



# The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

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## *Press Release*

### DA's final statement on use of deadly force in Quincy

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Norfolk District Attorney Michael W. Morrissey's office has completed the investigation into the June 14, 2013 use of deadly force beside Rte. 28 in the city of Quincy that caused the death of Wilfredo Justiniano, Jr., age 41, of New Bedford. The investigation developed evidence to conclude that the Massachusetts State Police trooper who discharged his weapon was justified in doing so as a matter of law.

The 8-week investigation included the production and review of numerous pages of police reports. Those reports included the interviews of six civilians who witnessed some or all of the incident – including the initial 911 caller who was able to observe the events from before the arrival of police and throughout – and the interview of responding Milton Fire Department personnel and additional State Police.

The investigation included the review of the autopsy of the decedent by the Office of the Chief Medical Examiner. That autopsy found the cause of death and all injuries to be entirely consistent with the narrative provided by police, Milton Fire and civilian witnesses. State Police Crime Scene Services Section collected forensic and ballistic evidence. The forensic and ballistic evidence at the scene is consistent with the narrative provided by police, Milton Fire and civilian witnesses.

#### **The consistent narrative emerges as follows:**

On June 14, 2013 at approximately 8 a.m., a 911 call was placed from a mobile phone within the vehicle that had been travelling behind Mr. Justiniano. The vehicles had been traveling northbound on Rte. 28 just north of the Rte. 93 interchange when Mr. Justiniano stopped his car in the middle of the roadway, blocking traffic, then weaving back and forth in an erratic manner, pulling off to the side of the road, over the curb, and then back into the roadway, eventually stopping in the breakdown lane. When the now very concerned driver behind Mr. Justiniano pulled near him, she saw him with his head tilted back and his hand on his chest.

She pulled into the narrow breakdown lane between traffic and a guardrail just in front of his car and exited her vehicle. She asked if he was okay but got no response. Believing that he was experiencing a heart attack, she contacted 911 to request assistance and stayed on scene – allowing her to witness the entire event.

A State Police trooper was dispatched to the area, and the 911 call was forwarded to Milton dispatch for fire and ambulance response. Before the arrival of any first responders, Mr. Justiniano exited his car and stood by the road side. Mr. Justiniano eventually spoke but the woman was not able to understand him. She then saw him spinning in the roadway near his vehicle, wildly swinging his arms. She was fearful for his safety. Within a few minutes a uniformed state trooper in a marked cruiser arrived.



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When interviewed, the trooper stated that he arrived to see a white male standing between a white van and a dark colored car on the northbound side of Rte. 28 jumping up and down and screaming. He positioned his cruiser and immediately placed a call for backup based on his observations. He exited his cruiser but kept his distance, positioning himself at the front of his cruiser. The trooper stated that when the male, later identified as Mr. Justiniano, noticed him, he began shouting for the trooper to kill him. The trooper told him that he was not going to kill him and tried to calm him down. Mr. Justiniano then claimed to be an undercover police officer and that the trooper had to kill him. The trooper saw that Mr. Justiniano had a pen in his hand and directed him to put the pen down. Mr. Justiniano responded, "No, you want it you're going to have to kill me." The trooper again told him that he was not going to kill him, but that he needed to put the pen down. Mr. Justiniano responded by saying "Then I'm going to kill you." He then began moving toward the trooper, causing the trooper to reach for the OC spray from his utility belt. The trooper informed Mr. Justiniano that he should stop advancing or he would be sprayed. Mr. Justiniano started yelling that he was going to kill him and continued to close on him. The trooper used his OC spray, striking Mr. Justiniano in the face, but it had little effect. He used his OC spray a second time within a short time frame, again without deterrent effect. The wind caused some of the second blast of spray to contact the trooper's face, causing his own vision to be compromised. The trooper began backing away from Mr. Justiniano, blinking his eyes to clear his vision. He said Mr. Justiniano then charged at him while screaming that he was going to kill the trooper. The trooper stated that at that time he drew his service weapon and fired twice.

A civilian witness described that when the trooper initially arrived, Mr. Justiniano went, in her word, "delirious," throwing his arms in the air as he approached the trooper. She stated that the Trooper had his hands stretched outward toward him, as if trying to calm him, as Mr. Justiniano continued to close on the trooper.

Additional motor vehicles began to stop or slow as they approached the activity, which was now spilling into the travel lane. Although those witnesses were not able to hear the exchange between the trooper and Mr. Justiniano, they were positioned to view what was unfolding. Another motorist relayed that she had to stop to avoid striking the trooper as he retreated backward into traffic, visibly speaking to Mr. Justiniano, with the trooper's hands raised in a gesture the driver described as communicating "get back."

Civilian witness accounts uniformly support the trooper's narrative. Witnesses stated that after being sprayed twice, Mr. Justiniano raised his hands in a combative posture and proceeded to "lunge" at the trooper and try to "tackle" him, and that Mr. Justiniano was "real close, right on him" when two shots were heard. One witness stated that the first shot did not stop the man and that if the trooper did not shoot a second time that "he wasn't going to stop." Mr. Justiniano was wounded in the wrist and chest. A pen was among the items found on the ground in the area during processing of the scene.



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Witnesses are also consistent that when the trooper attempted to approach Mr. Justiniano after he was shot and on the ground, he continued to resist and fight the trooper. As additional personnel arrived, Justiniano continued to flail as they attempted to render assistance. He was again the subject of OC spray by a different trooper and was eventually put in handcuffs by five troopers and two Milton firefighters who were struggling to control him. Emergency medical personnel were then able to try to stabilize Mr. Justiniano. He was taken by ambulance to Milton Hospital but he did not survive his injuries.

Although unknown to first responders at the time of the incident, the Norfolk District Attorney's Office subsequently became aware through archived reports obtained from the New Bedford Police Department that Mr. Justiniano had a condition that impacted his behavior, and he had past altercations with those around him and with responding police. This history resulted in a notation in those files that Mr. Justiniano could be unstable and violent toward police.

"Our investigation supports the trooper's statements that he attempted to reason with Mr. Justiniano, tried to calm him and attempted to de-escalate the situation. When those efforts were not successful, he twice deployed non-lethal means to attempt to stop a man advancing on him while promising to kill him," District Attorney Morrissey said. "One witness to the events stated that she felt the trooper was calm and that he demonstrated, in her words, 'a lot of restraint' in his attempts to de-escalate."

Massachusetts District Attorneys are elected civilians designated by statute as the chief law enforcement officials in their jurisdictions. "The investigation into the use of deadly force by law enforcement is not only an important legal matter but an important civil rights issue and issue of public concern," District Attorney Morrissey said. "The eye-witness accounts of civilian, fire and police witnesses, supported by significant physical and ballistics evidence, leave no room for doubt. The action of this Massachusetts State Police trooper was in self-defense and was justified as a matter of law."

"This incident began with a driver stopping to help someone she believed was having a heart attack," District Attorney Morrissey said. "What has emerged is a clear picture of a tragedy for all involved. I offer my personal condolences to the family