

REPORT

In the matter of the March 12, 2020 police-involved shooting in Potomac, Maryland.

Pursuant to an agreement between the Montgomery County State's Attorney's Office and the Howard County State's Attorney's Office, the Montgomery County State's Attorney's Office is providing this summary detailing the investigation and conclusions regarding a police-involved shooting that occurred on March 12, 2020 at 12252 St. James Rd., Potomac, Maryland.

Timeline of Investigation

On the morning of Thursday, March 12, 2020, the Howard County State's Attorney's Office received a phone call from the Montgomery County State's Attorney's Office providing information that a police-involved shooting resulting in a death had just occurred in Potomac, Maryland (Montgomery County) that morning. At that point, the Howard County State's Attorney's Office took control of the investigation. The Howard County prosecutor spoke with the lead detective a short time later to obtain the basic details of the case.

The detective informed the prosecutor that at approximately 4:30 a.m., members of the Montgomery County Special Operations - Tactical Unit were serving a high-risk search warrant related to firearms offenses at 12252 St. James Road in Potomac, Maryland. During the execution of the warrant, the suspect in the case, Duncan Lemp, a 21-year-old male, was shot and killed by a member of the Tactical Unit. After receiving basic information regarding the case, the assigned prosecutors visited the scene.

The prosecutors arrived at the scene at around 11 a.m. Upon arrival, they were greeted by Montgomery County police detectives. They observed the scene had been roped off with crime tape, but that many officers and personnel were still processing the scene. Furthermore, they were advised that Lemp's body had not yet been moved as police were waiting for the Medical Examiner to arrive. Lemp was located in his bedroom on the floor with a sheet covering him. The prosecutors then walked the scene while examining it for potential evidence as well as conversing with the lead detective.

While conversing with the detective, prosecutors received further details regarding the execution of the warrant. The subject of the search and seizure warrant was Duncan Lemp. Lemp was being investigated for firearms violations. Specifically, he was prohibited from possessing any firearm and investigators believed Lemp to be in possession of at least one illegal assault weapon. He was also known to be a member of a group that called themselves the "Three Percenters."

During the walkthrough, prosecutors discovered numerous firearms, both pistols and rifles, located throughout Lemp's bedroom in plain view. There were a number of loaded firearm

magazines located. These items were seen on the nightstand next to Lemp's side of the bed, on top of a desk, and on top of the table between a couch and the television. Additionally, there was a large amount of boxes of ammunition (at least 50) inside the closet and a bulletproof vest hanging on the wall. A 3D printer was also seen sitting on top of a shelf.

On March 13, 2020, the lead detective provided the prosecutors with the name of the officer who shot Mr. Lemp. The detective also provided information that the officer fired a total of 5 shots. Mr. Lemp was struck all 5 times. Three of the projectiles were recovered from Mr. Lemp's body during the autopsy. Additionally, the detective provided a copy of the search and seizure warrant.

On March 13, 2020, the detective attended the autopsy of Duncan Lemp. During the autopsy, an attorney for the Lemp family had contacted the medical examiner and asked that the medical examiner look for evidence that Lemp's throat and been stomped on. The detective stated that the examiner found no evidence of injury to Lemp's throat.

On March 16, 2020, the detective provided prosecutors with copies of interviews from the SWAT officers (10), Fire/Rescue medics (2) and the Lemp family, to include Lemp's father, mother, brother, and Kasey Robinson, Duncan Lemp's girlfriend. The interviews were reviewed the same day by the assigned prosecutors.

On March 23, 2020, the detective provided a copy of the raid plan/report and the General Orders of the Montgomery County Police Department as they pertain to the use of body-worn cameras and use of force.

On March 25, 2020, prosecutors received a letter from the attorneys representing the Lemp family.

On March 25, 2020, the detective emailed prosecutors a copy of the police and fire CAD reports along with the crime scene log.

On March 25, 2020, prosecutors received a call from the attorney who represents the officer who shot Mr. Lemp (hereinafter referred to as the shooting officer). The attorney advised that the client wanted to provide a recorded statement. An interview was scheduled for the following day at the Howard County State's Attorney's Office.

On March 26, 2020, the detective and prosecutors interviewed the shooting officer who was present with an attorney.

On April 2, 2020, the prosecutor requested that the detective conduct interviews with the Montgomery County Police Officer who was the affiant of the warrant and a SWAT supervisor in order to find out more details regarding why the decision was made to do a no-knock warrant.

On April 8, 2020, the detective interviewed the Montgomery County Police Officer who was the affiant of the warrant at the Montgomery County Police Department.

On April 9, 2020, the detective interviewed the SWAT supervisor at the Montgomery County Police Department.

On April 10, 2020, copies of the recorded interviews were given to prosecutors. After reviewing the interviews, the prosecutor requested that the detective interview the SWAT supervisor's commanding officer.

On April 13, 2020, that Montgomery County Police Officer was interviewed at the Montgomery County Police Department. A copy of his interview was sent to prosecutors later the same day.

On April 13, 2020, the detective followed up with the medical examiner who conducted the Duncan Lemp autopsy. The medical examiner reiterated that he found no evidence that Lemp's throat had been stepped on or stomped.

On April 15, 2020, the detective sent prosecutors copies of the crime scene report.

On April 29, 2020, the detective forwarded text messages found on Lemp's phone which he believed to be relevant to the investigation.

On April 29, 2020, the detective emailed the prosecutor reports from Bureau of Alcohol, Tobacco and Firearms (ATF) regarding the tracing of firearms recovered in this case.

On May 5, 2020, the prosecutor received the fire/rescue reports.

On June 3, 2020, prosecutors received Lemp's autopsy report which was conducted by a medical examiner with the Office of the Chief Medical Examiner (OCME).

On June 3, 2020, the prosecutor contacted the Grand Jury Unit of the Montgomery County State's Attorney's Office to get general information regarding when the grand jury would be available to hear the witness testimony. A date of June 25th, 2020 was tentatively set.

On June 18, 2020, members of the Howard County State's Attorney's Office met with Maria "Mercedes" Lemp, the mother of Duncan Lemp, and her attorneys. The meeting took place face-to-face at the Howard County State's Attorney's Office. During this meeting, the attorneys for Maria Lemp indicated that they had some information regarding a conversation she reported took place between a SWAT officer who was on scene and a retired SWAT officer. The prosecutors followed up on that information and conducted an interview on October 5, 2020 with the SWAT officer identified by the Lemp family attorney and continued with Grand Jury testimony taken from the retired SWAT officer on November 20, 2020. Information gleaned from both will be discussed on page 4 of this investigative summary.

On June 22, 2020, prosecutors contacted Kasey Robinson's attorney. The attorney indicated that he would not have enough time to discuss the matter with his client before the scheduled grand jury date of June 25, 2020. Between this date and early August, prosecutors attempted to get a new grand jury date. During this entire time, Kasey Robinson's attorney refused to commit to any date. Ultimately, the grand jury was set for August 27, 2020.

On July 6, 2020, the prosecutor sent the attorneys for the Lemp family a follow-up email requesting their information about the case that they would like investigated.

On July 10, 2020, the prosecutor spoke with the attorney by phone. She indicated that she had information that a SWAT Officer spoke to another retired SWAT member shortly after the raid on March 13th. During the call, the officer allegedly said that he believed the SWAT team had “fucked up.”

On August 27, 2020, prosecutors conducted interviews of Kasey Robinson and Maria Lemp before the Montgomery County Grand Jury.

On September 16, 2020, the prosecutor spoke with the Lemp family attorney to advise her that there was no evidence that the SWAT officer she had identified had spoken to the retired SWAT officer on March 13, 2020. After a brief discussion, the attorney stated that she had initially provided the wrong name and she then gave the name of the officer she believed had contacted the retired SWAT officer.

On September 21, 2020, the detective provided the prosecutor with additional firearm reports.

On October 5, 2020, the detective conducted a recorded interview with the SWAT officer that had been identified by the Lemp family attorney. That interview took place at the Montgomery County Police Department. The officer stated that he was very close with the retired SWAT officer, they’ve known each other their whole lives, and they are next door neighbors. He indicated that because the other officer was a former SWAT commander they talked all the time about job-related issues. However, he emphatically denied ever telling the retired SWAT officer that he believed the SWAT team “fucked up” that day. He went on to say that he would never have made that kind of statement especially when he felt the exact opposite about the Lemp case.

On November 19, 2020, the prosecutor conducted an interview of the retired SWAT officer before the Grand Jury of Montgomery County.* He freely admitted that he and the other officer were close friends, that they had grown up together and that they lived next door to each other. He stated that they talked all the time about everything, including SWAT. He also vigorously denied that the officer ever told him it was his belief that SWAT “fucked up” that day.

On December 1, 2020, the detective sent the prosecutor additional firearm reports.

On December 1, 2020, the prosecutor received a copy of the grand jury transcript pertaining to the testimony of Kasey Robinson and Maria Lemp.

Evidence Reviewed

Prosecutors reviewed the following evidence:

- 19 videotaped witness interviews
- Crime Scene Photographs
- Search and Seizure Warrant
- Raid Plan/Report

- General Orders of the Montgomery County Police Department for Body Worn Cameras and Use of Force
- Fire CAD Reports
- Police CAD Reports
- Crime Scene Reports
- Crime Scene Log
- Firearms Reports
- Fire and Explosive Investigations Unit Reports
- Autopsy Report
- Autopsy Photographs
- Grand Jury Testimony
- Cell Phone Records
- Body Worn Camera Video
- Interview of Shooting Officer
- Use of Force Opinion from Howard County Police Dept
- Duncan Lemp Facebook records
- Criminal Record – Duncan Lemp
- Written Reports of 15 Montgomery County Police Officers
- Written notes of 8 Montgomery County Police Detectives

Summary of Facts Substantiated from the Investigation

On March 12, 2020, at approximately 4:30 a.m., members of the Montgomery County Police Department’s Special Operations Tactical Unit (SWAT) executed a “no-knock” search and seizure warrant at 12252 Saint James Road in Potomac, Maryland. The subject of the warrant was Duncan Socrates Lemp (DOB 9/6/1998). The warrant was based on an investigation that Lemp was in violation of multiple firearms related offenses.

During the investigation, police had learned that Lemp may have been in possession of an illegal assault weapon and other firearms, as well as manufacturing and possibly selling “ghost” guns. In short, “ghost” guns are typically bought online as a kit that contains everything needed to build a real gun. A drill press (one was found in the basement of the Lemp home) is typically used to finish building the gun. Often times no state or federal background check is required to purchase these kits. The term “ghost” is used because most of these guns do not have required serial numbers which makes them nearly impossible to trace. Additionally, Lemp was prohibited from possessing any firearms in Maryland.

The information identifying Lemp came by way of a confidential source (CS) sometime in February 2020. The CS provided police with Lemp’s full name and address as well as “mymilitia.com” and “Instagram” profile pages in which Lemp used the name “yungquant.” The CS stated that Lemp was part of a group known as the “Three Percenters.” The Three Percenters are a far-right militia movement and paramilitary group. The group advocates gun ownership rights and resistance to the federal government’s involvement in local affairs. The term “Three Percenter” refers to the belief that only 3% of colonists fought against the British in the

Revolutionary War. While reviewing Lemp's profile pages, police came across a post on "mymilitia.com" in which Lemp posted the following: "Hello all! My name is Duncan Lemp, I am an active 3%er and looking for local members and recruits." Lemp included his cell phone number in the post. Furthermore, Lemp has a number of postings on his Instagram page showing him in possession of and shooting different types of guns. One of these guns was identified as being manufactured by Israeli Weapon Industries (IWI). When shown a picture, a representative of the manufacturer confirmed to police detectives that the gun was an IWI model Tavor X95. This rifle is banned in Maryland as it is considered an assault weapon under the law. The CS also advised police that Lemp was currently in possession of a bullet-proof vest and had made "anti-police" statements in the past. Additional information revealed that Lemp had also installed a "booby trap" on the outside door leading to his bedroom.

On March 11, 2020, Montgomery County Police applied for, and were granted, a "no-knock" search and seizure warrant for 12252 Saint James Road. The house was a ranch-style (one-story) single family home with a basement. If you were viewing the house from the front yard, the attached garage is located on the left side of the house. This garage had been converted into a bedroom that Lemp shared with his girlfriend Kasey Robinson. The right side of the house has two additional bedrooms where Lemp's father and younger brother slept. Duncan Lemp's mother, slept in a bedroom located in the basement. The reasons for the "no-knock" provision was due to Lemp being "anti-government," "anti-police," currently in possession of body armor, and an active member of the Three Percenters. Additionally, police had viewed several videos showing Lemp handling and shooting firearms. The police felt that knocking and announcing their presence would put the officers in serious danger if Lemp decided to resist his arrest.

On March 12, 2020, at around 4:30 a.m., the search warrant was executed by the SWAT team. The pre-raid plan indicated that the house was to be "dual-breached," meaning that two members of the raid team would conduct a "break and rake" on Duncan Lemp's first-floor bedroom window while the rest of the team entered the house by using a battering ram on the main front door. These actions were to occur simultaneously with each other. According to the team leader of this raid, he gave the order to dual-breach at 4:42 a.m. At this time, another officer used a fireman's pike tool to break the bedroom window closest to the bed where Lemp and Robinson were sleeping. The tool also has a hook that is used to grab a hold of and pull away the blinds so that officers would have an unobstructed view inside the bedroom. Once the window was broken and the shades pulled out of the way, one officer ducked below the window line as he was unarmed. A second officer (the shooting officer) who was armed with a rifle, then stepped up to the window and looked inside to locate Lemp as soon as possible and prevent him from having time to access any weapons that could be used against the SWAT officers. As two officers executed the "break and rake," the other members lined up and used a battering ram to access the main door. As the dual-breach was occurring, other members of the SWAT team were tasked with deploying "flashbangs" outside the residence to disorient the senses of the occupants of the house as to what was happening.

Upon entering the house through the main door, the first SWAT officers into the house were tasked with getting to Lemp's bedroom as soon as possible and securing him. All of these officers gave statements attesting that they were consistently yelling "police, search warrant" multiple times. Other officers toward the back of the line were tasked with securing the basement and the other bedrooms on the right side of the house. Based on a previous raid at the Lemp house in 2016, SWAT members had a very good idea of what the inside of the house

looked like. At least one of the officers that participated in the 2016 raid was also the first person to enter the house in this raid. As SWAT first entered the house they found themselves in the kitchen/dining area. To their left was a set of French doors that separated the kitchen area from Lemp's bedroom. According to the SWAT officers, as they approached the doors, which were fully covered with blinds, they heard several gunshots (3-5 shots based on the statements of several officers). A call came over the radio that shots had been fired, but nobody knew who was firing the shots. As the officers began opening the French doors, they got stuck. It was later determined that Lemp's body fell against the door after he was shot which prevented the officers from being able to get inside immediately. Because something was blocking the door, an officer tossed a flashbang into the bedroom through the narrow opening of the French doors hoping that might assist the officers into getting in the room quicker. Ultimately, the doors were broken down enough for the officers to get into the bedroom.

Upon entry into the bedroom, the officers noticed the body of Duncan Lemp unresponsive and suffering from several gunshot wounds. He was lying against the door in such a way that his head was blocking the French doors which had caused officers difficulty in trying to get in the room initially. Lemp's girlfriend, Kasey Robinson, was on the floor next to Lemp screaming. According to the statements of the officers, Lemp was lying on top of the IWI Tavor X95 rifle when they entered the room. One officer stated that upon observing the rifle, he attempted to kick it away from Lemp's body. As he did so, he stated that the magazine came flying out of the rifle. Another officer stated that as he entered the bedroom he immediately went to the bedroom door that led to the outside where he discovered the booby trap. The trap was described as a metal cylinder containing a shotgun shell and secured by a tripwire. It was installed and positioned in such a way that if anyone were to open that door the device would have caused the shotgun shell to explode in the area around someone's face. An officer disarmed the booby trap by cutting the tripwire. As this was occurring, Ms. Robinson was secured by other officers on the scene. Once the scene was secure, medics were brought in to treat Lemp, however he died at the scene.

It should be noted that while entering Lemp's bedroom to provide treatment, one of the fire/rescue personnel picked up the IWI Tavor X95 rifle from the floor and moved it to the bed. This was observed by multiple officers at the scene and the fire/rescue responder admitted to such during his recorded interview at the police department later that day. The rifle was moved before the crime scene technicians arrived on the scene and could properly photograph where the weapon was located on the floor. The fire/rescue responder did explain in his interview that the weapon was on the floor by Lemp's shoulder when he picked it up. His reasoning for moving the weapon was because when he entered the room to treat Lemp, he stepped on the weapon. He also stated that SWAT medics had addressed Lemp's wounds and had placed a tourniquet on him. He stated that once the paramedic arrived, he would have overseen Lemp's treatment.

Once the house was secured, it appears that a police officer, using body worn camera equipment, entered the house and went from room to room in order to document the scene. Investigators determined that very little evidentiary value could be obtained from this recording as it was conducted after the raid was over.

At this point, the SWAT members, the Lemp family, and Ms. Robinson were taken down to police headquarters to give recorded statements to Montgomery County Homicide detectives.

Additionally, detectives and crime scene personnel began to arrive at the scene to gather and document any evidence.

On March 13, 2020, an autopsy was conducted on Duncan Lemp. According to the autopsy report, a toxicology test for drugs and alcohol was negative. The cause of death was determined to be gunshot wounds. According to the report, Lemp suffered the following 5 gunshot wounds:

- A. Left side of Mid Chest – a projectile was recovered from this wound
- B. Left Groin – no projectile recovered as there was an exit wound
- C. Anterior Left Shoulder – a projectile was recovered from this wound
- D. Superior Left Shoulder – a projectile was recovered from this wound
- E. Left Elbow – no projectile was recovered as there was an exit wound

Based on a thorough review of the crime scene photographs, statements of witnesses and the search warrant return, it was determined that a majority of the evidence found inside the Lemp home was found in Duncan Lemp's bedroom with a small amount found in the bedroom of his younger brother as well as the basement. The following items were found/recovered while searching the house:

1. Tan IWI Tavor X95 rifle – found under Lemp's body and later placed on the bed in his room
2. Tan and black "EA" Engage Armament rifle with a loaded magazine and one in the chamber – found under the couch in Lemp's bedroom
3. Black Springfield Armory rifle with a loaded magazine and one in the chamber – found hanging on Lemp's bedroom wall near the French doors
4. Tan P80 "ghost" gun -9mm- with a loaded magazine and one in the chamber – found on top of the nightstand next to the side of the bed where Lemp sleeps
5. Black P80 "ghost" gun with a loaded magazine and no round in the chamber – found in the bedroom closet of Lemp's brother. (Lemp's mother gave a statement that Lemp put the gun there)
6. Booby trap – found attached to Lemp's bedroom door that leads to the outside
7. Body armor vest – found hanging on the wall in Lemp's bedroom next to the rifle and loaded with 3 fully-loaded magazines (.556 cal). A "Boogaloo Boys" patch was on the front of the vest
8. 5 magazines including one "high-capacity" magazine – found in the bedside table closest to the side of the bed that Lemp slept on
9. 1 gold handgun receiver – found in the same bedside table
10. 1 black silencer – found in the same bedside table
11. 1 loaded magazine for the Tavor X95 rifle – found on the floor next to the bedside table (the same magazine that came free from the rifle when the officer attempted to kick the rifle away from Lemp's body)
12. Additional booby traps matching the one recovered on the door – found inside a bag inside of the bedroom closet
13. Additional magazines – found inside the same bag in the closet
14. Many boxes of live ammunition – found in the same bedroom closet
15. Additional plates of body armor – found in the same bedroom closet
16. Box of gun parts and jigs used for "ghost" guns – found near the bedroom closet

17. 3D printer – found in Lemp’s bedroom
18. Small bag of suspected marijuana – found on table next to couch in bedroom
19. 1 magazine – found on the table next couch in bedroom
20. Drill press – found in the basement
21. Smart Phones (2) – found on the bed
22. Tablet – found on the bed
23. Laptops (3) – found on the bed, the desk and a shelf

The recovered firearms evidence was traced by ATF through their National Tracing Center. Three of the traces relate to the rifles (IWI, Springfield Armory and “EA” Engage Armament) seized from Lemp’s bedroom. According to the trace, the Engage Armament rifle was purchased as a receiver only. The firearm was built with parts readily available online and in gun stores, but the way it was built makes it a “short-barreled rifle (SBR)” under the law. SBR’s are illegal by both state and federal law unless you have a federal tax stamp to build one. There was no evidence that Lemp possessed a tax stamp.

One of the traces was for the “silencer” found in the bedside table drawer next to Lemp’s side of the bed. Federally, a silencer itself is considered a “firearm” and is required to be traced. Silencers must also have a serial number and the owner must possess a tax stamp to manufacture or even possess one. This silencer did not have a serial number. Also, based on text messages recovered from Lemp’s phone, he was testing a silencer.

Two of the traces were for the two completed “ghost” guns found in both Lemp’s bedroom and his brother’s closet. Neither of these guns had serial numbers on their frames. It is legal to manufacture these guns unless you are a “prohibited person” as Lemp was, or you are manufacturing with the intent of selling or transferring the guns. Based on the interview with Lemp’s brother, Duncan gave one of the guns to his brother as a birthday present. Under a strict interpretation of the law, this transfer would have been illegal.

It should be noted that upon further review and investigation into the IWI Tavor X95 rifle, it was determined that it was not an assault rifle. The weapon was purchased by Lemp from Engage Armament located in Rockville, Maryland. It appears that Lemp’s rifle was a legal “copycat” made to look exactly like the illegal version of the IWI Tavor X95. Very minute changes such as the overall length of the weapon can mean the difference between an illegal assault rifle and a legal one.

As part of the investigation, Lemp’s cell phone was downloaded and analyzed. During a review, investigators recovered several text message conversations they believed to be pertinent to this investigation.

The first of these conversations occurred on November 19, 2019.

Lemp: “I want my door replaced with a not-cardboard one, with a real lock and less/no glass.”

Lemp: “It doesn’t have to be bullet or blast proof but it needs to stand up to more than 1 battering ram blow.”

Lemp: “Shouldn’t be expensive, I will pay for it.”

Mom: “Keep in mind your room has a lot of windows that are easy to walk through.”

Lemp: “Yeah, I know, I’m considering a lot of situations and planning for all of them; most likely to come first, less likely later.”

Mom: “Who and why would they come?”

Lemp: “The police; because I exercise my constitutional rights.”

Mom: “Perhaps an off-site more secure storage would be better.”

Mom: “Would definitely be better.”

Lemp: “Storage? For my body?”

Mom: “For what they might be looking for.”

Lemp: “Ohohoh you think I’m scared they’re going to take my guns so you want me to give them to someone else instead?”

Lemp: “Nice try but my iq is >84.”

Mom: “Your own storage so that the family and house is not implicated...what’s a solid door going to do in a room with 4 huge windows?”

Lemp: “Slow a battering ram, slightly.”

Mom: “It would add a minute before they walked 2 feet and went in through the window.”

Lemp: “When they come for my ideas a gun in a (raided before the house) storage room will be as useless as you think they are now.”

Lemp: “It won’t add a minute, just seconds.”

Mom: “Let’s talk when you’re home.”

Lemp: “You’ve been thinking about all this in total less than I’ve been thinking about it today, let alone the last 14-16 years of my life.”

Lemp: “We can talk all you want, I’d like the door installed as soon as possible.”

Mom: “Ok, just trying to figure out your thinking and what you’re trying to do. Also papa made a good point that the door is just part – the frame and supporting structure too...”

Lemp: “Weakest link right now is the door itself, I’m not building a bunker (yet) just buying seconds to get ready.”

Mom: “I’d assume you’d have some warning and would go elsewhere if it came to it?”

Lemp: “Warning? Do you know what a no-knock warrant is? A red flag law? We’re one angry phone call away from a swat teams only warning being

the first battering ram hit, you can research yourself or you can not duplicate my work and just buy a door like I'm saying."

Lemp: "I sure as hell would go somewhere else if I had warning but you even mentioning that exemplifies how laughably misinformed you are."

Lemp: "Let's not talk more, I'm sure it's anxiety provoking for you; just do what I say."

Mom: "Lol...keep in mind, the front door is not your door and there are 4 doorways to enter the house."

Mom: "Let's talk more when you're home but you tell me to chill and but then you tell me we need a stronger door...I don't want to live feeling like we need a stronger door – that is not chill and causes me stress and anxiety that keeps me up at night and literally makes me physically sick. Let's talk when you're home. Don't want to continue to text about it."

The prosecutors found that text chain pertinent to their investigation as it gave insight into Lemp's mindset when police executed the no-knock warrant on March 12th. They specifically noted that from the body of the texts, it appeared that Lemp was anticipating such an event. Prosecutors referred to the text in which Lemp references the door being the "weakest link" and how he only needs it to stand up to one battering ram hit in order to buy himself "seconds to get ready." Prosecutors surmised that the only reasonable explanation to this statement is that Lemp was planning to engage the police if they ever came to his house with a no-knock warrant.

Prosecutors identified a second relevant text conversation which spanned the timeframe from February 24, 2020 until March 9, 2020 in which Lemp was texting with another individual.

Texter: "I'm really trying to hold myself back from making serious ass wave vids because I don't want to get red flagged."

Lemp: "I've accepted the inevitability and made peace with my demise."

Lemp: "At least I'll go down kicking."

Lemp: "Shit I mean I've been playing paintball and airsoft since I was 8, pretty well stocked and trained, I might even survive the first wave and go on the run!"

Later on in the conversation:

Lemp: "I'm packing 24/7 but you know of course that has consequences."

Lemp: "I really do feel the boog* though."

Lemp: "I might not survive to see it but I'm confident my brothers will."

Lemp: "Anyone can see it's societally inevitable and everyone is doing exactly the "right" things to make it happen."

*Boogaloo Boys, a far right anti-government, pro-gun rights group often state they are preparing for, or seek to incite, a second American Civil War which they call the “boogaloo” or “boog” for short.

During a subsequent text on December 11, 2019, Lemp’s mother sent him the following texts:

Mom: “Another \$405 body armor outlet? You owe me almost \$900, I still have the \$1000 you were going to use on bitcoin – I’ll just use that to pay for your charges.”

Mom: “You are going overboard with this stuff love and I’m honestly worried about you and us. You’re behaving in a manic way. One or 2 things might be understandable but you keep buying more and more things you will never use. If you were to ever use, would be the destruction of you and everyone around you. You ask us to accept you – but this you is over the top and you are not accepting everyone around you. It’s a compromise – especially when your actions put others at risk. You seemed happier when your focus was the business. Please consider how your actions negatively affect the people around you. It can’t just be about what you want when what you want has negative implications on others.”

On March 26, 2020, the shooting officer (SO), through his attorney, contacted the Howard County State’s Attorney’s Office and advised us that he wanted to come in and give a statement. All parties agreed to meet the following day at the Howard County State’s Attorney’s Office. It was agreed by the parties the SO would have his attorney present, but that the assigned investigators (detectives and ASA’s) would not be limited in the questions they asked of him.

During the relevant portion of the interview in which the SO discusses the raid itself, he stated that once the command to breach the house was given, he watched another officer attempt to break the window. This first attempt was unsuccessful as the officer ended up hitting the frame of the window. However, the second attempt was successful at breaking the window and pulling the shades to one side which allowed the SO to get a proper look inside Lemp’s bedroom. The SO stated that after moving his weapon and flashlight inside the window he immediately began yelling “police, show me your hands. Police, show me your hands” repeatedly. At this point, the SO observed a female (Kasey Robinson) get up from the bed and put her hands up as she was screaming. The female did not appear to be a threat and the SO then put eyes on the suspect, Duncan Lemp. As Lemp was getting up and out of the bed, the SO was yelling “police, show me your hands.” According to the SO, Lemp never raised his hands and was not obeying the officer’s commands in any way. As Lemp got out of the bed he was facing the officer. Lemp then bent down and picked up a rifle. As the SO saw this, he believed he started saying, “don’t do it. Don’t do it” to Lemp but couldn’t be entirely sure. After this, Lemp continued to raise the rifle up and at this time the SO recognized it as the illegal tan rifle from the pre-raid briefings. The SO believes he may have still been saying “don’t do it. Don’t do it” as Lemp raised the rifle to a point where the muzzle was directly pointed at the officer himself. At this point, the SO thought that Lemp was going to kill him and so he made the decision to shoot Lemp. Upon questioning, the SO stated that he never shot through glass, but that the window was broken out completely and the SO’s gun was actually protruding through the window. The SO continued to shoot until Lemp hit the ground. Lemp fell right next to the interior doors in which the main raid

team was coming through. The SO believed that Lemp fell face-first to the ground with the gun sticking out from underneath his body. After the other SWAT members entered the bedroom, the SO walked away from the window into the front yard and just stood there. He never entered the house. He was ultimately taken to a car and driven around the block away from the scene.

Howard County prosecutors noted that according to the recorded statements taken from the officers just after the raid, no other officer was in a position to see what the SO saw when looking through the window. However, during the course of these interviews, at least six police officers noted in their statements that they recalled the SO yelling commands while at the window looking into the bedroom. One officer indicated that he was several feet from the SO when the raid took place. He was providing shield cover outside the residence along with another officer in case there was a firefight. In one officer's statement, he recalled the SO yelling "don't do it" to someone inside the house. Another officer, who was also positioned several feet from the SO, stated that he believes he heard the SO yell, "don't move" and then quickly followed that up with, "don't do it" and then either, "don't move" or, "don't do it" a second time. Another officer on the scene stated that he was behind the SO when the raid began when he heard the SO yell, "don't move, don't do that" or something along those terms shortly before witnessing him fire 3-5 shots in rapid succession. An officer who was tenth in line on the main door, stated that the SO said, "don't do it, don't do it, don't do it" before firing shots inside the window. One of the medics on scene stated that he was positioned by a large tree in the front yard of the house when he heard the "guy who brought the gun up" (he didn't know the officers name) give commands of "police" and then something along the lines of "don't move." The medic stated that he didn't remember the exact wording. Finally, another officer on the scene provided a written statement that said he heard multiple officers announce "police, search warrant." He also heard "don't do it," although it's not clear based on his written statement who he was referring to regarding the phrase "don't do it."

Kasey Robinson – Interview #1

The first interview given by Mr. Lemp's girlfriend, Kasey Robinson, was done shortly after the search and seizure warrant had been executed. Ms. Robinson and the rest of Duncan Lemp's family members were taken down to the Montgomery County Police Headquarters where they each gave recorded statements to Montgomery County Police – Homicide Unit investigators. Ms. Robinson was initially interviewed at around 8:40 a.m. on March 12, 2020.

Prior to the interview, prosecutors noted that it was clear that Ms. Robinson was extremely distraught. She could be seen on video multiple times crying by herself while alone in the room. While some information was obtained in the initial interview investigators felt that there were multiple areas that were not adequately covered in the initial interview for that reason Ms. Robinson was interviewed a second time.

Kasey Robinson – Interview #2 (Grand Jury)

During this investigation, after reviewing statements given by all the witnesses in this case, Howard County prosecutors made the decision to interview Ms. Robinson for a second time. Ms. Robinson was issued a subpoena to testify before the Grand Jury of Montgomery County. After speaking with the attorneys for the family, Maria Lemp was also issued a Grand Jury subpoena as she had expressed a concern that the initial detectives did not ask her enough relevant questions during her first interview. Grand Jury was convened on August 27, 2020.

The grand jury testimony began with Robinson giving a description of the Lemp house in order for the jurors to have a primary understanding of the room layout within the house. She confirmed the house was one story with a basement and that her and Lemp slept in the old garage that had been converted into a bedroom. She further described the layout of the bedroom and how the head of the bed was positioned up against the wall that separates the bedroom from the kitchen area and there were two windows that faced the front yard. She explained that there two doors in the bedroom. One that led from the bedroom to the outside front porch and another set of French doors that led from the bedroom to the kitchen. Robinson also confirmed that the bedroom door that led to the outside was the door that had the booby trap attached to it.

When asked to describe the details of the raid, Robinson said she remembered waking up to an explosion that she thought was gunshots and she screamed. She then looked over toward the window where she saw a shadowy figure (later on she said 3-4 shadowy figures at the window) shining a flashlight in the room and that confused her. When asked if she heard any voices, Robinson testified that she heard a man's voice but could not make out what he was saying because of the explosion sound and her screaming. She stated that Duncan woke up after her and screamed. When asked if she heard any glass breaking, Robinson replied "yes, with the, I, I believe they were shooting out of the top of the window, but shooting in, rather, they were shooting it, so that they could then launch in a flash grenade. She went on to testify the shortly after the glass shattered she remembered a flash grenade being tossed into the bedroom. According to her testimony, the flash grenade was thrown over the bed to the other side of the ground where it exploded and that it was thrown pretty far.

When asked if Robinson knew how many gunshots she recalled hearing, her statement was that it was ongoing. "Even with the flash grenade, I kept hearing shots. I felt something whizzing through the air, so I don't know the number." When the prosecutor tried to pin her down to an estimate, she testified that she believed it was more than ten shots.

Robinson further testified the windows in the bedroom had shades on them that enclosed the whole window. She said these shades were all closed when she went to bed which may have prevented her from seeing the faces or outfits of the shadowy figures. She also testified that the French doors leading to the kitchen had shades on them that were closed too.

After hearing the gunshots, Robinson testified that she "dove for cover at the same time as Duncan was kind of starting to stand, sit up, and then stand up right beside the bed. I dove to the far side of the bed and a little bit underneath it down as far as I could to avoid these projectiles you know and explosions. I felt like that was the safest position." When she was asked to confirm what she meant by other side of the bed, Robinson said she dove over to Duncan's side of the bed which put the bed in between herself and the window.

After diving to the other side of the bed, Robinson was asked if she remembered where she was looking at that time. Robinson responded, "at first, at the very first second, I was duck

and cover, but then I got concerned because Duncan had stood up, so I looked toward him. When asked what she saw Duncan doing, she replied “he, because shots were coming in, he had picked up the rifle that he keeps beside the bed and drew it up towards the window to defend himself and me.” She continued by stating she saw Duncan pick up the gun and point it towards the direction of the window. When asked what happened next, she replied “I believe he fired about six shots.” She said that by using “he” she was referring to Duncan Lemp. Robinson continued that at the same time Lemp fired the six shots, he was struck multiple times and that it all happened instantaneously. She described it as a cross-fire. When asked where the shots that struck Lemp came from, she stated they came from the window area, from the top half of the window. Prosecutors noted that during the investigation, there was no evidence of any cross-fire or that Lemp’s gun had been fired.

After Lemp was struck multiple times, she saw him “stumble, dropped the gun, kind of looked like he had been really punched, you know, so he was stumbling backwards up onto the step” (there is one large step/landing area that leads from the bedroom to the French doors that separate the kitchen). At this time, Robinson said that another flash grenade came into the bedroom from the window. Based on his recorded statement, investigators believe this to be the one thrown by the officer who was trying to get through the French doors with the other SWAT members.

Robinson went on to testify that Lemp fell forward directly in front of the French doors leading to the kitchen and that “he was kind of like blocking the doors from being opened.” She remembered his back being against the door with his head turned facing her. When asked if she could tell where the bullets had struck him, she replied “I saw the chest, like maybe around the heart, stomach, on his left side.

Robinson was questioned about when she saw Lemp first pick up the gun. Her testimony was that she believed that the gun was propped up between Lemp’s bedside table and the bed itself. She also confirmed that Lemp had used one of the rifles, not a handgun. She recalled Lemp having the rifle up on his shoulder when he pointed it towards the window where the officer was located.

After Lemp collapsed against the door, Robinson remembered hearing footsteps in the kitchen and multiple voices saying, “open the door.” She did not open the door as she stated she was kind of frozen in fear. She remembered just watching the police banging the door against Lemp’s body over and over trying to get into the room. Eventually, the police were able to get inside the bedroom. Robinson testified that she was told to put her hands up and not to move an inch. She recalled three men entering initially and she told them not to shoot because she was pregnant. When asked, Robinson does not recall the men ever identifying themselves as police, however she admits that it was possible that the one word she couldn’t initially make out from the shadowy figure at the window may have been police. Robinson also stated she saw an officer step on Lemp’s neck upon entering the room. She stated that at the time, that particular officer had his gun pointed at her still. And then, you know, after I screamed that he like slowly took his boot off of Duncan’s neck.” That information was passed on to the medical examiner, but the doctor who performed the autopsy found no evidence of any injuries to Lemp’s neck area.

Analysis and Case Law

The current case law pertaining to the use of deadly force is explained in the cases of *Tennessee v. Garner*, 471 U.S. 1 (1975) and *Graham v. Connor*, 40 U.S. 386 (1989). These cases state that “deadly force” can only be used when an officer has probable cause to believe a suspect poses a significant threat of death or serious bodily injury to the officer or others. Furthermore, the reasonableness of a particular use of force scenario should be judged from the perspective of a reasonable officer on the scene and 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 given situation.

In this case, although body worn cameras (had they been used) may have shed better light on this incident, prosecutors were able to review very detailed statements by the two individuals who were in the best position to witness the circumstances surrounding Mr. Lemp’s death. When comparing the statements of the SO and Kasey Robinson, prosecutors determined that the statements were very similar and, to a certain degree, corroborated each other.

Prosecutors noted that many of the facts of this case do not appear to be in dispute. For instance, both witnesses stated the raid essentially began when the front window to Duncan Lemp’s bedroom was broken. While Robinson may have been under the belief that this was caused by bullets, the evidence showed that was not the case. When reviewing the crime scene photos, it was clear that the shades covering the smashed window had no holes. Robinson had testified the shades were closed on each of the windows. If someone had fired blindly into the window of Lemp’s bedroom, there would have to be evidence of holes or significant tearing to the shades caused by the bullets. There was none. Prosecutors surmised that it was more likely that Ms. Robinson heard the “break and rake” as described by the members of the SWAT team and that Ms. Robinson, having just been awoken from her sleep in such a frenzied manner, may have been confused. Ms. Robinson was soundly asleep until 4:30 a.m. when she was awakened by flash grenades, windows shattering and police yelling. Anyone put through that kind of sensory overload would have difficulty recalling exactly what happened. It’s an extremely chaotic situation.

When further comparing Robinson’s and the SO’s statements, prosecutors also noted similarities in their descriptions of the actions taken by Duncan Lemp. Both said that Robinson was the first to respond to police activity. Both indicated that Robinson dove for cover to the other side of the bed. Both indicated that Lemp stood up as opposed to crouching down for cover. Both gave statements that Lemp picked up a rifle from the same general area and pointed it at the officer. In fact, Robinson went a step farther and said that she believed Lemp fired 6 rounds at the window. That statement was not true as there was no evidence, i.e. shell casings or holes in the wall, that would indicate Lemp’s gun was fired. It was learned through investigation that three of the bullets were recovered from inside Lemp’s body during the autopsy. The last two exited Lemp’s body and were found in the bedroom wall below the hanging rifle and bulletproof vest. Finally, both witnesses indicated Lemp collapsed against the French doors leading to the kitchen which prevented other SWAT officers from being able to access the room immediately.

Additionally, the prosecutors gave significant weight to the text message exchange between Lemp and his mother regarding the need for a stronger door. Just four months prior to this raid, Lemp was asking his mother for a reinforced door to replace the French doors separating his bedroom from the kitchen. The specific reasons he wanted this door installed was

very telling. Lemp was prophesying a SWAT raid at his house. His texts gave a very good indication into his mindset when the police arrived on March 12, 2020. His main concern was to slow a battering ram slightly. When his mother tried to reason with him by saying that installing a door would add a minute before the police just come through one of the windows, Lemp's response was that he didn't need a minute, rather just seconds. Lemp went on to text, "I'm not building a bunker (yet) just buying seconds to get ready." Howard County prosecutors believed there was only one logical explanation for that quote. If SWAT ever came to his house again, Lemp planned to resist in a violent way which was consistent with the actions Lemp engaged in as described by both the shooting officer and Ms. Robinson.

Conclusion

Based upon a thorough review of all information known at this time, it is the opinion of the Howard County prosecutors, that the actions of the shooting officer on March 12, 2020 were reasonable under the circumstances. The threat caused by Duncan Lemp retrieving a rifle and pointing it at the officer, coupled with Lemp's apparent refusal to obey lawful commands, justified the shooting officer's use of deadly force. Accordingly, the Office of the State's Attorney for Howard County declines to file charges against this officer.

* Any information referred to in this document that was derived from Grand Jury testimony is included following permission given by the Court.