



The Commonwealth of Massachusetts

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DISTRICT ATTORNEY

BRISTOL DISTRICT

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DISTRICT ATTORNEY'S FINDINGS AND CONCLUSIONS REGARDING THE DEATH OF SCOTT MACOMBER DOB 3/26/68 IN FALL RIVER, MASSACHUSETTS

Introduction

This report describes the facts, circumstances and the District Attorney's conclusions related to the death of Scott Macomber. Mr. Macomber died on May 16, 2016 while in police custody in Fall River, Massachusetts. Mr. Macomber was arrested for interfering with a Fall River Police Officer during the pursuit and arrest of an individual with outstanding warrants. Sergeant Daniel Thom of the Massachusetts State Police Detective Unit assigned to the Bristol District Attorney's Office, led the investigation into the death. That investigation and this report describing the findings of the investigation are made pursuant to the District Attorney's obligation under M.G.L. Ch. 38, sec. 4.

An autopsy of Mr. Macomber was conducted by the Office of the Chief Medical Examiner. Upon completion of the autopsy and receipt of the results of testing, Dr. Henry M. Nields made a report of his findings and conclusions. A copy of that report has been provided to the District Attorney's office. In addition, the District Attorney's report relies on reports submitted by other members of the Massachusetts State Police Detective Unit, reports by troopers and civilian members of the Massachusetts State Police Crime Laboratory, photographs of the scene, of evidence and of the deceased, videotaped and audiotaped witness and police officer interviews, recorded "911" calls and Fall River Police radio transmissions, Fall River Police Department Use of Force Policies and training records of the Fall River Police.

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Factual Summary

At approximately 11:30 a.m. on May 16, 2016, Frederick Garfield walked into the Fall River Police station and spoke with Officer Matthew Pacheco who was working the front desk. Garfield told Pacheco that his ex-girlfriend, Lisa McNally, had several outstanding arrest warrants and that she was staying at an apartment on Mount Hope Avenue in Fall River.

Officer Pacheco relayed Garfield's information to another Fall River Officer, Joshua Carreiro, in the Fall River Police Department's Special Operations. Officer Pacheco confirmed through the state-wide warrant management system that McNally had outstanding warrants and he provided that information to Officer Carreiro.

Officer Carreiro knew Lisa McNally from prior dealings with her. Officer Carreiro had no prior dealings with Garfield before meeting Garfield at the station. Garfield described some of his issues with McNally and he told Carreiro that McNally was living with her cousins. Garfield said that McNally would not come outside if she knew the police were outside and that if the police tried to speak with the occupants of the apartment, the occupants would lie for her. Garfield believed McNally would run from the police if she was caught outside and that her cousins, "Barbie and Scott," would try to hide her. Garfield volunteered to assist police in the arrest of McNally by drawing her out of the dwelling.

Officer Carreiro informed police dispatch what he was going to do. He requested assistance from two additional patrol officers and asked them to stand by in the vicinity of Mount Hope Avenue and to respond if he needed them.

At Mount Hope Avenue, it took some time before McNally came out of the apartment. Officer Carreiro drove past the address before he parked on an adjacent street. From this location, Officer Carreiro saw Garfield and McNally come out of the building. Upon seeing

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McNally, Officer Carreiro recognized her “right away.” Carreiro approached in his vehicle, but McNally noticed him right away and she quickly ran toward the apartment door entrance.

Officer Carreiro, in full uniform, exited and ran after McNally. Carreiro chased McNally on foot as she ran back to the building. He shouted to her, saying, “Lisa stop, you have warrants.”

McNally got to the door of the building; she entered and slammed the door on Carreiro who was right behind her. McNally continued to the first floor apartment, entered and closed the door behind her. Carreiro immediately came to the door, turned the knob and tried to push open the door, but was met with resistance. As Carreiro tried to open the door, and follow her into the apartment he could feel people on the inside pushing back on the door. Carreiro forced the door open a crack and got a quick glimpse of a woman, who was not McNally, pushing the door shut. The door quickly slammed shut again and he heard the click of the lock. Carreiro couldn’t understand why McNally was so intent on running and he yelled to her—“Lisa don’t do this, it’s only warrants.”

Carreiro was able to force the locked door open and enter the apartment. Inside, he found a woman, who was unfamiliar to him, behind the door. She began to shout at the officer and Scott Macomber emerged from a room. Macomber approached Carreiro in the interior of the apartment and came into physical contact with the officer, in an effort to keep Carreiro from getting to McNally. The apartment occupants were yelling at the officer. Carreiro asked where Lisa was, and the occupants denied that Lisa was in the apartment. Along with Scott Macomber, the two women were identified as Barbara Robinson and Jennifer Bernadini. Bernadini had a young child with her in the apartment.

The two back-up officers responded to the apartment to assist Officer Carreiro. After officers arrested Ms. McNally, Officer Carreiro turned his attention to Mr. Macomber, who had

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interfered with him when Carreiro was searching for McNally inside of the apartment.

Macomber struggled with the officers, causing a physical confrontation in the living room of the apartment. During the confrontation one of the officers unholstered his Taser weapon and warned Mr. Macomber that if he didn't stop he would be tased. Mr. Macomber did not stop, despite several warnings, and as a result an Officer applied the Taser directly to the Macomber's body¹ in order to gain control over Mr. Macomber. Evidence downloaded from the "Taser Sync" showed three separate applications of the Taser. The first lasted three seconds, the second lasted two seconds and the third lasted one second.

Mr. Macomber was handcuffed and taken into custody. In accordance with Fall River Police Department protocol, an ambulance was immediately summoned even though Mr. Macomber was making no complaints of pain and was exhibiting no signs of distress. Police took Macomber and McNally placed them into separate police cruisers. While in the cruiser, Macomber asked for a window to be rolled down. Shortly thereafter, he went into medical distress. Fall River Rescue arrived on the scene and EMTs attended to Mr. Macomber and transported him to St. Anne's Hospital where he was pronounced dead at 1:20 P.M. An autopsy performed by the Chief Medical Examiner of the Commonwealth determined the cause of death to be Cardiac Dysrhythmia due to hypertensive and atherosclerotic cardiovascular disease and that the manner of Mr. Macomber's death was natural.

¹ A Taser can be used in one of two modes. An officer can fire two probes connected to the Taser by thin wires. The probes attach themselves to the suspect's skin or clothes and the probes are then energized with electricity. Use of the Taser in this mode is designed to cause neuromuscular incapacitation, which is an interference with the suspect's ability to control his own movements and it results in involuntary muscle contractions. The second Taser mode is known as a drive stun. Used in this manner the officer makes direct contact of the subject with the Taser and activates the Taser to provide electrical impulses. This mode does not interfere with muscle contractions or muscle activity. Instead, it encourages a suspect's compliance with commands by causing a pain in the area of the body in contact with the Taser.

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The District Attorney's Office received notice of the incident and Mr. Macomber's death at the hospital and this investigation followed. The investigation included interviews of all the relevant civilian and police witnesses, a search of the apartment and relevant forensic analysis.

Civilian Witness Interviews

Frederick Garfield

Frederick Garfield stated that a few weeks before this incident he reported he reported to the New Bedford Police that Lisa McNally made threats against him and as a result charges issued, along with a warrant for her arrest. On May 13, 2016, Garfield went to the Probate Court to get a restraining order against McNally. McNally did not appear and the Judge gave Garfield two weeks to have McNally served. Garfield knew that McNally had a few warrants and that she was hiding out in "Barbie's" apartment.

On May 16, 2016, Garfield went to the Fall River Police Department so that McNally could be arrested on her warrants. Garfield was the put in touch with a Fall River Officer who specialized in warrants. The Officer met Garfield quickly and then for a second time at St. Anne's Credit Union parking lot. Garfield convinced McNally to come out of her apartment to see her son. When McNally saw the Officer, she ran away. Garfield drove off, so that his son would not see his mother get arrested.

Neighbor #1

Neighbor #1 lived in the apartment next to the apartment where the incident occurred. He was home during the incident. At around 12:00 p.m., he went out to walk his dog. When he returned home, he saw the police chasing a woman into the house. He described a woman in an orange sweatshirt speaking to man with a child in a black Chevy. As the woman was speaking to the man, he saw an unmarked police car drive up. When the woman saw the car, she walked

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quickly away. The officer got out of his car and ran after the woman. The witness knew the Officer went into the house because the walls are paper thin and he heard a lot of screaming. He heard a man yell, "You can't just come in here this is my house!" He heard the Officer say, "Well, where's the woman that just ran in here?" Neighbor #1 stated the people in the house played dumb, saying, "What woman? I didn't see any woman?" Neighbor #1 heard the officer state, "You know who I am talking about, the woman who just came in here."

About two minutes later a marked police SUV cruiser arrived with two officers in uniform. Neighbor #1 stated that his mother was in the living room at the time and talked to the officers. After the two officers entered the apartment, he heard one woman screaming loudly, "you can't do that to her, don't touch her." He then heard a bang, followed by, "don't fight back" and "stop resisting." After these comments, he heard another bang, followed by "You're under arrest" and more screaming from everyone in the adjoining apartment. Shortly thereafter, the woman in the orange sweater and a man were brought outside. Scott Macomber was in pajama pants, a shirt and handcuffs.

Neighbor #1 said Macomber looked fine and was walking on his own. He described that Macomber did not want to go to the police car and was pushing back a little bit as he approached the cruiser.

Macomber tried to talk to his wife who was at the door. Neighbor #1 heard Macomber tell his wife, "that he didn't do anything and that it's ok." Macomber was then placed into a cruiser. The Officers spoke with each other and the woman at the door. Neighbor #1 observed, "That Scott must have had something happen to him medically." He stated at that time Macomber appeared unconscious and an ambulance came up. Macomber was placed into the ambulance. Neighbor #1 believed that Macomber was in the car for, "about five minutes...he

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looked fine...he was in the car and his window was down he kept yelling at the police officers.”

When he saw Macomber in distress, the officers pulled him out of the car and the ambulance was already there.

Neighbor #2

Neighbor #2 lives upstairs from the Robinson/Macomber apartment. She stated that on May 16, 2016, she suddenly heard slamming noises coming from downstairs. She looked outside and saw a police cruiser. She stated the noise become louder as she heard a police officer yelling, “Get down sir and get down on the ground.” She heard this twice. Then, she heard an officer state, “get down on your belly or I’m going to have to tase you!” She then heard the clicking noise of a Taser. While this was going she heard a woman yelling, “What did we do, we didn’t do anything!” She heard the police talking about resisting arrest and a female child’s voice. She did not leave her apartment or witness anything outside.

Neighbor #3

Neighbor #3 stated that on May 16, 2016, she became aware of police activity near her home and walked over to the intersection which is near 584, 586, 588 Mount Hope Avenue. She observed a male outside being handcuffed by police. She recognized the male as an individual she had seen walking in the neighborhood before. She said a uniformed police officer and the man were having a conversation and the police officer put his hands behind his back for handcuffing. She stated she did not actually see the handcuffing, but saw the man being lead to the cruiser. The man in handcuffs appeared to be uninjured. She stated everything appeared normal and there was no confrontation. She said shortly after placing the man in the cruiser, the officer ran to the other side of the cruiser and opened the door. She saw an ambulance arrive at the same time. At that point, she went back inside her home.

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Neighbor #4

Neighbor #4 stated her son told her that he saw a police cruise outside. She heard a commotion from the rear apartment and loud yelling but it was difficult for her to hear words. She could not understand what the police were saying, but heard a female voice yell, "get away from me." She did not hear anything about a Taser.

Neighbor #4, 2nd Interview

After investigators learned that Neighbor #4 had posted a photograph on her Facebook page of Mr. Macomber under arrest, she was re-interviewed regarding anything she may have left out. Neighbor #4 took six pictures of Macomber and McNeely outside of the apartment after the incident. Copies of these photographs were taken by investigators as evidence. Neighbor #4 stated that Macomber appeared to be fine when she saw him outside of the apartment and the photographs are consistent with that opinion. Neighbor #4 explained that at the time of the first interview she didn't understand the seriousness of the incident and only learned of Scott Macomber's death later. When she was first interviewed she didn't think the photographs were important.

Lisa McNally

Lisa McNally was the subject of several warrants and was arrested by Fall River Police on May 16, 2016. She stated that she had been living with her boyfriend Frederick Garfield, but they had not been getting along so she went to stay with Scott Macomber at 576 Mount Hope Avenue in Fall River. She had been staying there for two weeks. McNally said that Frederick Garfield showed up at 576 Mount Hope Avenue and said that her son was outside. She went out to see him at that point. When she was outside, she saw an unmarked police cruiser and she

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concluded that Garfield set her up. McNally later claimed that she wanted to turn herself in on her warrants. She did not want to be brought in while handcuffed.

McNally ran into the house, locked the door behind her, and ran directly into the bathroom. She did not see anything prior to her being removed from the bathroom. She believed that she heard the police kick in the door and Barbara Robinson yell, "What the hell, what the hell's going on, or something"

There was no lock on the bathroom door and eventually the police opened the door. McNally was face down on the floor as the police tried to handcuff her. She said her arm came out of her sleeve in front of her and she could not put her arm behind her back to be placed in handcuffs.

McNally said that she didn't "really...know what happened with [her] cousin Scott." She said that Scott was "flipping out" and that although she couldn't see him, she could hear him yelling. McNally said that Macomber had a bad temper and that he has a bad past. Macomber was yelling, "What the f..k are you doing, what the f..k are you doing, get the f..k out of my house, where's the f..king search warrant...there's nobody here." Amidst the commotion, McNally could hear Macomber's girlfriend, Barbie, saying, "Stop! Stop resisting...Scott...Stop..."

McNally heard an officer say, "I'm going to tase you." McNally described that there was a bed in the livingroom that she had been sleeping on and that Macomber was on the bed and officers were on top of him. McNally provided inconsistent details about whether she saw the Taser used. McNally told investigators that Macomber was not taking any medications. McNally also said that Macomber had been complaining about his chest hurting a lot.

Barbara Robinson

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Ms. Robinson was the fiancée of Scott Macomber. She was the listed tenant of 584 Mount Hope Avenue Apt # 1. Along with Scott Macomber, she lived there with her son, Scott Macomber, Jr., her daughter, Jennifer Bernardini and Jennifer's two year old child. She had been together with Scott Macomber off and on for 15 years. Robinson said that McNally had been staying at the apartment for a couple of days before the incident and that she was planning on taking McNally to see a doctor because McNally had not been acting herself.

Robinson said that McNally called Garfield the night before the incident and that on May 16, 2016, Garfield texted Robinson's phone that he was outside. Garfield then knocked loudly on the apartment door. Macomber was in bed, sleeping at the time.

McNally was initially reluctant to see Garfield. However, when Garfield told McNally that their son was outside, McNally agreed to get dressed and go outside.

Robinson became aware of a problem when the apartment door flew open and McNally ran into the apartment and said, "Don't let him get me." At that time, Bernardini was exiting her bedroom and both Robinson and Bernardini ran to lock the door. Robinson said that she did not hear anyone identify themselves as police, but when the door was pushed really hard, she saw a police officer and she told Bernardini to stop holding the door closed.

Robinson claimed that the officer pinned Bernardini to the wall and asked "where is she?" Robinson said that the officer then just took off into the apartment screaming and that she never had a chance to say anything. Robinson said that the officer was saying, among other things, that they heard him identify himself as an officer and that they were obstructing justice.

Robinson stated that Scott Macomber emerged from a bedroom and asked what is going. The officer asked where Lisa was and Robinson said that she pointed to the bathroom.

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According to Robinson, the officer first searched her son's bedroom and a couple of other rooms in the apartment before finding Lisa hiding in the bathroom. Robinson said that the officer was joined by other officers and that they pushed McNally to the floor and kicked McNally while she was on the floor. She said that the officers and McNally ended up in the kitchen where they were fighting with McNally, "[be]cause she was resisting of course...she was crazy."

At about the time officers were handcuffing McNally, Macomber appeared began to record the incident on a cellular telephone.² Robinson described that Macomber was "bum-rushed." According to Robinson, the officers pushed Macomber into the living room, got on top of him, and told him to stop resisting arrest while they were hitting him. Then, the police said "I am going to tase you if you keep resisting," but all Macomber was doing was lifting up his head telling them that he couldn't breathe and that he was not resisting. Robinson heard the Taser go off and she looked away because it scared her. She then heard it go off a couple of more times. Robinson claimed that Macomber was lifted off of the bed and thrown to the floor and handcuffed. The officers then got him up and walked him out of the apartment. Robinson further stated that the officer threatened to tase her as well if she followed them.

Robinson described that she spoke with Mr. Macomber while he sat in the back of the cruiser and she saw him communicate with the police about where he was going and that they were taking him to the court house. Macomber communicated this information to Robinson. At the same time, Robinson said that Lisa McNally was screaming in the back of another cruiser. Macomber told Robinson from the back of the cruiser, "Honey I'm going to court...meet me at the courthouse...don't let them keep me."

² Robinson gave her recorded statement to investigators on May 24, 2016. This was the first mention that Macomber recorded any part of the encounter. Subsequent attempts to locate the phone, including requests to her attorney, have not resulted in the recovery of the device.

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Jennifer Bernardini

Jennifer Bernardini is the daughter of Mr. Macomber and lived at 584 Mount Hope Avenue in Fall River. She stated that at one o'clock in the afternoon on May 16, 2016, she was getting ready to go out and get coffee when Lisa ran in the door. Lisa said, "Don't let them get me." Bernardini went over to the door of the apartment. She held the door shut. She said an officer started kicking the door in but he didn't tell her he was an officer and that he came barreling into the house. Barbara then told her to get back because he was an officer. The officer then pushed the door in and was yelling and screaming, "where is she, where is she." They did not tell him where Lisa was, because they did not know she had warrants. She said Lisa ran into the bathroom. She said that Barbara finally told the Officer that Lisa was hiding in the bathroom. Bernardini said the officer went to the bathroom door and kicked it in and dragged Lisa out.³ At this point, she said Scott Macomber came out. She said she was in the bedroom with Barbara and her baby when she heard Lisa scream. Lisa said to "stop kicking [her] in the stomach." She said Macomber came out and asked what is going on and that all of the officers attacked him.

Bernardini claimed the officers brought Macomber over to the bed in the living room and got on top of him. She heard the police say that he was interfering with the arrest and they all tackled him. Bernardin claimed that the police were saying, "Stop resisting," and that Macomber said, "I'm not resisting, I'm not resisting, I can't breathe." She said the police kept tasing him and tasing him and they then threw him on the ground. After this, he said could not breathe and they took him out of the house.

³ Investigators did not observe that the bathroom door was "kicked in" when they went through the apartment.

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Bernardini described that Lisa was screaming at the top of her lungs in the back of a cruiser. She also said that the officers threatened to tase her and Barbara after this happened. She said that when the police had Mr. Macomber on the mattress, the police were saying stop resisting and she was pretty sure he had his hands behind his back. She claimed that instead of handcuffing him, they tased him. She said the last words her father spoke was in the back of the cruiser when he said to Barbara, "get me out, they're bringing me to court they said. Get me out." She said the window to the cruiser was down and at this time he appeared fine.

Police Officer and First Responder Interviews

Officer Joshua Carreiro

Officer Carreiro was working the day shift on May 16, 2016, when he received a call from the desk officer, stating that a male at the window had information on the location of Lisa McNally, who had multiple outstanding warrants for her arrest. Officer Carreiro spoke to Garfield who relayed the same information he had to the desk officer. Carreiro contacted Officer Shane Galus and Officer Jonathan Ferreira to assist with the arrest. He then traveled to the location. He saw Mr. Garfield speaking with Ms. McNally near Mount Hope Avenue. She recognized him right away. When McNally saw Officer Carreiro, who was in uniform, she started to run. He told her to stop because she had warrants. He chased her up the stairs to the apartment. As they reached the door, she slammed the door on him. He turned the knob and as he tried to push the door open he felt resistance, as if someone was holding the door. He heard the door being locked and yelled to McNally not to do this because it was only warrants.

Officer Carreiro was able to kick the door open but could still feel resistance behind it. He saw a woman he was unfamiliar with still holding the door shut. When he was finally able to get into the apartment, he saw Barbara Robinson and Scott Macomber in the room. He asked

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where Lisa McNally was hiding. They told him that Lisa McNally was not in the house.

Officer Carreiro attempted to go to the kitchen in order to look for McNally and his path was blocked by Macomber who bumped his chest up against Officer Carreiro. Macomber told Officer Carreiro that he couldn't go into the kitchen.

Officer Carreiro informed the occupants that he was going to place everyone under arrest for interfering with a police officer. Upon hearing this information, Barbara Robinson subtly pointed to the bathroom. Officer Carreiro attempted to open the bathroom door and again felt resistance until the door opened suddenly. When the door opened suddenly, Lisa McNally came out with her arms flailing. Officer Carreiro struggled with McNally and called for backup from Officers Ferreira and Galus. They arrived and were able to get McNally under control and arrest her.

Officer Carreiro then turned his attention to Scott Macomber. He advised Macomber that he was under arrest and attempted to escort him out of the living room. As the officer put his hands on Mr. Macomber, Macomber became wild and pulled away. Macomber then lunged forward into the living room as Officer Carreiro attempted to put Macomber's wrists together. The momentum of the movement caused Officer Carreiro to push Macomber against the futon. Officer Carreiro attempted to put Macomber's hands together while Macomber pulled his arms apart. Officer Carreiro instructed Macomber to "stop resisting."

Officer Ferreira provided assistance. Officer Ferreira was on the left of Macomber and Officer Carreiro was to his right. Macomber's head was against the wall because of the small space. As the officers were trying to control Macomber's movements, he was kicking and trying to bring his arms out. The officers struggled to hold his arms together as Macomber forcefully tried to get loose.

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During this struggle, Macomber freed one of his hands, got off the futon, and elbowed Officer Carreiro. In reaction, Carreiro threw a punch back, but missed and hit Officer Ferreira on the side of his face.

As the officers were able to get Macomber back onto the futon, Officer Shane Galus came in. Macomber continued to struggle after he was forced back on the futon. Carreiro heard Officer Galus give verbal warnings that if Macomber did not stop resisting that he was going to get tased. Macomber continued to resist. Officer Carreiro then heard Officer Galus yell, "Taser, tase, tase." Officer Carreiro and Ferreira then disengaged from Mr. Macomber. Officer Galus used the Taser in drive stun mode, applying the Taser to Macomber's right, lower back area. Macomber got up and grabbed the Taser at which time he was tased again. This allowed the officers to get Mr. Macomber handcuffed.

Following the completion of the arrest, Macomber calmed down considerably and continued to ask what he had done and why he was being arrested. Officer Carreiro then told him he already told him why he was being arrested. As Macomber was escorted out of the apartment, Officer Galus called for a rescue unit because police department police required it any time a drive stun is used.

Officer Carreiro described that Macomber had calmed down and was walking fine on his own, Lisa McNally continued to scream and yell. Officer Carreiro stated he was talking to the landlord who arrived on scene and while talking, the landlord pointed over to Macomber, who was on a stretcher with his mouth wide open.

Officer Shane Galus

On May 16, 2016, Officer Shane Galus was asked by Officer Carreiro to act as back up as he went to arrest a female on warrants. Officer Galus stated that he and Officer Ferreira

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stayed in radio contact with Officer Carreiro who told them he was going to attempt to place the female in custody. Within a few seconds of this call, Officer Carreiro called for more cars to assist. Officers Ferreira and Galus then immediately drove to the location and ran into the apartment. They heard a struggle in the kitchen and ran into the kitchen. Galus saw Carreiro struggling with a female. He assisted Officer Carreiro in placing the female in custody. After the female was handcuffed, Galus went into the living room where he saw Officer Carreiro and Officer Ferreira struggling with a male (Scott Macomber). Officer Galus attempted with to take Macomber to the ground with the other officers, but was unsuccessful. Galus then drew his department issued Taser, removed the cartridge containing the prongs, and warned Macomber that he was going to be Tased if he didn't comply with the officer. The other officers were able to get Macomber down, but he was still fighting and swinging his arms at the officers. Galus again warned Macomber that he was going to be tased, if he didn't comply to give them his hands and stop fighting. Galus placed the Taser in Macomber's right, lower back area and warned him again that he was going to be Tased. Macomber continued to keep fighting. So he told the other officers he was going to tase him. He then tased him one time with the Taser in drive stun mode.

After being tased, Macomber sprung up and turned around to face Officer Galus. Macomber grabbed the front of the Taser with his hand. Officer Galus attempted to pull the Taser back, but he could not. He discharged the Taser again in drive stun mode again shocking Macomber in the hand. Macomber backed off and Officer Galus put the cartridge back in the Taser and ordered Macomber to the ground. Galus pointed the laser with the red dot and ordered Macomber to lie on the floor in the middle of the living room, Macomber complied with these requests and was handcuffed.

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Officer Galus escorted Mr. Macomber out of the apartment along with Officer Carreiro. While escorting Mr. Macomber, Galus radioed for an ambulance to come for a Taser evaluation. Macomber continued to engage the officers verbally and was able to walk out on his own. At no time did Mr. Macomber complain of any medical or pain issues.

Macomber was placed in the back of a cruiser operated by another officer and the rear window to the cruiser was down. After speaking with another Officer, Galus turned around to check on Mr. Macomber. Officer Galus saw Mr. Macomber had aspirated in his mouth. Galus opened the door and pulled Macomber out of the cruiser.

As Macomber was removed from the cruiser, Fall River Rescue was coming down Mount Hope Avenue. Officers sat Mr. Macomber up because they did not want him to choke and he was still breathing at that time. Macomber was put him on a stretcher and placed into the ambulance.

Officer Galus rode in the back of the ambulance with Mr. Macomber. During the ride, he took the handcuffs off. When Mr. Macomber stopped breathing, Galus assisted in providing CPR until he was relieved by a paramedic.

Officer Joseph Ferreira

Officer Ferreira stated that he was working with his partner, Officer Shane Galus, on May 16, 2016, when they were asked by Officer Carreiro to provide back up when he went to arrest a female at 576 Mount Hope Avenue in Fall River, MA. Officer Carreiro asked them to wait down the street and he told them that if he needed their assistance, he would call for them. Ferreira and Galus waited in a car dealership down the street. Ferreira saw Officer Carreiro drive by. Within a short period of time he heard Officer Carreiro on the radio asking dispatch to

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send more cars. Ferreira and Galus responded and upon arriving at the scene, Officer Ferreira was directed to the house by a woman who poked her head out of a window.

As soon as Ferreira entered the building, he could hear yelling. He entered the apartment and ran around the corner and saw Officer Carreiro and Officer Galus struggling with a female on the floor. He stated that as they were trying to get the women into custody a man had come into the room close to them. Officer Ferreira then stated Officer Carreiro went to deal with this individual. Ferreira described that a heated exchange between Officer Carreiro and Macomber followed. Officer Carreiro grabbed Macomber's arm and Macomber pulled away. Mr. Macomber then bolted toward Officer Carreiro causing both of them to fall onto a futon which was against the living room wall. Officers Ferreira and Carreiro held Macomber against the wall as Macomber thrashed around. The officers instructed Macomber to stop resisting and to give them his hands. Macomber continued to resist as he tried to get away and turn on the officers.

The officers were able to get Macomber back onto the futon/mattress in the living room. But Macomber still had his hands across his chest. On the mattress, Macomber continued to fight with the officers and did not listen to their commands. Officer Galus told Macomber that he was going to tase him. Officer Ferreira heard Lisa McNally and one of the other females in the apartment yell to Macomber to "stop fighting." Nonetheless, Macomber continued to hand fight with the officers. Officer Galus informed Ferreira and Carreiro to disengage from Macomber because he was going to tase Macomber. Ferreira saw Officer Galus drive stun Macomber and Mr. Macomber jumped to the side and back. Macomber reached for the Taser and Officer Galus pulled the trigger again.

At this point, Macomber said, "I'm done, I'm done." Macomber went down to the floor and became compliant. The officers handcuffed Macomber and walked him out. While heading

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out, Officer Galus called for an ambulance. Officer Ferreira had no further interaction with Macomber.

Officer Luis Vertentes

Officer Vertentes was working on May 16, 2016, and was dispatched to Mount Hope Avenue for a Taser deployment. While enroute to the location he heard a radio transmission requesting rescue be dispatched to the scene due to the use of the Taser. When he arrived on scene, he saw a male party in custody being walked over to his cruiser. He stated that the man appeared fine. He saw the man placed in the back of the cruiser. After being placed in the cruiser, the man asked Vertentes to open the cruiser windows because he was hot. Vertentes opened all the windows. The man spoke to Vertentes through the open windows and told him what happened and that he was not happy about it. After a few minutes passed, Vertentes noticed that the man, who had been talking a lot, stopped talking. Vertentes knew something was wrong because the man started to tense up a bit and he had, what looked like, foam coming out of his mouth.

Vertentes alerted Officer Galus; who opened the door and removed the man from the vehicle. The man was placed in the recovery position and they sat him down on his backside. Officer Galus was behind him holding him up to ensure he was breathing so that he would not choke. Macomber was breathing and appeared conscious. Fall River Rescue arrived at about that time and took over the situation.

Paramedic Joe Krewko

Joe Krewko stated that he had been working the day shift on May 16, 2016 when he received a call from the police to evaluate a party. It took five to six minutes to respond to the scene. Upon arrival, he saw Macomber in a seated position on the curb. There was a lot of

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yelling and there were a number of cruisers on scene. Specifically, he was concerned about a woman who was screaming. This caused him to be concerned for the safety of the emergency medical personnel and for the patient. As a result, the patient was picked up and put on a stretcher and placed him in the ambulance. Macomber had been seated on a curb next to a cruiser and that the police officers helped place him on a stretcher. Krewko observed that Macomber was unresponsive and that his color did not look good. Macomber was gasping for air and had dilated pupils. Krewko did not observe any major trauma to Mr. Macomber, noting only a little bruise on Macomber's right side.

Autopsy

Dr. Henry Niels, the Chief Medical Examiner of the Commonwealth of Massachusetts, performed an autopsy on Macomber. Dr. Niels made the following final diagnosis:

1. Hypertensive and atherosclerotic cardiovascular disease. There was cardiac hypertrophy and severe single vessel coronary artery atherosclerosis. There was moderate to severe two vessel coronary artery atherosclerosis. There was nephrosclerosis.
2. Mr. Macomber had blunt impact injuries of head. Macomber had an abrasion of his scalp and contusions of his scalp. There was no skull fracture.
3. Mr. Macomber had blunt impact injuries of his torso. There were contusions on his chest and back.
4. Mr. Macomber had blunt impact injuries of his extremities, an abrasion to his left wrist, contusions of left and right arms and an abrasion to his left leg.
5. Mr. Macomber had a Taser injury to his back. There was a soft tissue hemorrhage on his right lower back.
6. A toxicology screen was positive for cannabinoids.

Dr. Niels determined the cause of death to be Cardiac Dysrhythmia due to hypertensive and atherosclerotic cardiovascular disease and the manner of death to be natural.

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Fall River Police Department Use of Less-Lethal Force

The Fall River Police Department has an established written policy which addresses the use of force and possession of Electronic Muscular Disruption Device by police officers. In general, the policy provides:

“It is the policy of this Department to use only that level of force reasonably necessary to control or otherwise subdue non-compliant individuals. Conducted Electronically Weapons (CEW) have been proven effective and are authorized for use in appropriate circumstances by trained and authorized personnel.” (Section 1.3.9) (a)

Regarding the use of **Electronic Muscular Device Deployment** as relevant to this investigation, the policy stated:

“2. In addition the Electronic Muscular Disruption probes maybe deployed in the following circumstances:

d. To affect a lawful arrest, when an officer is threatened with assaultive behavior and other means of controlling the offender, such as verbal commands and persuasion, have been ineffective in inducing cooperation.

e. Using the Taser with the goal of stopping assaultive behavior.” (Section 1.3.9) (a)

Regarding the definition of **Drive Stun** as relevant to this investigation, the policy stated:

“Contact is made by pressing the front of the Electronic Muscular Disruption Device (cartridge removed) into the body of a subject and activating the Electronic Muscular Disruption Device. The Drive Stun causes significant localized pain in the area touched by the Electronic Muscular Disruption Device, but does not have a significant effect on the central nervous system. The Drive Stun does not incapacitate a subject but may assist in taking a subject into custody.” (Section 1.3.9) (a)

Regarding the definition of **Less-Lethal** as relevant to this investigation, the policy stated:

“Force, that when used, is not intended to cause serious bodily injury or death (i.e. pepper spray, baton, beanbag, Taser.”)

Regarding the use of **Aftercare** as relevant to this investigation, the policy stated:

2. “When an Electronic Muscular Disruption Device is operationally discharged on a person, Emergency Medical Services (EMS) personnel shall be summoned to the scene.” (Section 1.3.5)

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Fall River Police Officer's Training and Qualifications

The Officers' training and certification records were reviewed. They were qualified to handle and deploy the Taser according to Fall River Police Policies that he used on May 16, 2016.

Conclusions

We have reviewed the level of force used by the members of the Fall River Police Department during the incident involving Scott Macomber on May 16, 2016, to determine whether the subsequent death of Scott Macomber occurred in violation of Massachusetts General Laws. We have concluded the officers did not cause Mr. Macomber's death or use excessive force during the struggle that took place inside of 584 Mount Hope Avenue, Apartment 1. Therefore it is our judgement that the use of force in this matter did not constitute criminal conduct.

The officers entered the home under lawful authority in pursuit of an individual known to have warrants. Initially, residents of the home attempted to block the entrance of the Officer into the home. Macomber escalated the situation by resisting officers attempts to arrest both McNally and later himself. Macomber's escalation of the situation by resisting arrest led to a struggle with the officers. Macomber's continued struggle with the officers after they told him to stop resisting led the officers with no other decision than to use non-lethal force to subdue him. After, Mr. Macomber was arrested, Fall River rescue was called as part of an established protocol and an ambulance responded. Mr. Macomber was conscious and speaking with the officers and his fiancée after being arrested.

Dr. Niels autopsy report concludes that the cause of Mr. Macomber's death was cardiac dysrhythmia due to hypertensive and atherosclerotic cardiovascular disease. Although Mr.

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Macomber suffered some superficial abrasions and bruises during his struggle with police, the evidence establishes that these abrasions and contusions did not contribute to the cause of Mr. Macomber's death.

For the foregoing reasons and based on all available information and eyewitness accounts, the death of Mr. Macomber on May 16, 2016 did not violate any General Law of the Commonwealth of Massachusetts.