

**Commonwealth's Attorney**  
Colin D. Stolle

**Chief Deputies**  
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June 10, 2021

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Chief Paul Neudigate  
Virginia Beach Police Department  
2509 Princess Anne Road  
Virginia Beach, VA 23456

RE: Officer Involved Shooting of Refugio Reynaldo Olivo Jr.

Dear Chief Neudigate:

I have completed my review and investigation of the officer involved shooting that occurred on September 6, 2020 in the City of Virginia Beach that resulted in the death of Refugio Reynaldo Olivo Jr. and enclosed is my final report. In short, it is clear that the officers discharged their weapons in defense of another person. Based upon the law and the substantial evidence in this matter, it is my opinion that the officers were within their legal authority and were justified in the use of deadly force in the situation as it presented itself. Therefore, no charges will be prosecuted by this office against the officers for the death of Refugio Reynaldo Olivo Jr.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin D. Stolle", is written over a faint, larger signature.

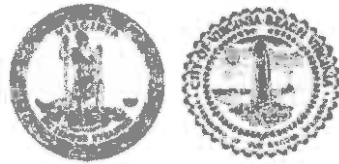
Colin D. Stolle  
Commonwealth's Attorney

/adh

Enclosure

Cc: Patrick A. Duhaney –Virginia Beach City Manager

# **Report of the Commonwealth's Attorney**



## **City of Virginia Beach**

### **In Regards to the Officer-Involved Shooting that Resulted in the Death of Refugio Reynaldo Olivo, Jr.**

The Office of the Commonwealth's Attorney for the City of Virginia Beach has completed its own independent investigation, as well as a review of the Virginia Beach Police Department's investigation into the use of deadly force by members of the Virginia Beach Police Department in the killing of Refugio Reynaldo Olivo, Jr.

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 officer 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 when the officers shot and killed Mr. Olivo, Jr.

The investigative material relevant to this matter consisted of a 911 call recording, body worn camera video, medical records, a toxicology report, and various interviews. Sergeants R. Jason and P. Koepp, as well as Commonwealth's Attorney Office Investigator S. Coerse, conducted interviews with witnesses who were present in the home on the night of this event, as well as the officers who responded to the home. Additionally, this office reviewed the Death Investigation conducted by the Office of the Chief Medical Examiner related to Mr. Olivo, Jr. After reviewing all of the information in these investigations it is clear that Officer R. Ruszas and Officer Z. Kubera, were acting in defense of J. Hogan when they discharged their firearms. Based upon the law and the substantial evidence in this matter, it is my opinion that these two officers were within their legal authority and were justified in the use of deadly force in the situation as it presented itself. Therefore, no criminal charges will be initiated against Officer R. Ruszas or Officer Z. Kubera for the death of Refugio Reynaldo Olivo, Jr.

## Summary of the Facts

On September 6, 2020 at 4:24 am, R. Castillo, the son of Olivo, Jr., called 911 and described his father as drunk, that his father had hit his mother, and that his father threatened to kill her. Castillo heard his mom saying to his father, "Don't touch me." Castillo left the residence and called 911. Castillo explained that his mother and 14-year-old brother, T. O. were still inside, and his father was armed with a knife. Castillo added that his mother hit Olivo, Jr., also, and he was "sort of bleeding."

Officer Z. Kubera was the first officer to arrive at the case location. His body worn camera was activated and recorded the events. He knocked on the door and identified himself as Virginia Beach Police. A man was yelling inside, but the words were not clear. T.O. opened the door and gestured that his parents were upstairs. When Officer Kubera asked if they were okay, T.O. shook his head no. He held the door open for Officer Kubera to enter the home.

Refugio Olivo, Jr. was at the top of the stairs, and Officer Kubera saw that he had a large kitchen knife in one hand and another bladed object in the other. Officer Kubera directed him to put the knife down four times. J. Hogan, Olivo, Jr.'s wife, could not be seen, but spoke from inside the bathroom. Olivo Jr. stated, "Come on bitch" and "I'm ready to die." Olivo, Jr. threw a beer can at Officer Kubera, striking him in the head. Officer Kubera's verbal attempts to disarm Olivo, Jr. were met with increasing hostility. He retreated to request additional police units to assist him. Olivo, Jr. turned his back to Officer Kubera and continued yelling at Hogan. Hogan yelled, "He's not going to hurt anybody," from inside the bathroom.

Officer R. Ruszas arrived three minutes later and positioned himself next to Officer Kubera on the ground floor at the bottom of the stairs. His body worn camera was activated and recorded this encounter. Olivo, Jr. said, "I'll fuck you up...fuck your ass up, come on bitch, I'll hit you bitch, come on bitch" while he faced the bathroom door. Olivo, Jr. continued to yell through the door at Hogan. Hogan implored, "Rufus stop." While he yelled through the door, Olivo, Jr. repeatedly stabbed the bathroom door which created a hole above the door handle. Hogan had used a bathroom vanity drawer to block the door as it did not lock. Officers awaited the arrival of a non-lethal weapon, called a sage. Officer Ruszas engaged Olivo, Jr. and directed him to drop the knife, yelling, "Drop the fucking knife or you're going to get shot!" Olivo, Jr. responded, "I ain't dropping shit bitch, shoot me bitch." The officers remained at the bottom of the stairs.

Hogan told Olivo, Jr., "Stop" and pleading, "Why are you doing this?" Officers Kubera and Ruszas recognized an increased threat to Hogan when Olivo, Jr. created a hole in the door. Officer Ruszas stated, "If he gets in there with those knives, we're going to have to take him." When Olivo, Jr. forced his way into the bathroom, the officers went up the stairs. Once on the landing, they saw damage to the wall and a hole above the bathroom door handle. At this point, Olivo, Jr. and Hogan were barricaded behind the closed bathroom door. Officers Kubera and

Ruszas made multiple attempts to open the door by kicking it and shouldering it, but they could not gain access to the bathroom to assist Hogan. Olivo, Jr. stabbed the knife through the hole in the door from inside and toward the officers. Officer B. Garin arrived and positioned herself on the stairwell with the sage<sup>1</sup>. Officer N. Gauck was also in the hallway, prepared with a taser. Simultaneously, Hogan said, "Don't stab me babe" and "Please" four more times.

Officer B. Pomo arrived with a breacher kit<sup>2</sup>. As Officer Pomo and Officer Gauck dislodged the door, Hogan's pleas to Olivo, Jr. became increasingly fearful in tone. Once the door was removed, officers could see Olivo Jr. with his arm around Hogan, actively stabbing her. She struggled to keep the knife away from her as he swung it toward her chest, shoulder and neck. A total of five shots were fired between Officers Kubera and Ruszas. Officer Kubera fired four times from his Glock pistol and Officer Ruszas fired once from his rifle. Hogan was pulled from the room where Officer Bienko rendered aid to stop her bleeding. She was stabbed in her neck, shoulder and chest. Officer Kubera applied pressure to Olivo, Jr.'s wounds immediately, while Officers Garin and Gauck assisted with placing tourniquets and chest seals on his body. Officers Kubera, Gauck and Garin all performed CPR on Olivo, Jr. until EMS arrived. Olivo, Jr. was pronounced deceased on scene at 4:59 a.m. Hogan was transported to the hospital where she was treated for stab wounds.

Two knives were recovered from inside the bathroom, and another was recovered from an upstairs bedroom. An interview with T.O. after the incident revealed that Olivo, Jr. punched Hogan in the stomach while he accused her of being pregnant and unfaithful. He also knocked over an entertainment center in anger.

The Office of the Chief Medical Examiner issued an autopsy report, which described Mr. Olivo, Jr.'s cause of death as multiple gunshot wounds. He had gunshot injuries to his left forearm, torso, right thigh, and right shin. The injuries observed on Mr. Olivo, Jr. could have been caused by as many as seven bullets and as few as five. Additionally, Mr. Olivo, Jr. had a stab wound on his left forearm. Postmortem toxicology revealed a blood alcohol content of .17%, and a cocaine level of .089 mg/L. The cocaine level is indicative of use within six hours and is still at stimulant level.

## Analysis

The controlling legal authority relating to officer-involved shootings states that the determination must be whether the officer's actions were "objectively reasonable in light of the facts and circumstances confronting them." Tennessee vs. Garner, 471 U.S. 1 (1985); Elliott vs. Leavitt, 105 F3d 174 (4<sup>th</sup> Cir. 1996). Four years after Garner, the United States Supreme Court said, "The 'reasonableness' of a particular use of force must be judged from the perspective of a

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<sup>1</sup> A sage is a less-lethal weapon that expels a rubber projectile.

<sup>2</sup> A breacher kit is similar to a crowbar and hammer used to dislodge a door from its frame and hinges. It is not similar to a battering ram.

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). “Before employing deadly force, police must have sound reason to believe that the suspect poses a serious threat to their safety or the safety of others.” Lee v. City of Richmond, VA, 100 F. Supp. 3d 528, 541-542 (E.D. Va. 2015). Further, for defense of others to be applicable, “one must reasonably apprehend death or serious bodily harm to another before he or she is privileged to use force in defense of the other person,” and “may only avail himself if, he believes, based on the attendant circumstances that the person defended is without fault in provoking the fray. The amount of force which may be used must be reasonable in relation to the harm threatened.” Foster v. Commonwealth, 13 Va. App. 380 (1991), citing Diffendal v. Commonwealth, 8 Va. App. 417 (1989).

From the time Officer Kubera arrived on scene to the time officers discharged their weapons, Olivo, Jr. was directed to drop the knives in various forms at least eleven times. He repeatedly threatened to injure or kill J. Hogan who was in the bathroom. At no time did officers witness Hogan as the aggressor toward Olivo, Jr. He forcefully entered the room by damaging the door to reach in and move a vanity drawer which was used to barricade the door shut. Hogan’s pleas to Olivo, Jr. to “calm down” evolved to “don’t stab me babe,” were heard outside the bathroom by the officers. Fearing that Olivo, Jr. would kill Hogan, they opened the door as Olivo, Jr. stabbed her. Olivo, Jr. continued to stab Hogan as the door was removed, and Officers Kubera and Ruszas fired their weapons at Olivo, Jr. which resulted in fatal injuries.

The officers heard increasing threats to Hogan’s safety, and once the door was opened, saw Olivo, Jr. stabbing her. Thus, based upon the facts and applicable law in this matter, it is my opinion that Officer Kubera and Officer Ruszas were justified in shooting Olivo, Jr. given the circumstances they observed on September 6, 2020. It is also reasonable to conclude that the officers’ actions prevented further serious bodily injury or death to J. Hogan.

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