



**Report of Suffolk County District Attorney Daniel F. Conley  
On Findings in the October 12, 2016, Shooting Death of Kirk Patrick Figueroa**

The Suffolk County District Attorney's Office has concluded its investigation into the October 12, 2016, officer-involved shooting death of Kirk Figueroa in the basement of 136 Gladstone Street in East Boston. This investigation revealed that, while armed with a 9mm semiautomatic handgun and wearing a bulletproof vest, Mr. Figueroa shot and critically wounded two uniformed Boston Police officers who were investigating a report that Mr. Figueroa had assaulted one of his roommates with a knife. After shooting two of the responding officers, Mr. Figueroa engaged the officers in a pitched gun battle, as he retreated to a bedroom and other officers attempted to rescue their two gravely wounded colleagues. During the gunfight, Mr. Figueroa armed himself with a second weapon – a tactical pump-action 12-gauge shotgun – and again fired on the officers. Mr. Figueroa refused repeated commands to surrender his weapons and at one point feigned surrender as he attempted to ready the shotgun to continue the gunfight. Under the circumstances, the officers who fired their weapons did so in a lawful and proper exercise of self-defense and defense of others as they tried to stop Mr. Figueroa's violent assault and allow other officers to rescue the two wounded Boston Police officers. Therefore, based on a thorough investigation into the circumstances surrounding the shooting death of Mr. Figueroa, I have determined that criminal charges against the Boston Police officers who fired their weapons are not warranted.

The Suffolk County District Attorney has the statutory duty and authority to direct all death investigations in the City of Boston, including fatalities related to the use of force by law enforcement officers. The primary goal of this investigation, therefore, was to determine whether any person bears criminal responsibility for Mr. Figueroa's death. Pursuant to my authority to direct this and all death investigations in Boston, I went to the scene that night with Assistant District Attorney Edmond Zabin, my Chief of Homicide. First Assistant District Attorney Patrick Haggan and Chief Trial Counsel John Pappas went to the scene as well.

Subsequently, I assigned ADA Zabin to lead the investigation in consultation with me and the most senior attorneys on my staff.

### **I. Scope of the Investigation**

The investigation included a review of the materials compiled by the Boston Police Department Firearm Discharge Investigative Team (FDIT) led by Sergeant Detective John P. Conroy. The final Boston FDIT report was delivered to my office on March 21, 2018. The evidence that we reviewed included: recorded statements of the involved officers and civilian witnesses; video surveillance footage; police radio transmissions; recordings of 911 calls; ballistics analysis of the involved officers' weapons and ammunition; physical evidence from the scene, including two pistols, dozens of rounds of ammunition, high-capacity feeding device magazines, and a shotgun recovered from Mr. Figueroa's bedroom; criminalistics testing and analysis; the autopsy report with supporting documentation and photographs; scene photographs; records pertaining to Mr. Figueroa's work and military background; reports of prior interactions between Mr. Figueroa and law enforcement; Mr. Figueroa's criminal history; and his social media postings. All the investigative materials that we reviewed have been preserved for examination by Mr. Figueroa's family, the involved officers, the media, and other interested parties.

### **II. Relevant Background Information**

Mr. Figueroa was a thirty-three-year-old man who was a licensed City of Boston Constable. In October 2016, he lived in the basement apartment at 136 Gladstone Street in East Boston. He was not licensed to carry a firearm in Massachusetts; at the time of his death, however, Mr. Figueroa owned three firearms that police recovered from 136 Gladstone Street – an HS Produkt XDM Compact 9mm semiautomatic handgun, a Beretta Px4 Storm 9mm semiautomatic handgun, and a Kel-Tec KSG tactical pump-action 12-gauge shotgun. All three weapons were registered in his name in Florida. A license check revealed that, although Mr. Figueroa was not licensed to carry a firearm in Massachusetts, he possessed a concealed weapons permit in Florida, his former state of residency.

Mr. Figueroa had worked for a number of security-related companies outside Massachusetts and, at the time of his death, represented himself as the "Founder" of "Code Blue Protection Corp" established in Florida and an LLC registered in Massachusetts under the name "Bail Runners LLP." The Statement of Registration filed in 2015 with the Massachusetts Secretary of State's Office describes Bail Runners LLP as providing "Constable Services." In 2016, Mr. Figueroa registered a 2011 black Ford Crown Victoria that was recovered from Gladstone Street on October 14. The automobile has blue lettering with the words "'Elite Policing.org 'Code Blue Protection,'" with what appears to be a company seal on the doors and the words "Justice Will Be Done" along the hood. The words "Bail Runners" are on the rear and the front of the car. It is equipped with a push bar similar to those attached to marked police cruisers. Residents of 136 Gladstone Street reported that Mr. Figueroa held himself out as a law enforcement officer, a "bounty hunter," and military veteran. According to the Department of Defense, Mr. Figueroa enlisted in the US Army Reserve in a military police program in 2003 but requested and was granted a hardship discharge before beginning his training. Records from the State of Florida document Mr. Figueroa's ultimately unsuccessful attempt in 2013 to secure a private investigator's license there.

On October 5, 2016, Connecticut State Police Officers attempted to stop Mr. Figueroa's vehicle for speeding and other related motor vehicle offenses near New Haven. The driver of Mr. Figueroa's vehicle led Connecticut State Police Officers on a high-speed chase before the officers were advised to break off the pursuit. As of October 12, 2016, Connecticut State Police were still investigating the incident and attempting to locate Mr. Figueroa.

### **III. The Incident**

Sometime before 10:50 PM on October 12, 2016, Mr. Figueroa assaulted his roommate [REDACTED] inside the basement living area of the 136 Gladstone Street apartment they shared. During the assault, Mr. Figueroa kicked and punched Mr. [REDACTED] and then assaulted him with a kitchen knife. Mr. [REDACTED] fled the apartment and called 911 on his cellular telephone. During the 911 call, Mr. [REDACTED] reported the assault and that Mr. Figueroa was "police" and had a firearm.

Boston Police Operations dispatched uniformed officers to 136 Gladstone Street for the report of a man with a gun. Boston Police officers Eric Schmidt and Richard Cintolo arrived at the scene and met Mr. [REDACTED] in front of 136 Gladstone. Mr. [REDACTED] was extremely emotional but was able to describe the events that had just transpired. He explained to the officers that, although he had seen Mr. Figueroa with a firearm in the past, Mr. Figueroa had not displayed the firearm during the altercation that evening. As a result, Officer Schmidt contacted the Operations Division to inform other responding officers to slow down their response.

Other officers, including Mathew Morris and Hector Gonzalez, responded to the dispatch and arrived shortly after officers Schmidt and Cintolo. The officers proceeded to search the various rooms in the building for Mr. Figueroa. Initially, Officer Schmidt unholstered his department-issued firearm as he searched the building. After interacting with some of the tenants and leading them out of the building, officers Schmidt, Cintolo, and Morris walked down a flight of stairs to the kitchen area that Mr. Figueroa and Mr. [REDACTED] shared. As they walked down the stairs, all three officers were in uniform and their weapons were holstered.

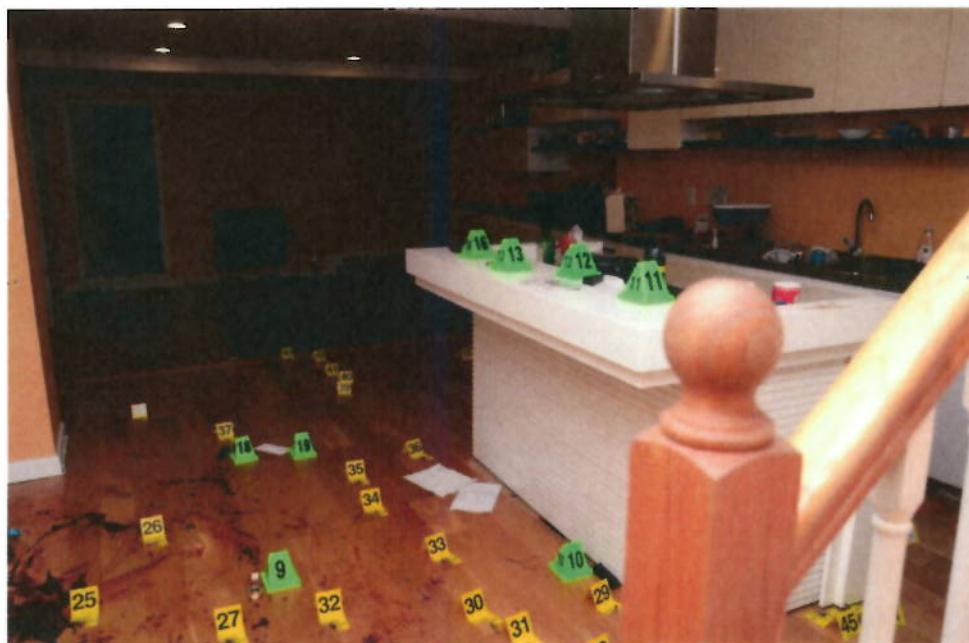
When the three officers entered the basement kitchen area, they encountered Mr. Figueroa, who was talking on a cellular telephone. In the time between his assault on Mr. [REDACTED] and the arrival of the three officers, Mr. Figueroa had put on a GH Armor Systems bulletproof vest, armed himself with the loaded HS Produkt XDM Compact 9mm semiautomatic handgun and two high-capacity magazines, and put his constable badge on his waist.

Officer Cintolo attempted to speak with Mr. Figueroa, who displayed his constable identification. Officer Cintolo noted that Mr. Figueroa was wearing a bulletproof vest. Officer Cintolo asked Mr. Figueroa if he was armed. Mr. Figueroa falsely replied that he was not. Officer Cintolo then told Mr. Figueroa that he was going to frisk him for weapons. As Officer Cintolo began to pat down Mr. Figueroa, he felt a handgun and alerted the other officers. Officers Cintolo, Morris, and Schmidt attempted to grab Mr. Figueroa's gun and control his hands. A struggle ensued during which the 6'1", 250-pound Figueroa freed himself, drew his gun, and fired at the officers. Officer Cintolo was struck once in the area of the neck beneath his chin and twice at close range in the upper torso, rendering him immobile. Officer Morris was struck once in the upper left leg, the bullet severing his femoral artery. Both officers fell to the ground critically wounded. Officers Morris and Schmidt returned fire as Mr. Figueroa retreated

to a darkened bedroom on the opposite side of the kitchen. During the exchange of gunfire, Mr. Figueroa positioned himself behind the bedroom wall and fired through the partially open door.



*View from stairs leading to kitchen area. Officer Cintolo fell to the floor at the base of the stairs. Officer Morris fell in front of the sliding glass door. Mr. Figueroa's bedroom, the location where he established his firing position, is to the right with an unobstructed line of fire to the stairs.*



*View from the base of the stairs towards Mr. Figueroa's bedroom door, where Mr. Figueroa established his firing position after he shot officers Cintolo and Morris. The kitchen island where Officer Schmidt positioned himself to return fire is to the right. The sliding glass door where Officer Morris fell is to the left, near placard 25. Officer Cintolo fell at the base of the bannister.*



*View from Mr. Figueroa's bedroom door, showing his approximate view as he fired at officers Cintolo, Morris and Schmidt. Sliding door where Officer Morris fell is to the right at the base of the stairs. Officer Cintolo fell in the center at the base of the same stairwell. Officer Schmidt took a position near the kitchen island to the left.*

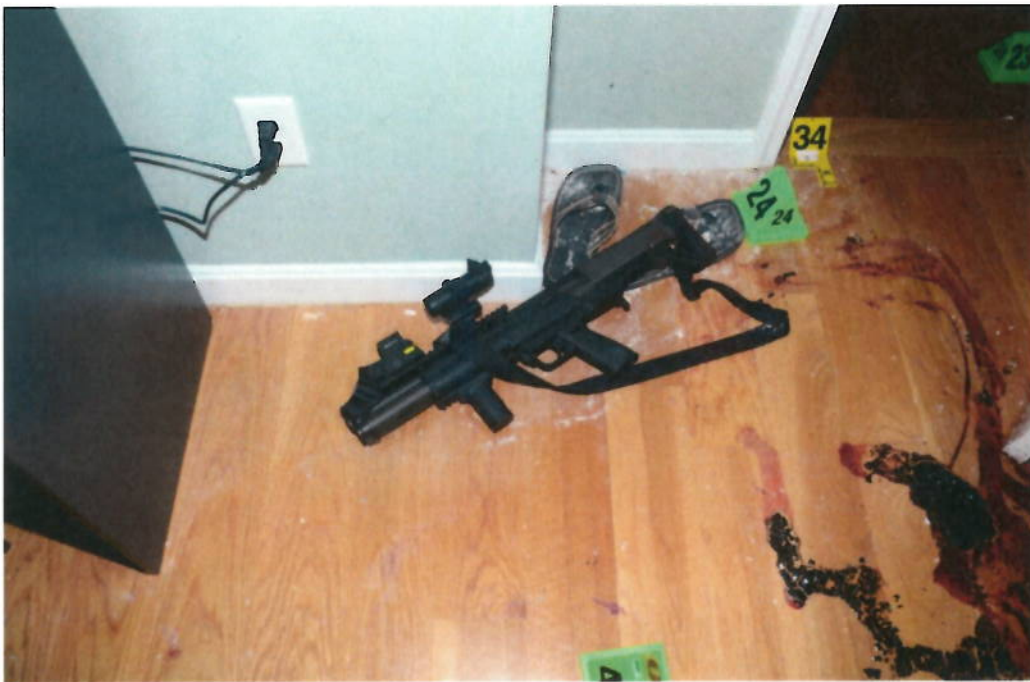
Officers Morris and Schmidt continued to fire at Mr. Figueroa, who had positioned himself next to the door behind a wall in the bedroom. Officer Morris's condition deteriorated quickly as he began to bleed heavily. Recognizing that he was weakening and unable to continue to assist Officer Schmidt, he gave his weapon to Officer Schmidt, who continued to fire. All three officers were vulnerable to return fire as there was no adequate cover or protection where the officers were positioned. Officer Schmidt called over the radio for ammunition and for officers to commence a rescue operation to extricate the two critically wounded and dangerously exposed officers. As officers who descended the stairs to rescue officers Morris and Cintolo would be exposed to gunfire, Officer Schmidt continued to fire at the bedroom to cover the rescue attempt.

After several minutes, Mr. Figueroa, who was still in the bedroom, called out that he was going to surrender. Officer Schmidt ordered Mr. Figueroa to show his hands and drop his weapon. Rather than comply with the order, Mr. Figueroa chambered ammunition in the Kel-Tec shotgun and again opened fire on the officers in the kitchen area. Officer Schmidt returned fire.

Boston Police Department Sergeant Norberto Perez and two officers assigned to the Boston Police Department SWAT, officers Lenin Ortiz and Clifton Singletary, attempted to descend to the kitchen area to rescue officers Cintolo and Morris. These officers had no route to the wounded officers that was out of Mr. Figueroa's line of fire. As Officer Schmidt covered them, Sergeant Perez and officers Singletary and Ortiz descended the stairs and carried out Officer Morris. Officer Ortiz then returned to the basement with Boston Police officers Joseph McSorley and Joseph Greco, and all three officers went back down to the stairs and rescued Officer Cintolo.

As other officers took Officer Cintolo out of the building, Officer Ortiz returned to the kitchen area carrying two tactical long rifles. By this time, Officer Schmidt had moved to the area where Officer Morris had been lying on the floor and was now pointing his pistol at the bedroom area, where Mr. Figueroa was on the floor still holding the shotgun. As Officer Schmidt was low on ammunition, Officer Ortiz handed one of the rifles to him,<sup>1</sup> and the two officers trained their weapons on Mr. Figueroa. When Mr. Figueroa began moving his hands, Officer Schmidt opened fire with the rifle.

Other officers assigned to the SWAT team then entered the basement and began clearing all of the rooms. Mr. Figueroa was found deceased, lying in the doorway to the bedroom with the Kel-Tec tactical shotgun in his hands. Mr. Figueroa sustained gunshot wounds to the chest, arms and head. Eighteen rounds struck Mr. Figueroa in the torso but did not penetrate the bulletproof vest he was wearing during the confrontation with police. From Mr. Figueroa's bedroom and person, police recovered a number of items including: the Kel-Tec shotgun from Mr. Figueroa's hands, the 9mm pistol that he fired at the officers on the floor near Mr. Figueroa's body, a Beretta Px4 9mm pistol from a bag, two large-capacity magazines of 9mm ammunition strapped to Mr. Figueroa's ankle, several additional loaded large-capacity magazines for the two 9mm semiautomatic pistols, and dozens of boxed and loose rounds of ammunition for both pistols and the shotgun.



*Kel-Tec shotgun after removal from Mr. Figueroa's hands. The bedroom doorway is to the right leading to kitchen area. Mr. Figueroa's body is to the right of the blood stain.*

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<sup>1</sup> As a result of his previous assignment to the Boston Police Department SWAT team, Officer Schmidt had been trained on the use of the 223 Remington long rifle.



*The 9mm semiautomatic pistol that Mr. Figueroa used to shoot and critically injured officers Cintolo and Morris during the initial confrontation near the stairs. The firearm was recovered just behind Mr. Figueroa's body. One round, partially ejected from the chamber area, is visible.*



*Two 19-round 9mm magazines strapped to Mr. Figueroa's ankle. Massachusetts law forbids the possession of magazines that can hold more than 10 rounds.*

#### IV. The Legal Standard and Conclusion

My legal analysis as to whether the actions of the involved law enforcement officials could constitute criminal acts was guided by applicable case law and legal precedent on the use of force by law enforcement.

To be lawful, an officer's use of deadly force must be objectively reasonable in light of all of the circumstances confronting the officer. Whether such actions were reasonable is evaluated from the perspective of a reasonable officer at the scene rather than the 20/20 vision of hindsight. The United States Supreme Court has explained that, "[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*, 490 U.S. 386, 396-397 (1989), and that "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2016 (2014). The Massachusetts Supreme Judicial Court has also noted, "a police officer has an obligation to protect his fellow officers and the public at large that goes beyond that of an ordinary citizen, such that retreat or escape is not a viable option for an on-duty police officer faced with a potential threat of violence." *Commonwealth v. Asher*, 471 Mass. 580, 589 (2015).

After consideration of the facts and the law, I conclude that officers Matthew Morris and Eric Schmidt acted reasonably and lawfully. My investigation established that Mr. Figueroa initiated a violent attack on three uniformed Boston Police officers engaged in a lawful investigation of Mr. Figueroa's recent violent armed assault on his roommate. After critically wounding officers Morris and Cintolo, Mr. Figueroa continued to fire at the three officers, who were in an unprotected and vulnerable position. Rather than heed commands to drop his firearm, Mr. Figueroa feigned surrender and continued to fire at the officers with two weapons. Officers Morris and Schmidt were justified in returning fire to protect themselves from Mr. Figueroa and to protect Officer Cintolo, who was lying immobilized and defenseless in the direct line of fire.

Many officers acted heroically that night in responding to the attack, including those who attempted to disarm Mr. Figueroa and those who exposed themselves to gunfire to extricate their wounded colleagues. By remaining in the line of fire to provide cover and facilitate the rescue of the wounded officers, Officer Schmidt exhibited extraordinary bravery and likely saved the lives of officers Morris and Cintolo. Under the circumstances, the use of deadly force was a lawful and reasonable exercise of self-defense and defense of others. Accordingly, I have determined that criminal charges are not warranted.