

NEWS RELEASE

The Virginia State Police investigation into the death of Mr. Chase Austin, who died as a result of being shot by Officer Martinez, Roanoke Police Department on October 16, 2019, has been received by this office. My role is to review the facts developed by the investigation and determine whether or not there is probable cause to believe that any crime has been committed. In order to support a criminal charge, the evidence must show either (1) the presence of malice on behalf of the person involved or (2) conduct that exhibits gross, reckless disregard for the life or safety of others, which is criminal negligence. Having reviewed this investigation, I find that criminal charges are not appropriate under the facts. My decision only applies to the criminal aspect of this investigation and any aggrieved party is free to pursue any civil remedy they may have available.

In order to facilitate the community's understanding of what occurred that afternoon and the basis for my conclusion that no criminal charges are appropriate, I am providing this factual summary.

On Wednesday, October 16, 2019, at approximately 12:44 p.m. Officer Martinez responded to a trespassing call at Krispy Kreme located at 1625 Hershberger Road. He parked his patrol vehicle in the Member One bank parking lot immediately east of the store and approached on foot.

As he entered the store, he immediately encountered an individual inside the doorway. Based upon information disseminated earlier at the morning lineup, he determined that the individual was Chase Austin due to the presence of two distinctive upper arm marijuana leaf tattoos. He was aware that Mr. Austin was wanted on a number of felony and misdemeanor warrants and attempted to take him into custody. A struggle ensued at the doorway and Mr. Austin produced what appeared to be a semi-automatic pistol and pointed it in the direction of Officer Martinez. Officer Martinez released his grip on Mr. Austin and retreated inside the store. Mr. Austin fled running north towards Lowes/Kroger parking lot. At this point, Officer Martinez pulled his firearm from his holster and pursued Mr. Austin.

Once outside the store, Officer Martinez yelled commands for Mr. Austin to stop and show his hands, but he continued to run. As Mr. Austin ran into the K&W parking lot he swiveled his upper torso towards the Officer who, aware that Mr. Austin still had a weapon in his hand, fired three rounds at him. There was no indication that any of these rounds struck Mr. Austin as he continued to run through the K&W parking lot towards Lowes.

Mr. Austin ran towards a car wash that was under construction between Krispy Kreme and the Lowes parking lot. The Officer continued to pursue, commanding him to stop and show his hands. Mr. Austin ran through the car wash and came out the other side closer to the Lowes parking lot. At this point Mr. Austin again turned his body in the direction of the Officer who then fired three more rounds causing Mr. Austin to fall to the ground. While on the ground, Mr. Austin rolled to face the Officer resulting in a final shot being fired. EMS personnel transported Mr. Austin to Carilion Roanoke Memorial Hospital where he was taken into surgery but was pronounced dead at 3:10 p.m.

Located on the ground beside where Mr. Austin fell was a loaded Ruger .22 caliber handgun with a round in the chamber and an additional ten rounds in the magazine. This firearm had been reported stolen two weeks earlier in Roanoke City. Several live .22 caliber cartridges were also found in Mr. Austin's backpack. Also found in his backpack was a small leather bag that contained three separate plastic bags each containing substance that would later test positive for methamphetamine by the Department of Forensic Science. Also found was a bag of pills that would test positive for Alprazolam, a schedule IV controlled substance. Finally, a glass smoking device was located with burn marks that would be consistent with the use (smoking) of methamphetamine.

An autopsy performed by Dr. Suzuki on October 17, 2019 of the Medical Examiner's Office revealed that Mr. Austin had been struck by four bullets. One bullet entered on the front of his right thigh and was recovered from his leg. Another bullet entered on the back of his right thigh and exited out the front of his leg. Another bullet entered the side of his lower right leg and exited the leg at the top of his calf on an upward angle. The fatal shot struck Mr. Austin on his lower right back and traveled through his kidney and liver. The cause of death is listed as "Gunshot Wound of Abdomen." Additionally, a sample of Mr. Austin's blood was drawn and sent for analysis. The analysis revealed that Mr. Austin had a level of Methamphetamine at 0.52 per mg/L. The presumptive level of intoxication for Methamphetamine is 0.10 per mg/L, indicating that he was more than five times the presumptive level for Methamphetamine intoxication. Someone with that level of Methamphetamine intoxication would act more erratically, in an agitated manner and their emotions would be more exaggerated. There was also a low level of marijuana in his system.

Investigators with the Virginia State Police interviewed some twenty-three witnesses who had some connection to this event including Officer Martinez. The statements of these witnesses, combined with video footage retrieved by the investigators (cameras from Krispy Kreme, Member One and Lowes) and the physical evidence collected, corroborate this summary of the facts as set forth in this release. It should be noted that Officer Martinez was wearing a department issued body camera at the time of this incident. This body camera had been activated for a traffic stop which occurred immediately before his dispatch to Krispy Kreme, but was not deactivated at the

conclusion of that traffic stop and it continued to record. Consequently, when Officer Martinez was walking to the Krispy Kreme building, he inadvertently turned off his camera when he thought he was turning it on. As a result, there is no body camera footage of his encounter with Mr. Austin.

I have reviewed the written police reports, photographs of the scene, video surveillance recordings, witness statements, forensic reports and visited the scene where the shooting occurred. I have reviewed the official autopsy report, to include the toxicology report of the deceased. Additionally, Special Agent M. Shane Clifton (Virginia State Police), John McNeil (Senior Assistant Commonwealth's Attorney), and I met with the family of Mr. Austin to brief them on the findings of the investigation.

Based upon the facts available to me at this time, I am of the opinion that Mr. Austin's actions placed Officer Martinez in a position where he reasonably believed that he and others were in immediate, imminent danger of death or serious bodily injury. Whatever his motivation, Mr. Austin introduced the element of deadly force into what was otherwise a relatively benign situation. By pulling a gun on Officer Martinez and then fleeing while armed towards a populated area in broad daylight, Mr. Austin effectively expanded the scope of the threat to the public at large. Officer Martinez has an obligation to protect the general public from threats such as the one presented by Mr. Austin. Therefore, I am of the opinion that, under the law of Virginia, Officer Martinez was legally justified in the use of deadly force to protect his own life as well as the lives of others in this situation. Thus, criminal charges are not appropriate under these circumstances, and none will be pursued.

A handwritten signature in black ink, appearing to read "Donald S. Caldwell", written in a cursive style.

Donald S. Caldwell
Commonwealth's Attorney
Roanoke City