Sample.

Summary of the Facts

At approximately 10:23 p.m. on August 11, 2020, Trooper A. Turner of the Virginia State Police (VSP) was traveling in his marked VSP cruiser on Interstate 264 in the City of Virginia Beach. Trooper Turner observed a black Lexus traveling in front of him change lanes and quickly accelerate to 92 m.p.h. in a 55 m.p.h. zone. In response to that driving behavior, Trooper Turner activated his emergency equipment and attempted to affect a traffic stop on the vehicle. In response to Trooper Turner activating his lights and sirens, the vehicle increased speed. Trooper Turner radioed dispatch that he was involved in a pursuit and continued to follow the Lexus. As Trooper Turner followed the Lexus, it increased speed and started to aggressively change lanes on I-264 including a last-second lane change over the shoulder to merge onto I-64. Once on I-64, the Lexus increased speed to over 120 m.p.h., changing lanes to swerve around slower-moving traffic, including driving onto the shoulder. As the pursuit progressed, Trooper Holmes joined the pursuit, following the Lexus and Trooper Turner's cruiser beginning at I-264. The pursuit continued as the Lexus changed lanes numerous times, maintaining a high rate of speed. The Lexus exited I-64 onto Indian River Road, immediately running a red light as he eluded Trooper Turner. At the next intersection, the Lexus swerved left around the median dividing Indian River Road and began driving into oncoming traffic. The vehicle then made a left turn through a red light, pulling into the oncoming traffic lanes once again. The Lexus then made a left turn into a residential neighborhood, running a stop sign and cutting off a vehicle which had the right of way, nearly causing a crash. The Lexus then drove into the parking lot of Banbury Lake Village apartments, where it crashed into a parked vehicle in the parking lot.

Trooper Turner exited his cruiser and approached the Lexus as Coleman Sample, the driver and lone occupant of the Lexus, jumped out of the vehicle and attempted to flee on foot. Trooper Turner attempted to tackle Sample, although the two men stayed upright. The two continued to struggle outside the view of the trooper's in-car camera. However, the trooper's shoulder-mounted microphone recorded two gunshots fired as Trooper Holmes approached the two struggling men. The audio from the troopers' microphones captures their repeated commands to, "Drop the gun," and Mr. Sample's refusal to do so.

In addition to the audio recording, an eyewitness to the incident recorded the altercation. Based upon that recording, it is clear that both Trooper Turner and Trooper Holmes continued to physically wrestle with Mr. Sample as they attempted to gain control of him and seize his firearm. Mr. Sample had a handgun in his right hand, and Trooper Turner and Trooper Holmes had drawn their handguns and held them in their right hands as well. On the cell phone recording, the troopers can be heard ordering Mr. Sample to, "Drop the gun," and he again refused. The troopers struggled to gain control of Mr. Sample, but eventually leveraged him onto the hood of a nearby parked car. Within one second of Mr. Sample being pinned to the hood of the car, a final gunshot went off, and Mr. Sample went limp. Both Trooper Turner and

Trooper Holmes recoiled at the sound of the final shot. Trooper Turner asked Trooper Holmes if he was hit, but he was not. Both troopers then holstered their sidearms.

The troopers observed a wound to Mr. Sample's head and a large amount of blood pooling on the hood of the vehicle as well as the ground. Trooper Holmes laid Mr. Sample on the ground. At some point, the troopers realized Mr. Sample was still breathing and encouraged him to keep fighting until medics arrived. Medical intervention was not able to overcome the gunshot wound to Mr. Sample.

Physical evidence was collected from the shooting scene. Among these items of evidence included:

- 1) 3 cartridge casings- found along the sidewalk where the struggle occurred;
- 2) a bullet- found in the engine block of a RAV4 parked next to the sidewalk;
- 3) 3 unfired .45 caliber cartridges;
- 4) Suspected marijuana and personal items located in Mr. Sample's vehicle;
- 5) A Springfield Armory .45 caliber handgun possessed by Mr. Sample;
- 6) 2 Sig Sauer .357 caliber handguns carried by Trooper Turner and Trooper Holmes, respectively.

The body of Coleman Sample was transported to the Office of the Chief Medical Examiner, where an autopsy was performed by Dr. Maisen. During the autopsy, bullet fragments were recovered from the body of Coleman Sample.

It is important to note that there were several inaccurate statements released to the public by the VSP in the days following the death of Colman Sample. These statements include:

VSP Initial Statement

1. As he fled, Sample produced a handgun and fired at the troopers.
2. Despite immediate rescue efforts, Sample succumbed to his wounds.

VSP Investigative Findings

Trooper Turner was already hands-on with Sample at the time the shots were fired.

Trooper Holmes was approaching from behind Turner and Sample. There is no evidence that Sample fired any shots at the troopers.

Neither Trooper Turner nor Trooper Holmes engaged in any medical treatment of Sample. Initially, neither realized he was alive. Once they determined he was breathing, they verbally encourage him, but did not render aid.

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| 3. At no time did the troopers draw their weapons- they didn't have time. | Both troopers gave statements that they drew their weapons. Review of the witness video clearly shows that both troopers have their weapons drawn through the entirety of the altercation, only holstering their weapons after Sample had been shot. |
| 4. No buildings or vehicles were struck by bullets. | One of the bullets fired from Sample's gun struck a RAV4, entering the engine compartment of the vehicle. The second fired bullet was never located. |
| 5. There was no confrontation between Sample and the troopers prior to him turning and shooting at them. | Sample never turned and shot at the troopers. There was an almost immediate physical altercation between Trooper Turner and Sample, which occurred before any shots were fired. |

Investigators are often flooded with unverified information after an event has taken place. The purpose of an investigation is to determine that information which can be verified versus that which is merely speculation or presumption. Verified information becomes facts and evidence. Unverifiable information usually shows itself to be unreliable. First impressions may often be wrong. The problem with releasing information too early after an event is that investigators have not had an opportunity to verify what information is reliable and what is not. When unverified unreliable information is released then later shown to be inaccurate, as happened in this case, the natural response is to question the veracity of the investigation as a whole.

So, in reviewing this investigation, there are several items that can be viewed as verified and reliable. Based upon the findings in the Autopsy Report of the Chief Medical Examiner, as well as the Trace Evidence and Toolmarks Section of the Department of Forensic Science, the following conclusions can be made:

- 1) The firearm possessed by Mr. Sample was a Springfield Armory .45 caliber semiautomatic pistol. The firearms possessed by Trooper Turner and Trooper Holmes were Sig Sauer .357 caliber semiautomatic pistols.

- 2) Coleman Sample's Cause of Death was a Gunshot Wound to the Head. The bullet entered the back of Mr. Sample's head, traveled from right to left and forward, ending its path just behind his left ear. Based upon stippling and soot around the wound, the distance from the muzzle of the gun to the entrance wound was approximately 3 inches.
- 3) The bullet that entered Mr. Sample's head fragmented into pieces. Toolmark analysis determined that the bullet was a .45 caliber bullet. Further analysis determined that one of the fragments was fired from the Springfield Armory firearm that Coleman Sample possessed.
- 4) The three cartridge casings located at the shooting scene were .45 caliber shell casings. Toolmark analysis determined that each shell casing was cycled through and ejected from the Springfield Armory firearm in Coleman Sample's possession.
- 5) The bullet which penetrated the bumper and was located in the engine block of the RAV4 was a .45 caliber bullet. Toolmark analysis determined that the bullet was fired from the Springfield Armory .45 caliber handgun in the possession of Coleman Sample.
- 6) DNA swabs taken from the grip, trigger, trigger guard and muzzle of the Springfield Armory handgun indicated the presence of DNA from one contributor. Coleman Sample was that contributor to a reasonable degree of scientific certainty.
- 7) Neither of the weapons carried by the State Troopers was fired during this altercation. Both weapons were inspected and found to contain the maximum number of rounds for that weapon (14 in the magazine, 1 in the chamber). No bullets or cartridge casings of the same caliber as these weapons were located at the shooting scene.
- 8) The Report of the Chief Medical Examiner identifies the Manner of Death as undetermined. This finding is based upon the inability to determine whether the final shot from the Springfield Armory .45 caliber handgun was intentional or accidental, and if it was intentional, who or what was the ultimate target of that shot.
- 9) The audio and video recordings, as well as eyewitness accounts of the incident, make it clear that Trooper Turner and Trooper Holmes were attempting to control and disarm Mr. Sample during the physical altercation. On several occasions the troopers ordered Mr. Sample to, "Drop the weapon," a directive that Mr. Sample refused.

- 10) Both Troopers Turner and Holmes drew their weapons during the altercation with Mr. Sample, but neither of those weapons were fired. The troopers each had their firearm in the right hand. Each trooper was holding onto Mr. Sample's body with their left hand. Since each trooper had his firearm in his right hand, neither trooper had the need or the physical ability to fire Mr. Sample's handgun.
- 11) The fatal gunshot was fired from the Springfield Armory .45 caliber handgun in Mr. Sample's possession. The Springfield handgun was in the sole and exclusive possession of Coleman Sample at the time the fatal shot was fired from that weapon.

Analysis

The United States Supreme Court has said, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." Graham vs. Connor, 490 U.S. 386 (1989). "The proper application of an excessive force test under the Fourth Amendment 'requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.'" Cromartie v. Billings, 298 Va. 284, 302 (2020).

Trooper Turner and Trooper Holmes were faced with a man who had engaged in a high-speed pursuit on two highways and multiple surface roadways at speeds in excess of 100 m.p.h. Throughout the pursuit, Mr. Sample endangered the troopers as well as other drivers on the roadway by his reckless and aggressive driving, running of multiple red lights, driving into oncoming traffic, and running a stop sign. Mr. Sample then crashed into a parked car causing damage to both his vehicle and the parked vehicle. As Trooper Turner attempted to affect an arrest for this felonious and dangerous behavior, Mr. Sample struggled with him and fired two shots in quick succession. Already in a physical altercation with a subject wielding and discharging a handgun, Trooper Turner was entirely justified in continuing his use of force. Further Trooper Turner and Trooper Holmes were justified in drawing their own handguns in response to Mr. Sample firing two shots from his firearm. Mr. Sample presented an imminent threat of death or bodily injury to the troopers and the citizens in the area. Both Trooper Turner and Trooper Holmes attempted to order Mr. Sample to drop his weapon, an order he refused. The two troopers were justified in their reasonable use of force as they attempted to arrest and disarm a fleeing felony suspect. Unfortunately, the trooper's efforts to disarm Mr. Sample were unsuccessful and the final, fatal shot took Mr. Sample's life.

Neither trooper was the proximate cause of the fatal gunshot that took Mr. Sample's life. Further, they were justified in using the reasonable force they used in trying to gain control of Mr. Sample. Therefore, no criminal charges will be filed against Trooper Turner or Trooper Holmes.

Colin D. Stolle
Commonwealth's Attorney
City of Virginia Beach