

**OFFICER-INVOLVED SHOOTING**

**COVINGTON FARM AND FUEL**

**(MARCH 14, 2022)**

**PRESS RELEASE**

From Ann Gardner, Commonwealth's Attorney for Alleghany County  
and the City of Covington, Virginia

On March 14, 2022, members of the Covington Police Department and the Alleghany County Sheriff's Office were confronted with an armed gunman at Covington Farm and Fuel located at 121 North Alleghany Avenue, Covington, Virginia. Toney Stuart Poulston, Jr. shot and killed his stepfather Randal Lee Paxton and Officer Caleb Daniel Ogilvie before being shot by responding law enforcement officers. The Virginia State Police Bureau of Criminal Investigation conducted a comprehensive and independent investigation into the facts and circumstances surrounding this officer-involved shooting. In my capacity as Commonwealth's Attorney, I personally went to Covington Farm and Fuel minutes after the incident to view the evidence and interact with investigators as they processed the scene. In the days that followed, I met with a team of investigators for a debriefing at Virginia State Police Headquarters in Salem. Finally, a complete investigative file was provided for my review which included store video, body camera video, diagrams, photographs, witness interviews, 911 calls, radio traffic and forensic reports. Independent scientific examinations were conducted by the Office of the Chief Medical Examiner and the Virginia Department of Forensic Science in Roanoke. After taking the necessary time to complete thorough examinations, those experts provided autopsy reports and certificates of analysis needed to make factual determinations. Once forensic reports were received, I consulted with scientific experts to discuss the findings contained therein.

As the elected Commonwealth's Attorney for Alleghany County and the City of Covington, it is my responsibility to fairly and impartially assess the officers' conduct in this case to determine whether the shooting of Toney Poulston, Jr. was justified under Virginia law. The sole purpose of this report is to determine whether or not the officers'

conduct was legally justified. This opinion does not address any civil remedies that may be available.

The evidence in this case clearly and unequivocally establishes that Toney Poulston, Jr. had already shot and killed two people, including a police officer, before he burst out the door of Covington Farm and Fuel leveling a gun toward officers and civilians in the parking lot. After Poulston fired a shot in their direction, two (2) Covington Police Officers and four (4) Alleghany County Sheriff's Deputies shot Poulston fearing for their own safety as well as for the safety of the public.

At the time officers fired, Poulston was under the influence of methamphetamine, homicidal, armed and attempting to escape, thereby, presenting an imminent threat of death or serious bodily harm to anyone in his path. When faced with this very real danger, these six (6) law enforcement officers responded appropriately, according to their training, when they employed deadly force against Poulston in order to protect themselves and the citizens around them. Under the circumstances in this case, the law overwhelmingly supports the conclusion that these officers were entitled to use deadly force when they reasonably perceived an imminent threat of death or serious bodily injury to themselves or others. Criminal charges against these officers are not appropriate. This report sets forth the basis for these conclusions.

## **FACTS**

The facts surrounding this event as developed by the Virginia State Police are as follows:

According to Covington dispatch records, J.W. Tingler, owner of Covington Farm and Fuel, made a 911 call at approximately 4:45 the afternoon of March 14, 2022. Mr. Tingler reported that a man was "high on drugs" and he wanted the man off the property. After Tingler's call was disconnected, dispatchers called back to Covington Farm and Fuel. This time they first spoke to a woman and later, to Randal Paxton, who identified the man as his stepson, Toney Poulston. Paxton told dispatchers that Poulston was armed with a gun. Store video showed Paxton on the phone (during the time of the 911 call) while Poulston was watching him and pacing close by with the handle of a gun visible in his pocket. Poulston appeared noticeably agitated.

Covington Police Officers Caleb Ogilvie and Justin Jefferson responded to Covington Farm and Fuel as requested in the 911 call. Dispatchers had made both

officers aware that the suspect had a gun. Corporal Jefferson requested that dispatch call the Alleghany County Sheriff's Office for back-up. At approximately 4:47 p.m., Officer Ogilvie arrived first from the south with Corporal Jefferson arriving from the north. Shortly thereafter, as Officer Ogilvie approached the glass front door on foot, Tingler opened the door and warned, "He's got a gun." Almost immediately, before Officer Ogilvie could get past the threshold, Poulston looked at the officer and shot Randal Paxton in the back of the head, execution-style. At approximately 4:48 p.m., both the store camera and Officer Ogilvie's body camera recorded Poulston shooting his stepfather from behind at point-blank range. Paxton instantly fell to the floor and was later determined to have died from the gunshot wound. Two women and a man could be seen inside the store in close proximity to the gunman when the shot was fired. Another citizen, customer Jessee Lewis, was standing nearby at a cash register when he witnessed Paxton being shot. Lewis described the shooter as appearing to be "out of his mind." Another customer, Ross Holsclaw, was behind Lewis when he witnessed the shooting. Holsclaw observed the shooter "dancing back and forth" and "aggressively" smoking a cigarette before shooting Paxton. After the shot was fired, Lewis fled out the back door; however, Holsclaw hid inside the store until he was later rescued by police.

After witnessing Poulston shoot his stepfather, Officer Ogilvie backed away from the door into the parking lot calling into his radio, "shots fired." Covington dispatchers had already heard the gunshot on their live feed. At the same time, Tingler could be seen on video fleeing past Officer Ogilvie in the direction of a white Dodge pick-up truck. Corporal Jefferson was making his way across the parking lot when he heard the gunshot and saw Officer Ogilvie retreating from the doorway yelling, "shots fired."

Officer Ogilvie ran toward Corporal Jefferson exclaiming, "He just shot a guy." As both Officers retreated toward the north side of the building, Poulston came out the front door and immediately began shooting at the officers. Poulston could be seen on video firing multiple shots at the officers while two civilians fled on foot across the parking lot behind him. A small white car could also be seen, in close proximity, driving away while Poulston opened fire on the two officers.

Officer Ogilvie had made it some distance from the door when he raised his service weapon; however, he fell to the ground soon after Poulston fired the initial shots. Once his partner fell, Corporal Jefferson attempted to return fire while taking cover behind a tire rack and, simultaneously, radioing dispatch, "officer down!"

It was apparent, on video, that Poulston began shooting at the officers immediately after he stepped out of the door. Store video further showed that, after firing multiple

shots, Poulston advanced toward the two officers while he ducked to take cover behind the building. Shortly thereafter, Poulston retreated, apparently uninjured, back inside the store. Three civilians were present near the counter in the store when Poulston reentered still holding his handgun. These three individuals were able to escape through a back exit. Civilian, Ross Holsclaw, however, was still inside. Holsclaw called 911 from where he was hiding in the kitchen area hunkered down in the corner behind a stove.

For approximately ten (10) minutes, Poulston could be seen on video pacing throughout the store and stepping over Paxton's motionless body while he smoked cigarettes and drank beer. Poulston nervously moved around the store. He repeatedly looked out the windows watching as police began to gather in the parking lot. There were audible sirens, visible emergency lights and multiple marked law enforcement vehicles surrounding the building. A heavy police presence would have been apparent to Poulston as he peeked out the windows remaining visibly agitated. Law enforcement positioned outside could see Poulston looking out at them. They were made aware that the shooter was Toney Poulston.

As officers and deputies responded, they positioned themselves behind police and civilian vehicles for cover. Sergeant Jeremy Morris and Deputy Joshua LaPrade took cover beside a black Ford. A woman could be seen on body camera video inside the vehicle with the seat laid back covering her ears. A twelve-year-old girl was crouching down beside the tire taking cover next to the two deputies. The child had witnessed Officer Ogilvie being shot by Poulston. She was able to describe Poulston's gun to law enforcement officers. Her presence was captured by multiple body camera videos. The child remained in the parking lot throughout the entire incident.

Corporal Jefferson and Corporal Phillip Lewis were positioned beside a Covington Police vehicle. Civilian, Osbie Carl Frazier, Jr. was crouched beside the rear tire of the same vehicle alongside the two law enforcement officers. Earlier, Frazier had also witnessed Poulston shooting Officer Ogilvie. Frazier recounted that he saw a white male run out of the store and "open fire" on the officer who initially responded to Tingler's 911 call. Frazier stated that, after Officer Ogilvie was killed, the law enforcement officers who gathered outside Farm and Fuel could be heard yelling commands for the shooter to come out of the store. Deputy LaPrade confirmed that he heard multiple commands for Poulston to come out with his hands up and drop the weapon. Other civilian witnesses said they heard commands as well.

Alleghany County Sheriff's Deputy Sierra Cosby was also positioned near Frazier, Corporal Jefferson and Corporal Lewis. Deputy Cosby was giving commands to other civilians due to concern for their safety. Major Casey Gibson was directing law enforcement officers to clear multiple civilian bystanders from the area. Covington Police Detective Richard Baker arrived from the south side and took cover near Officer Ogilvie's patrol vehicle.

Poulston remained inside Covington Farm and Fuel ignoring officers' commands. Store video showed Poulston looking out the glass door of the storefront just before he bolted out of it wielding his gun. Witnesses said Poulston burst through the door holding the handgun in his right hand pointed toward both officers and civilians. Video footage confirms Poulston leveling a gun toward the parking lot with his right arm extended as he ran toward a white Dodge pick-up truck. Multiple officers recalled Poulston immediately firing one (1) shot in their direction as he came out the door in a movement described as "violent and fast." Poulston immediately ran to the driver's door of the white Dodge pick-up truck. Inside the truck, civilian Chris Skidmore was hiding. Skidmore was hunkered down in the floorboard trying to avoid injury after he heard the initial gunfire directed at Officer Ogilvie and Corporal Jefferson. The driver of the pick-up, Ross Holsclaw, was still trapped inside the store.

After Poulston burst through the door and fired a shot toward officers and civilians, two (2) Covington Police Officers and four (4) Alleghany County Sheriff's Deputies returned fire. Poulston had reached for the driver's door of the white pick-up truck when he was struck by gunfire and fell to the ground. Officers then called a "ceasefire" (which could be heard over both body cameras and radio traffic) after which the shooting stopped. Poulston lay on the pavement with his Smith and Wesson 9mm semi-automatic pistol visible a short distance away. The shooting lasted approximately ten (10) seconds. No additional law enforcement officers and no other innocent civilians were injured.

When it was clear that Poulston was no longer a threat, Alleghany County Sheriff's Deputies and Covington Police Officers cleared the area rescuing civilians who had been trapped inside the building and in vehicles. They found Holsclaw taking cover inside the store and Skidmore still hiding inside the white Dodge pick-up that Poulston attempted to enter while armed with his pistol. The Covington Police Department requested an independent investigation by the Virginia State Police who then secured the scene and enlisted multiple agents to gather evidence, interview witnesses and process the scene.

Agents photographed and collected a Smith and Wesson 9mm Luger Pistol found lying on the pavement beside the white Dodge pick-up near Poulston's body. Both the magazine and the firing chamber of the pistol were empty. This 9mm was determined to be the weapon Poulston used to kill Officer Ogilvie and Paxton. It was sent to the forensic lab for examination and comparison.

Five (5) spent 9mm cartridge casings were found near the front door of Covington Farm and Fuel. This was the same area in which Poulston could be seen on video shooting at Officer Ogilvie and Corporal Jefferson. This is also the door from which video showed Poulston bolting as he pointed his pistol toward officers in the parking lot. Four (4) of these spent cartridge casings were clustered near the door while the fifth casing was by itself adjacent to a doormat in front of the door. A sixth spent 9mm cartridge casing was later found inside the store where Paxton was shot. All six (6) of these 9mm casings were submitted to the state lab for comparison.

Approximately nine (9) spent 9mm cartridge casings were recovered from the pavement toward the north corner of the building near where Officer Ogilvie was shot and where Corporal Jefferson attempted to take cover. These spent cartridge casings were also sent to the lab for comparison. Approximately fifty-three (53) spent .223 cartridge casings consistent with the officers' .223 rifles were collected from various areas of the parking lot. The bodies of Officer Ogilvie, Toney Poulston, Jr. and Randal Paxton were taken to the Office of the Chief Medical Examiner in Roanoke for autopsy.

In an autopsy report dated April 21, 2022 and received in my office June 29, 2022, Assistant Chief Medical Examiners Dr. Sara Ohanessian determined the cause of death for Randall Lee Paxton to be a "gunshot wound to the head."

In an autopsy report dated April 7, 2022, Assistant Chief Medical Examiner, Dr. Eli Goodman determined the cause of death for Officer Ogilvie to be "gunshot wounds of the neck, torso, left upper extremity and right lower extremity." The autopsy identified a total of three (3) gunshot wounds. The bullet path of one (1) wound showed that Officer Ogilvie was shot in the left upper back. A toxicology report dated April 14, 2022 confirmed that Officer Ogilvie had no drugs or alcohol in his system.

In an autopsy report dated April 7, 2022, Dr. Eli Goodman determined the cause of death for Toney Poulston, Jr. to be "gunshot wounds of the head, neck, torso, extremities." Virginia State Police Special Agent, Nicholas Lomasney, provided scene photographs and video for Dr. Goodman's review in conjunction with the autopsy investigation. Dr. Goodman's findings in Poulston's autopsy report identified a number of injuries consistent with gunshot wounds many of which were superficial while some

were lethal. According to both the autopsy report and S. A. Lomasney's interview with Dr. Goodman, "no order or sequence" of gunshot wounds could be determined. Some deformed .22 caliber projectiles were recovered at Poulston's autopsy; however, most were bullet jackets and jacket fragments not suitable for comparison. Blood samples recovered from autopsy were sent to the Department of Forensic Science for examination. A Certificate of Analysis dated April 19, 2022 confirmed that Poulston had methamphetamine present in his blood, "greater than 2.0 mg/L."

The results of a firearms examination conducted by the Department of Forensic Science were detailed in a Certificate of Analysis dated May 9, 2022. Scientists determined that Poulston's Smith and Wesson 9mm Luger Pistol was in mechanical operating condition. As with all semi-automatic handguns, it was designed to eject a spent cartridge casing each time a shot is fired. The five (5) spent 9mm cartridge casings found near the front door of Covington Farm and Fuel were fired from Poulston's pistol according to the report. Likewise, the sixth spent 9mm cartridge casing found inside the store was fired from Poulston's pistol. Thus, scientific examination confirms that at least six (6) shots were fired from Poulston's gun. This scientific evidence is consistent with video footage and witness statements indicating that Poulston shot Paxton inside and also shot at officers outside while he was standing near the front door.

Of the nine (9) spent 9mm cartridge casings found between the gas pumps and the north end of the building, two (2) were determined to have been fired from Officer Ogilvie's Glock Model 45 9mm pistol. The remaining seven (7) were found to have been fired from Corporal Jefferson's Glock Model 45 9mm Pistol. The location of these nine (9) spent cartridge casings is consistent with multiple video angles of the two Covington officers as they reacted to gunfire from Poulston.

The Assistant Chief Medical Examiner recovered a bullet from Officer Ogilvie's neck. This lethal jacketed hollow point bullet was examined by the Department of Forensic Science and determined to have been fired from Poulston's pistol. Similarly, a bullet jacket recovered from Officer Ogilvie's leg was found to have been fired from Poulston's gun. Thus, the scientific evidence, together with video footage, confirms that Poulston killed Officer Ogilvie.

### **ANALYSIS**

The Virginia General Assembly has recently enacted a law outlining the circumstances under which a law enforcement officer may use deadly force during an arrest or detention. Specifically, deadly force may be used if:

The law enforcement officer reasonably believes that deadly force is immediately necessary to protect the law enforcement officer or another person, other than the subject of the use of deadly force, from the threat of serious bodily injury or death.

Va. Code Ann. § 19.2-83.5 (1950). The general law of self-defense, applicable to all persons, allows the use of deadly force when one reasonably perceives an “imminent” threat of death or serious bodily harm. McGhee v. Commonwealth, 219 Va. 560, 562, 248 S.E.2d 808, 810 (1978). A law enforcement officer who reasonably believes that a suspect poses an imminent threat of death or serious physical harm to that officer or others may legally use deadly force to “prevent harm to one’s self or others and to prevent escape.” Couture v. Commonwealth, 51 Va. Ct. App. 239, 244, 656 S.E.2d 425, 427 (2008). Specifically, if a “suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” Tennessee v. Garner, 471 U.S. 1, 11 (1985).

The “reasonableness” of an officer’s “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.” Graham v. Conner, 490 U.S. 386, 396 (1989). The Graham court acknowledged 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.” Id. at 397.

Finally, if the use of deadly force is reasonable under the circumstances, the law does not require the use of the least or even a less deadly alternative. Plakas v. Drinski, 19 F.3d 1143, 1149 (7<sup>th</sup> Cir. 1994).

Based on the investigation presented to me by the Virginia State Police, the pertinent facts leading to the officer-involved shooting death of Toney Poulston, Jr. on March 14, 2022 are not in dispute. Unlike many cases which rely solely on the observations and testimony of witnesses, the events in the present case were captured on multiple video recordings. Virginia State Police investigators provided me with video footage of the three (3) shooting deaths recorded as they happened. We were able to review the footage thoroughly and repeatedly. The source of these videos was from both private citizens and officer-worn body cameras. Watching the shootings from different camera angles left little doubt as to what transpired that afternoon at Covington Farm and Fuel.

The uncontroverted evidence showed that Poulston shot his stepfather, Randal Paxton, in the back of the head at point-blank range right in front of Officer Ogilvie and multiple civilian witnesses. After this unprovoked killing, Poulston turned on Officer Ogilvie chasing him out into the parking lot where he opened fire on both Officer Ogilvie and Corporal Jefferson. As he retreated from the doorway, Officer Ogilvie exclaimed to Corporal Jefferson that Poulston “just shot a guy.” In addition to the two officers, there were numerous other people in harm’s way both inside the store and in the parking lot. At that moment, any reasonable officer in this position would perceive that Poulston presented an imminent threat of death or serious bodily harm to both himself and others. The evidence showed that, after Poulston shot toward them, both Officer Ogilvie and Corporal Jefferson returned fire as they had a legal right to do to protect themselves and others. The use of deadly force employed by these two (2) officers, under these circumstances, was justified.

During this second round of shots fired by Poulston, he shot and killed Officer Ogilvie, a uniformed police officer, in front of Corporal Jefferson. After watching his fellow officer fall, Corporal Jefferson called for back-up while he pulled Officer Ogilvie away from Poulston’s line of fire. Poulston, still armed, retreated back inside Covington Farm and Fuel creating a continuing risk for the civilians still inside.

For about the next ten (10) minutes, Poulston watched as marked units arrived and uniformed law enforcement officers positioned themselves outside. The Allegheny County Sheriff’s Office assisted the Covington Police Department in setting up a perimeter around the building. Poulston, who was high on methamphetamine, ignored officers’ commands to come out in a peaceful manner. Instead, Poulston bolted out the door with the gun visible in his right hand leveled at both law enforcement officers and civilians. Store video confirmed that Poulston pointed the gun toward those taking cover in the parking lot. Witnesses further confirmed that Poulston fired a shot toward officers as he burst out the door and ran toward the white Dodge pick-up.

Faced with Poulston’s explosive and aggressive actions, six (6) sworn law enforcement officers had to make a split-second decision to protect themselves and others who were in harm’s way. In response to this immediate threat, Officer Justin Jefferson and Detective Richard Baker of the Covington Police Department fired their weapons at Poulston. Allegheny County Sheriff’s Corporal Phillip Lewis, Deputy Sierra Cosby, Deputy Joshua LaPrade and Sergeant Jeremy Morris also responded by firing back at the armed gunman.

Poulston was later determined to have died from gunshot wounds. Toxicology conducted on Poulston's blood taken at the time of autopsy revealed that he had methamphetamine present in this blood "greater than 2.0 mg/L." Under Virginia Code Section 18.2-269, if a suspect's methamphetamine level is equal to or greater than 0.1 milligrams of methamphetamine per liter of blood it shall be presumed that he was under the influence of drugs to a degree which impairs his ability to drive or operate a motor vehicle. Thus, 0.1 mg/L is often called the "presumptive level" of methamphetamine.

To put our facts in perspective, I consulted with Dr. Trista Wright at the Virginia Department of Forensic Science who confirmed that Poulston's lab results showed him to be greater than twenty (20) times the presumptive level. According to Dr. Wright, at this elevated level, Poulston's behavior on March 14, 2022 was consistent with the stimulant or "rush" phase of methamphetamine intoxication which can cause aggressive and irrational behavior, reduced inhibitions and poor judgment.

When determining whether an officer reasonably perceived an imminent threat of death or serious bodily injury to himself or another, we must examine the circumstances as they appeared to the officer at the time. The reasonableness of a use of force must be judged from the perspective of a reasonable officer having to make a split-second decision under stressful conditions at the scene.

There is overwhelming evidence that the shooting of Poulston was in response to his aiming a firearm at officers while attempting to escape after he had already shot and killed two people (including another police officer). Video evidence alone supports this conclusion. By any objective standard, these six (6) law enforcement officers acted in reasonable apprehension of being shot by Poulston when he pointed a gun at them. Moreover, the officers told investigators that Poulston also fired a shot as he fled toward the white Dodge pick-up. Faced with this immediate danger, any reasonable law enforcement officer would feel it necessary to meet such a threat with deadly force.

Where the officers were entitled to use deadly force to defend themselves, they were equally entitled to defend others who they reasonably perceived were in danger of death or serious bodily harm. It is, in fact, their sworn duty to protect. Holsclaw was still hiding inside Covington Farm and Fuel when Poulston burst out the door wielding his gun. Multiple officers and civilians were in the parking lot at that time including the twelve-year-old girl who was crouched behind the Ford next to Deputy LaPrade and Sergeant Morris. A woman, was also inside the Ford covering her ears. Civilian, Osbie Frazier, was taking cover beside a Covington Police vehicle next to Corporal Jefferson and Corporal Lewis. All of these individuals were potentially in Poulston's line of fire

as he aimed his pistol toward the parking lot. Video showed Poulston fleeing toward the white Dodge pick-up truck, gun in hand. He was shot as he reached the driver's door. Christopher Skidmore was in the truck at the time. Skidmore and any other person in Poulston's path would have been in danger.

In judging the reasonableness of the officers' response, it is also important to note that they were aware of the fact that Poulston had already killed Officer Ogilvie and shot at Corporal Jefferson after shooting at another person inside the building. They also knew, from Tingler's 911 call, that Poulston was "high on drugs." It is, therefore, reasonable that these six (6) law enforcement officers would perceive that the continuation of Poulston's drug-induced shooting spree posed an imminent danger of death or serious bodily injury to themselves and others as he clearly leveled a gun at them in an attempt to escape. At this point, use of deadly force was legally justified; however, officers and deputies said that Poulston went one step further and fired one (1) shot in their direction. Clearly, they reasonably perceived an imminent danger of death or serious bodily harm for themselves as well as others.

### **CONCLUSION**

The two (2) Covington Police Officers and four (4) Alleghany County Sheriff's Deputies who fired their weapons at Toney Poulston, Jr. on March 14, 2022 did so in reasonable apprehension of Poulston shooting and killing or wounding one or more officers and/or civilians at the scene. Under the circumstances, the killing of Poulston by law enforcement officers was a justifiable homicide in defense of self or others. Consequently, no criminal charges will be brought against any of the six (6) officers involved.