



**REPORT BY THE OFFICE OF THE FREDERICK COUNTY STATE'S
ATTORNEY REGARDING THE OFFICER-INVOLVED SHOOTING
DEATH OF BRYAN SELMER IN THE AREA OF THE SILO HILL
EXXON WITHIN THE TOWN OF EMMITSBURG, MARYLAND**

January 4, 2021

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INTRODUCTION

The Frederick County State's Attorney's Office (FCSAO) has completed its review of the officer involved shooting death of Bryan Selmer that occurred on October 19, 2020 at approximately 2:52pm in the area of the Silo Hill Exxon in Emmitsburg, MD involving two deputies from the Frederick County Sheriff's Office. The FCSAO's review focused exclusively on whether criminal charges relating to the deputies' conduct are warranted. The FCSAO's review did not examine issues such as the deputies' compliance with internal policies and procedures, their training and tactics, or any issues related to civil liability; however, internal policies and procedures and training are factors that were considered in evaluating the deputies' conduct.

As detailed below, when all available evidence is considered, the Involved Deputies did not commit a crime under Maryland law. This conclusion is based entirely on the relevant criminal laws and standards of proof in Maryland and does not limit administrative action by the Frederick County Sheriff's Office or civil actions where less stringent laws, rules, and legal standards of proof apply. The FCSAO's authority extends only to criminal matters and as such we express no opinion regarding the propriety or likelihood of success of any non-criminal actions.

OVERVIEW OF THE INCIDENT

On October 19, 2020, police officers of the Cumberland Township Police Department (“CTPD”) and troopers from the Pennsylvania State Police (“PSP”) Fugitive Unit were attempting to locate and apprehend a David LEATHERMAN who was wanted at the time on charges out of York County, Pennsylvania for Attempted Murder. LEATHERMAN was believed to be operating an allegedly stolen white 2007 Chevrolet 2500 pickup and in possession of a Glock 22 .40 caliber handgun. LEATHERMAN was to be considered armed and dangerous by any Law Enforcement Officers (“LEOs”) encountering him.

At approximately 2:23PM, CTPD officers located a white 2007 Chevrolet 2500 pickup in the area of US Rt. 15 southbound (SB) near Marsh Creek in Cumberland Township, PA. A traffic stop was attempted at which time the suspect vehicle took off at a high rate of speed. Troopers from the Pennsylvania State Police joined the pursuit shortly thereafter. The pursuit crossed state lines into Frederick County, MD at approximately 2:26PM at speeds in excess of 120 MPH. Troopers from the Pennsylvania State Police and officers from the Cumberland Township Police and Liberty Township Police followed the pursuit into Maryland. Once in Maryland, deputies of the Frederick County Sheriff’s Office joined the pursuit. Communication between the different departments was accomplished through each of their respective dispatches. An officer would communicate information to his/her dispatch and the dispatcher would relay that information by either radio or telephonically to the dispatchers of the other agencies who would then disseminate the information to their respective departments via radio.

At approximately 2:29PM the suspect vehicle exited Rt. 15 SB at West Main Street in Thurmont, MD. The suspect vehicle traveled on Rt. 77 for approximately 6 miles at extremely high speeds before making a sharp turn off of the roadway into an open corn field. The suspect vehicle then reentered the roadway from the field onto Frushour Rd. 2 miles later the suspect vehicle made a left hand turn onto Mud College Rd. At approximately 2:37pm, the suspect vehicle made a sharp left turn into a yard circling back onto Mud College Rd. in the opposite direction. The suspect vehicle then made its way back to Rt. 15 northbound (NB) and proceeded to accelerate to well over 100 MPH once back on Rt. 15. At approximately 2:40pm, the suspect vehicle briefly lost control and drove through the median onto Rt. 15 SB into oncoming traffic before crossing back over the median onto Rt. 15 NB. At approximately 2:41PM, a CTPD officer was able to get in front of the suspect vehicle in an attempt to slow the vehicle down. At this time multiple gun shots were reported to have been fired from the suspect vehicle at the CTPD officer’s vehicle. The CTPD officer’s vehicle sustained disabling damage as a result and fell back in the pursuit. While this was occurring, PSP troopers and other CTPD officers positioned themselves in the median of Rt. 15 approximately 1 mile ahead of the pursuit with the intent to deploy stop sticks against the suspect vehicle. Upon approaching the stop sticks, the suspect vehicle drove partially off the roadway into the median of Rt. 15 nearly striking the officers attempting to deploy the stop sticks. The cap of the suspect vehicle came off and went airborne into the roadway as a result of the high speed maneuver and very nearly struck other vehicles on the roadway.

At approximately 2:42PM, PSP troopers again attempted to spike the suspect vehicle on Rt. 15. This second attempt was successful in so far as the suspect vehicle became disabled shortly thereafter in the median of Rt. 15 just south of Rt. 140. LEATHERMAN and one other occupant, later identified as Bryan SELMER, took off from the vehicle on foot. SELMER proceeded running parallel to Rt. 140 towards Emmitsburg while LEATHERMAN proceeded into the backyard of the property located at 47 Park Drive.

At approximately 2:43pm, LEATHERMAN was apprehended in the area of 47 Park Drive. No weapon was found on LEATHERMAN's person. This information was relayed to dispatch who relayed to all officers in the area that the firearm utilized during the pursuit was likely in the possession of the other fleeing occupant, Bryan SELMER. SELMER was therefore to be considered armed and dangerous by any officers coming into contact with him.

At approximately 2:52pm, Deputies 1, 2, 3, and 4 of the FCSO caught up to SELMER in the area of the McDonalds off of Silo Hill Parkway running northwardly. At this point in time SELMER had discarded his sweatshirt and was in a black t-shirt. Deputies 1 and 2 chased SELMER on the backside of the McDonalds while Deputy 4 proceeded around the front of the McDonalds. Deputy 3 was in the parking lot of the Jubilee Foods attempting to get citizens out of the area. Once across Silo Hill Pkwy onto the property of the Silo Hill Exxon, SELMER stopped and turned quickly towards Deputies 1 and 2, raised his hands and arranged his body position in a manner that would lead a reasonable person to believe he was about to discharge a firearm (hereinafter referred to as a "shooter's stance"). At this point in time Deputies 1 and 2 were still located on the other side of Silo Hill Pkwy standing near the edge of the McDonalds parking lot facing north towards the Exxon. Deputy 1 fired 3 rounds and Deputy 2 fired 8 rounds simultaneously at SELMER over the next 2 to 3 seconds until SELMER fell to the ground. 6 of the 11 total rounds fired impacted and penetrated the main building of the Exxon which was immediately behind SELMER's position and directly within the field of fire of Deputies 1 and 2. Deputies 1, 2, and 4 moved in and apprehended SELMER a few moments later. SELMER sustained one gunshot wound to the torso. A request was made at 2:53PM by officers at the scene for EMS response. First aid was administered by officers until EMS arrived and took over medical treatment at 2:57PM. SELMER was flown from the scene to Shock Trauma in Baltimore where he was pronounced dead later that day at 4:02PM. While securing the scene, a clerk from the Silo Hill Exxon was discovered to have been injured by glass shrapnel from a window that was impacted by one of the rounds fired by Deputies 1 and 2. The clerk was treated by EMS at the scene for non-life threatening injuries. No other civilian bystanders were injured as a result of this incident. No firearm was found on SELMER's person nor in the area in-between the Silo Hill Exxon and McDonalds.

Later that day at 7:15pm after all scenes were secured, a loaded black Glock 22 .40 caliber handgun was recovered by investigators in the grass 10-15 feet to the front of the disabled suspect vehicle in the median of Rt. 15. No other firearms related to this incident were recovered.

SUMMARY OF THE EVIDENCE

Autopsy of Bryan Selmer

A Post-Mortem Examination Report was completed by a medical examiner. The medical examiner reported that there was a single gunshot entrance wound on the right lower chest, located 20" below the top of the head and 2-3/8" right of the anterior midline. The examiner further reported that a deformed jacketed bullet was recovered from within the fractured bone abutting the spinal cord. The examiner concluded that Bryan SELMER died of a GUNSHOT WOUND OF THE TORSO with injury to the rib cage, right lung, diaphragm, liver, and T11 vertebra and associated spinal cord with no evidence of close range discharge of a firearm on the skin surrounding the entrance wound.

Dashcam Video

At 2:23PM CTPD officers locate and catchup to the suspect vehicle in the area of Rt. 15 SB near Marsh Creek in Cumberland Township, PA.



At 2:24PM the pursuit continues into Maryland at speeds in excess of 120MPH on Rt. 15 SB.



At 2:29PM the suspect vehicle exits Rt. 15 SB at the West Main Street exit into Thurmont, MD.



At 2:39PM the suspect vehicle gets back on Rt. 15 NB.



At 2:40PM the suspect vehicle briefly loses control and travels across the median into oncoming traffic on US 15 NB.



At 2:41PM the CTPD vehicle struck by gunfire from the suspect vehicle is seen here with its back windshield shot out and rear driver's side tire deflating.



At 2:41PM officers attempt to deploy stop strips against the suspect vehicle on Rt. 15 NB at which time the suspect vehicle travels into the median nearly striking the officers. The cap of the suspect vehicle comes off and goes airborne into the roadway.







At 2:43PM the suspect vehicle becomes disabled in the median of Rt. 15 just south of the Rt. 140 overpass.



LEATHERMAN (on the left) runs from the disabled vehicle towards 47 Park Circle. SELMER (on the right) runs from the disabled vehicle towards downtown Emmitsburg.



Jubilee Foods External CCTV (no audio) - video clip attached to report

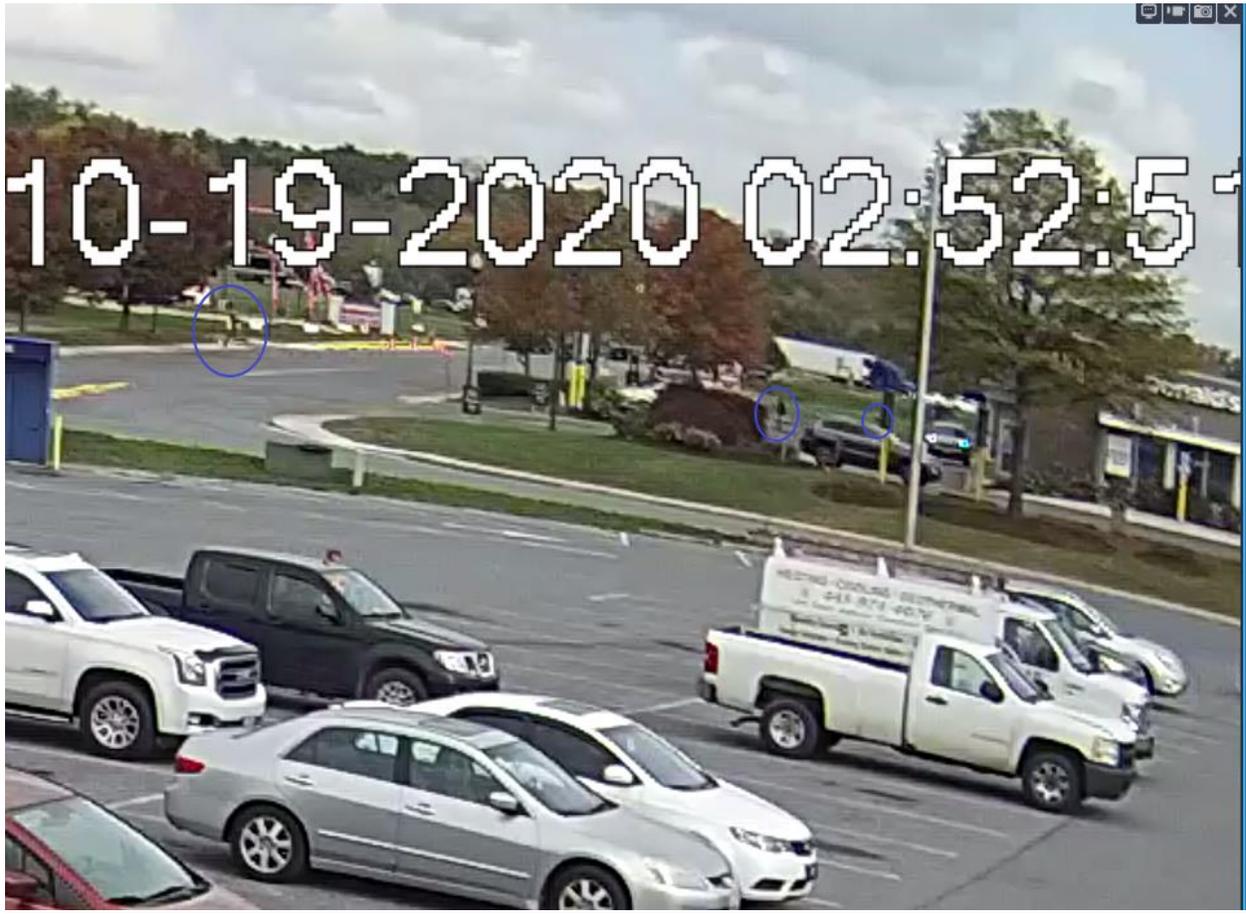
At 2:52PM SELMER (circled below) runs north through the McDonalds parking lot along the backside of the McDonalds.



SELMER comes back into view from behind the McDonalds.



SELMER (circled on the left) runs north across Silo Hill Parkway onto the property of the Silo Hill Exxon. Deputies 1 and 2 (circled on the right) are in pursuit.



A few seconds later, SELMER suddenly stops, turns, raises his arms towards Deputies 1 and 2, takes up a shooter's stance and begins moving towards them. Deputies 1 and 2 draw their service weapons and begin firing at SELMER over the next 2 to 3 seconds.





SELMER takes two steps towards Deputies 1 and 2 with his hands still raised. Deputies 1 and 2 continue to fire their service weapons at SELMER. Circled to the far left is the location of the Exxon Clerk inside the store when the incident took place.



SELMER falls to the ground after being shot. Once on the ground, Deputies 1, 2, and 4 move in to take him into custody.

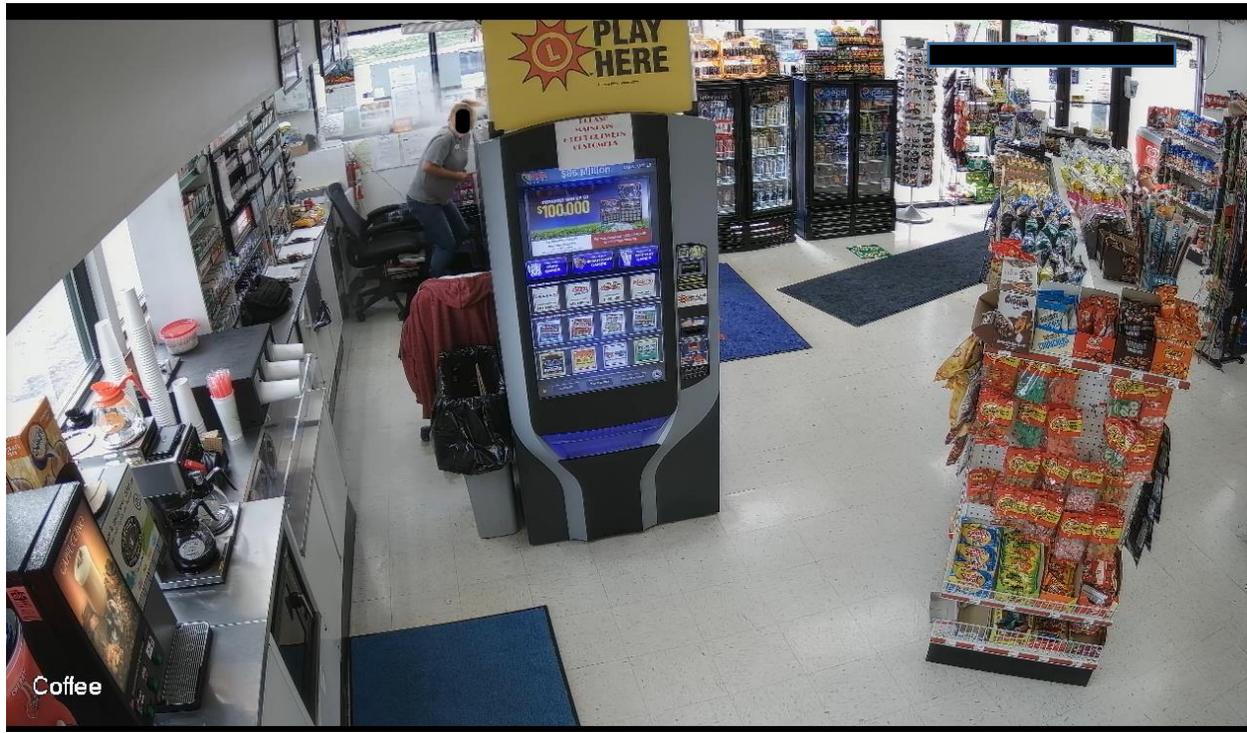


Silo Hill Exxon CCTV

Exxon clerk sits in her chair behind the register when the first round enters the store and strikes the metal trashcan door swing circled below. The dent from the round impacting the door is visible in the image as the door swings outward.



Approximately 1 second later a round passes through the window just behind where the clerk is seated very nearly striking her. The concussion from the bullet can be seen in this image blowing her hair back. Shrapnel from the broken window is also visible.



WITNESSES STATEMENT SUMMARIES

Law Enforcement Witnesses

1. Deputy 1
 - a. Deputy 1 was on foot in pursuit of the male suspect along with Deputy 2. Deputy 1 stated that he saw the suspect with a gun between the McDonalds and the Exxon gas station. Deputy 1 fired his service weapon at the male suspect along with Deputy 2 after the male suspect turned and lifted his arms towards them as if he was holding a gun.
2. Deputy 2
 - a. Deputy 2 stated that he exited his patrol vehicle at which point the male suspect took off running prompting Deputy 2 to give chase. Deputy 2 pursued the male suspect through the parking lot of the McDonalds. Deputy 2 stated that the male suspect stopped, turned towards him and took up a shooting stance raising his hands like he had a gun though Deputy 2 could not specifically recall seeing it.
3. Deputy 3
 - a. Deputy 3 stated that he parked his patrol vehicle at the Jubilee Foods, retrieved his Adams Arms rifle, and began to move across the Jubilee parking lot on foot towards Route 140 prior to the incident taking place. Deputy 3 stated he heard over the radio that other deputies had spotted one of the suspects running toward the McDonalds on East Main Street (Rt. 140) and that the suspect had taken off his dark colored sweat shirt. Deputy 3 observed Deputies 1 and 2 chase the male suspect behind the McDonalds towards the Exxon. Deputy 3 ran to the front parking lot of the Jubilee Foods to get people out of the area and to keep eyes on the suspect. While crossing the parking lot Deputy 3 heard gun shots at which point Deputy 3 proceeded directly to the Exxon and saw other deputies handcuffing the male subject and performing first aid.
4. Deputy 4
 - a. Deputy 4 was travelling east on foot alongside Route 140 just prior to Rt. 15 when he observed the male suspect walking west on Rt. 140 on the Emmitsburg side of the Rt. 15 overpass. Deputy 4 observed the male suspect taking off his black hoodie and tossing it into the wood line alongside the roadway. Deputy 4 stated he also saw the suspect throw something smaller in the wood line but was unable to make out what it was. Deputy 4 verbalized this information over the radio at which point Deputy 2 came upon the area in his patrol vehicle. Deputy 2 stopped, exited his patrol vehicle, and gave verbal commands to the male suspect to stop. Deputy 4 was approximately 200 feet away from the male suspect when this occurred. Deputy 4 then observed the male suspect take off running towards the rear of the McDonalds with Deputies 1 and 2 in pursuit. Deputy 4 drew his service weapon and ran around the front of the McDonalds towards the Exxon at which point he stated he heard approximately 5 to 6 gunshots coming from the side of the McDonalds in the vicinity of Deputies 1 and 2. Once around the Exxon, Deputy 4 assisted taking the male suspect into custody.

Civilian Witnesses

1. Civilian Witness 1

Interview Date: 10/19/20

- a. Civilian Witness 1 was a customer at the Silo Hill Exxon who had just finished pumping her gas and was about to exit the parking lot onto Silo Hill Parkway when the incident took place. Civilian Witness 1 stated that as she looked to her left for oncoming traffic her attention was drawn towards a male running across the road from behind the McDonalds to the east side of the Exxon building with two other individuals running a distance behind him in pursuit. She stated that the male ran across the road and up onto the grassy area towards the Exxon. She stated that the male then suddenly stopped, turned around and raised both arms in the direction of the two individuals who had been running behind him. Civilian Witness 1 then stated she heard multiple gun shots and saw the male subject fall to the ground.

2. Civilian Witness 2

Interview Date: 10/20/20

- a. Civilian Witness 2 was a customer at the Silo Hill Exxon and was parked and preparing to pump gas when the incident took place. Civilian Witness 2 did not see the incident but was able to hear the interaction which took place just prior to it. Civilian Witness 2 stated that he heard yelling to the effect of "Police!" and "Lay down on the ground!" Civilian Witness 2 stated he heard another person yelling back but was unable to distinguish what that person said. Civilian Witness 2 then stated he heard several gun shots in close proximity to one another at which point he departed the area in fear of his safety.

3. Civilian Witness 3

Interview Date: 10/20/20

- a. Civilian Witness 3 was traveling westbound on Rt. 140 approaching the traffic light at Silo Hill Parkway when the incident took place. Civilian Witness 3 stated that she observed a tall, skinny, white male subject walk across Rt. 140 at a normal speed down the hill toward the McDonalds parking lot before picking up his pace into a run with two officers dressed in black giving chase. Civilian Witness 3 next stated that the white male got to the curb next to the Exxon on the road that leads to the Sleep Inn Hotel (Silo Hill Parkway) when he turned around facing the officers who were chasing him and put his hands up towards them at approximately a 45 degree angle outward. Civilian Witness 3 stated that the male

then took two steps towards the officers before hearing gunshots and seeing the male subject fall to the ground.

4. Civilian Witness 4

Interview Date: 10/19/20

- a. Civilian Witness 4 was parked at the Dunkin Donuts in Emmitsburg and witnessed the incident take place. Civilian Witness 4 stated that he observed officers chasing a male subject and heard officers yell to the subject to get on the ground. Civilian Witness 4 stated that when the male subject got to the grass next to the Exxon the male subject turned around “and put his hands out like shooting a gun at the officers. The officers yelled get down on the ground and shot 6 or 8 shots at him. I observed some shots hitting the ground around him and he got down on the ground.”

5. Civilian Witness 5

Interview Date: 10/19/20

- a. Civilian Witness 5 was a passenger in Civilian Witness 4’s vehicle and also witnessed the incident take place. Civilian Witness 5 stated that he observed a male subject coming from the woods all the way to the Exxon. Civilian Witness 5 stated that he heard an officer state “lay down and stop.” Civilian Witness 5 further stated that the male subject had his hands out in front of him like he was pointing a gun at the officers when he turned around towards them before being shot.

6. Civilian Witness 6

Interview Date: 10/19/20

- a. Civilian Witness 6 was working at the Exxon at the time the incident took place. Civilian Witness 6 stated the following: "I was sitting in front of the register at work when I heard a shot and the window shattered behind me. The phone rang I picked up the phone and another shot was fired. No one entered the store. A Sheriff Deputy came in."

LEGAL ANALYSIS

In *Graham v. Connor*, 490 U.S. 386, (1989), the U.S. Supreme Court set the standard for when a police officer's use of force is justified. If the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting the officer, without regard to their underlying intent or motivation, the force is justified. *Graham v. Connor* at 387. *Graham* requires consideration of what the officer reasonably believed at the moment he/she pulled the trigger. This standard is universally recognized and applied by all courts throughout the U.S. including the Maryland Court of Appeals.

Turning to the present case, Deputies 1 and 2 knew the following:

- David LEATHERMAN was wanted on charges out of York County, Pennsylvania for Attempted Murder.
- LEATHERMAN was to be considered armed and dangerous by any Law Enforcement Officers ("LEOs") encountering him.
- Bryan SELMER was an occupant in the vehicle with LEATHERMAN.
- The vehicle SELMER was an occupant in was involved in a high speed pursuit from Pennsylvania into Maryland.
- The vehicle SELMER was an occupant in was reported to have driven partially off the roadway on Rt. 15 nearly striking officers attempting to deploy stop sticks.
- The vehicle SELMER was an occupant in was reported to have fired multiple gun shots at other officers involved in the pursuit.
- SELMER fled from officers on foot after the vehicle he was an occupant in became disabled in the median of RT 15
- The whereabouts of the firearm reported to have been utilized against officers during the vehicle pursuit were unknown at the time SELMER fled the vehicle. Additionally, no firearm was found on LEATHERMAN's person when he was taken into custody prior to SELMER being located. SELMER was therefore to be presumed armed and dangerous by any LEOs encountering him.
- SELMER was not yielding to verbal commands from deputies.
- SELMER suddenly stopped, quickly turned towards Deputies 1 and 2, raised his arms as if he was holding a gun, took up a shooter's stance, and rapidly moved towards Deputies 1 and 2.
- No innocent bystanders were immediately observable to either Deputy 1 or Deputy 2 as being in the line of fire between them and SELMER at the time SELMER took the aforementioned actions.

As the United Supreme Court has stated, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* at 396-97. Further, "[t]he '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." *Richardson v. McGriff*, 762 A.2d 48, 56 (Md. 2000) quoting in part from *Graham v. Connor* at 396.

Here, Deputies 1 and 2 were faced with such a “tense, uncertain, and rapidly evolving” situation when they observed SELMER suddenly turn towards them and raise his hands as if holding a gun. This observation, coupled with their knowledge that a firearm was reported to have been utilized just 12 minutes prior against officers and the whereabouts of that firearm were still unknown, made it reasonable for Deputies 1 and 2 to believe that SELMER was in fact armed and dangerous when he took up the shooter’s stance despite it being later determined that SELMER was not in possession of a firearm at that time. It was also reasonable for Deputies 1 and 2 to believe that SELMER had the intent to cause serious bodily injury or death to them when he raised his arms and took up a shooter’s stance given that (1) again, just 12 minutes prior it was reported that shots were fired from the vehicle SELMER was an occupant in at other officers involved in the pursuit, (2) the vehicle SELMER was an occupant in was reported to have driven partially off the roadway on Rt. 15 nearly striking officers attempting to deploy stop sticks, (3) the vehicle SELMER was an occupant in had been travelling in excess of 120MPH weaving in and out of traffic and at times driving on the wrong side of the roadway towards oncoming vehicles, and (4) SELMER was not yielding to verbal commands from officers. Lastly, turning to the after the fact realization that Civilian Witness 6 was within the field of fire, based on all of the evidence, her presence and placement within the Exxon building was determined to have not been apparent to either Deputy 1 or Deputy 2 at the time they reacted to SELMER’s actions. Thus, their decision to engage SELMER was not made unreasonable by Witness 6’s ultimate presence within the field of fire and the non-life threatening injury she sustained as a result.

For all of these reasons, Deputy 1 and Deputy 2’s reaction to that split-second situation was reasonable under these circumstances.

CONCLUSION

For all of the aforementioned reasons, it would be objectively reasonable for Deputies 1 and 2 to have concluded that their safety was at risk when Bryan SELMER, who was fleeing from a felony and considered to be armed and dangerous, suddenly stopped, turned towards them, raised his arms like he was holding a gun, took up a shooter's stance, and began rapidly moving towards them. As such, their decision to use deadly force was justified under the Maryland law of self-defense, defense of others and the standard put forth by the U.S. Supreme Court in *Graham v. Connor*.