

**OFFICE OF THE COMMONWEALTH'S ATTORNEY
CITY OF CHARLOTTESVILLE**

MEMORANDUM

To: For Public Release

From: Dave Chapman *wjk*
Commonwealth's Attorney, City of Charlottesville

Re: May 26, 2013 Shooting Incident at Birdwood Court

Date: July 1, 2013

This afternoon, members of the regular Grand Jury for the June 2013 Term of the Charlottesville Circuit Court heard evidence relating to the facts and circumstances of events that occurred on May 26, 2013 at 105 Birdwood Court. in the City of Charlottesville. These events resulted in a gunshot wound to Josue Salinas Valdez that was inflicted by Albemarle County police officer William Underwood.

The investigation of this incident was conducted by personnel of the Charlottesville Police Department. The evidence presented to the Grand Jury included:

1. A *verbatim* recording of the 911 dispatch traffic relating to this incident;
2. A contemporaneous audio recording of the incident that was captured on Albemarle County police officer James Herring's MVR (mobile video recorder) unit;
3. Unedited audio recordings of statements that officers Herring and Underwood made to Charlottesville police officer Sgt. DI Jones in the immediate aftermath of the incident;
4. Unedited videotaped statements that were later provided by officers Herring and Underwood at the Charlottesville Police Department as a part of the investigation;
5. An unedited videotaped statement that was made to Charlottesville police investigators by an eyewitness to the incident;
6. Photographs of the scene of the incident at Birdwood Court;
7. Albemarle County and Charlottesville Police department training manuals relating to the use of force; and,
8. The results of a toxicology report relating to Mr. Salinas Valdez' blood alcohol level.

(2)

The investigation determined that on May 26, 2013 at approximately 8:45 p.m., a vehicle that was stopped at a red light at the intersection of Seminole Trail and Seminole Court was rear-ended by another vehicle. The driver of the victim vehicle immediately called 911 and reported that the suspect vehicle was leaving the scene of the accident at a high rate of speed through the Seminole Square Shopping Center. The caller was able to provide a physical description of the other driver, a license plate number, and a description of the suspect vehicle.

Approximately nine minutes later Albemarle County police officers Herring and Underwood responded to 105 Birdwood Court where they located the suspect vehicle. Mr. Salinas Valdez was standing on the porch when the officers arrived. He was the registered owner of the vehicle and matched the description of the driver who fled the scene of the accident. As the officers began to question Mr. Salinas Valdez about the accident, they observed that his speech was slurred and there was an odor of alcohol coming from his person. Mr. Salinas Valdez was uncooperative. He left the porch and approached the officers, grabbing Officer Underwood. A physical struggle ensued in which officer Underwood was injured. Officer Herring deployed his taser two times during the struggle, but Mr. Salinas Valdez continued to actively resist and refused to comply with verbal commands to place his hands behind his back. During the altercation Mr. Salinas Valdez gained possession of Officer Underwood's asp. During the altercation the cartridge of Officer Herring's taser was dislodged. As a result, he went to his patrol vehicle to obtain a second cartridge.

While Officer Herring was at his vehicle, Mr. Salinas Valdez advanced on Officer Underwood, who drew his firearm while retreating and gave multiple verbal commands to Mr. Salinas Valdez to drop the asp. Officer Underwood's verbal commands to Mr. Salinas Valdez are audible on the contemporaneous recording that was available as evidence. While giving repeated verbal commands, Officer Underwood attempted to use the light on his firearm as a distraction technique by shining it in Mr. Salinas Valdez's eyes. Mr. Salinas Valdez refused to drop the asp and continued to advance on Officer Underwood. Officer Underwood audibly told him two times that he would shoot him if he did not comply with his instructions, but Mr. Salinas Valdez continued to advance toward Officer Underwood with the extended asp. Officer Underwood shot him one time in the torso. Mr. Salinas Valdez fell to the ground. Officer Underwood called for rescue and immediately began to administer first aid to Mr. Salinas Valdez.

In consideration of the evidence, the grand jurors returned four indictments against Mr. Salinas Valdez. He is charged with DUI, Felony Hit and Run, Assault of a Law Enforcement Officer and Attempted Malicious Wounding of a Law Enforcement Officer.

The Grand Jurors also received instructions regarding the law of self-defense in Virginia as it relates to the use of deadly force or potentially deadly force by any citizen, including a law enforcement officer. The Commonwealth concurs with their conclusion that no criminal charges are merited against Officer Underwood under the circumstances.

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Mr. Salinas Valdez was arrested without incident and has been admitted to bail by a magistrate. He has a first appearance scheduled on July 2, 2013 at 1:00 p.m. in the Charlottesville Circuit Court.

Bear in mind that indictments are merely charges and are not evidence of guilt. The defendant is presumed to be innocent and the Commonwealth must prove his guilt beyond a reasonable doubt.



Warner D. Chapman
Commonwealth's Attorney
City of Charlottesville