

**OFFICE OF THE COMMONWEALTH'S ATTORNEY**  
**for the**  
**COUNTY OF ALBEMARLE**

**DENISE Y. LUNSFORD**  
COMMONWEALTH'S ATTORNEY

**PHONE: (434) 972-4072**  
**FAX: (434) 972-4093**

DEPUTY  
**DARBY G. LOWE**  
ASSISTANTS  
**JON R. ZUG**  
**ELLIOTT J. CASEY**  
**WILLIAM HENDRICKS**

February 9, 2010

**U.S. MAIL AND FACSIMILE: 434-352-3498**

Captain Paul Kvasnicka  
Virginia State Police  
P.O. Box 577  
Appomattox, Virginia 24522

**RE: Shooting of Colby Wade Eppard**  
**January 1, 2010**

Dear Captain Kvasnicka:

Thank you for the information provided to me by Special Agent Dino Cappuzzo regarding the shooting of Colby Wade Eppard on January 1, 2010 in Albemarle County. I have reviewed all information provided to me by S/A Cappuzzo after the investigation and interviews conducted by the Virginia State Police. This is to summarize my legal analysis regarding your investigation into this matter.

**FACTS**

On January 1, 2010, a relative of Colby Wade Eppard ("Eppard") reported that Eppard had taken her truck without her permission. Eppard had 2 rifles with him when he left with the truck. After several reports of sightings of the truck, Greene County Sheriff's Deputy Sean Sellari ("Sellari") responded to an area where the truck was reported to have crashed and the driver, believed to be Eppard, exited the truck and fled on foot. The rifles Eppard reportedly had with him remained in the truck. Sellari parked and exited his marked patrol vehicle, left the engine running and locked the doors. Shortly after entering nearby woods to search for the driver of the truck, Sellari heard yelling and a crash which sounded like glass breaking. Nearby witnesses described a person fitting the description of Eppard use a rock to break the window of the patrol vehicle. When Sellari returned to the area where his patrol vehicle had been parked the vehicle was already out of sight. Sellari notified dispatch that his vehicle had been stolen at 12:48.

Shortly thereafter, Eppard used the police radio in the stolen Greene County patrol vehicle which he was driving. Eppard identified himself and made statements indicating that officers would have to kill him to  
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stop him. Eppard also indicated that he had possession of a loaded police issue shotgun and that he would use the weapon against officers. Video from the stolen patrol vehicle shows Eppard exit the vehicle and retrieve a shotgun and several boxes of ammunition from the trunk. Eppard can be seen loading the shotgun.

Albemarle County Police Officer David Hutchinson ("Hutchinson") encountered Eppard in the stolen patrol vehicle on Georgetown Road in Albemarle County approximately one hour after the vehicle was reported as stolen by Sellari. Hutchinson activated his emergency lights. Eppard activated the emergency lights on the Greene County patrol vehicle and turned onto the 250 bypass driving south. He missed a tire deflation device ("Stinger") deployed by another Albemarle County Police Officer and continued south on Route 29 being pursued by Hutchinson. Hutchinson lost sight of Eppard as he neared the Nelson County line on Route 29.

Shortly after entering Nelson County, Eppard turned east onto Route 6. On Route 6 Eppard encountered Albemarle County Police Sergeant Tim Seitz ("Seitz"), who was traveling west on Route 6 in his marked patrol vehicle, an SUV. As the vehicles neared each other, Eppard swerved toward Seitz attempting a head on collision. Seitz swerved to avoid Eppard, turned around and attempted to catch up with Eppard. Seitz next saw Eppard at the intersection of Green Creek Road where Eppard was stopped on Green Creek Road facing Route 6. It appeared that Eppard had been waiting for Seitz to catch up to him and Eppard pulled out as Seitz approached, again traveling east on Route 6.

Farther East on Route 6, Scottsville Police Officer Ron Morris ("Morris") had positioned his vehicle such that Eppard would pass Morris as he traveled east toward Route 20. Virginia State Police Officer Tom Skehan ("Skehan") passed in front of Morris traveling west when Morris saw Eppard, who was traveling east, swerve toward Skehan's marked vehicle. As Eppard and Skehan neared each other Eppard slowed and Skehan and Morris observed Eppard point a shotgun in their direction out of the window of the stolen patrol vehicle he was driving. Morris pulled out directly behind Eppard with his lights and siren activated. Skehan executed a turn in the road and fell in behind Morris. Seitz was behind Skehan with his emergency equipment also activated. Eppard made a left onto Route 20 from Route 6. A Virginia Department of Game and Inland Fisheries Conservation Officer fell in behind Seitz and the pursuit traveled north on Route 20. Law enforcement officers were advised that Eppard had threatened to use the weapon from the stolen patrol vehicle and had brandished a shotgun at law enforcement officers on Route 6. Law enforcement had also been advised by their respective dispatches that Eppard had stated that he would not be taken alive.

Greene County Sheriff Chief Deputy Randy Snead ("Snead") had been attempting to locate the stolen patrol vehicle and was in North Garden when he was advised by phone that Eppard had turned onto Route 6. Snead traveled east toward Route 20 and arrived at Route 20 at Keene to be in position in the event Eppard turned north on Route 20. Snead was behind Albemarle County Police Officer Mike Fields ("Fields"). Also at this intersection was Albemarle County Police Officer Caleb Marden ("Marden"). At the direction of Seitz, Marden set up his Stinger for deployment just south of the intersection of Route 20 and Plank and Coles Rolling Roads with his marked patrol vehicle facing southbound oncoming traffic. As he passed Marden's position Eppard placed the shotgun out the driver window and across the

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windshield of the stolen patrol vehicle and fired at Marden and Fields. As the stolen patrol vehicle hit the Stinger, Snead pulled out in front of Eppard with lights and siren activated in an attempt to warn oncoming traffic. In his rear view mirror, Snead saw that Eppard had the shotgun out the window of the vehicle. Eppard passed Snead as the two vehicles overtook a tractor trailer which was northbound on Route 20.

Eppard fired additional shots during this time and Snead asked Greene County dispatch to inform other law enforcement officers that Eppard was shooting.

Albemarle County Police Officer Marcus Baggett ("Baggett") had been monitoring the pursuit and knew that Marden was going to attempt a Stinger deployment at Keene. He heard the call that shots had been fired by Eppard and that the Stinger had been successful. Baggett had positioned himself at Harris Creek Road with his marked patrol vehicle pointed south in the southbound lane with his Stinger set up. Baggett saw the stolen patrol vehicle driven by Eppard traveling north in the southbound lane directly toward Baggett's vehicle. Baggett backed away from his vehicle and could see that the driver's side tires on the stolen vehicle had made contact with the Stinger deployed by Marden. Eppard moved to the northbound lane. Baggett deployed his Stinger and all tires on the vehicle driven by Eppard ran over the spikes. Baggett got back in his car and followed the pursuit north on Route 20. Also involved in the pursuit north on Route 20 was Albemarle County Police Officer Scott Miller ("Miller").

By this time, Albemarle County Police Officer Andy Gluba ("Gluba") had positioned himself on Route 20 just south of Red Hill Road and was attempting to prohibit vehicles from traveling south. Gluba was monitoring Albemarle County Police radio traffic.

After passing Baggett's location the tires on the stolen Greene County patrol vehicle were coming apart and Eppard began to lose control of the vehicle. He barely avoided a head-on collision with a truck traveling south on Route 20 and completely lost control of the vehicle after crossing Carter's Bridge. The vehicle driven by Eppard came to rest in a ditch on the east side of Route 20 facing north.

After hearing that Eppard had passed Baggett's location Gluba moved his marked vehicle further south until he could see the Greene County vehicle in the ditch. Gluba positioned his vehicle so as to avoid crossfire from northbound law enforcement. Trooper Brooks Taylor ("Taylor") a Virginia State Police Officer who had been positioned just south of Interstate 64 on Route 20 also proceeded south after being advised that the vehicle driven by Eppard had hit the Stinger and was slowly traveling north on Route 20. Taylor came upon Gluba's marked patrol vehicle parked in the southbound lane of Route 20 and parked behind Gluba.

After the patrol vehicle driven by Eppard came to rest there were 14 other law enforcement vehicles in the immediate area – 2 southbound and to the north of the vehicle driven by Eppard and 12 northbound and to the south. Other than the Greene County patrol vehicle driven by Eppard there were 3 marked Virginia State Police vehicles including the one driven by Skehan, an unmarked Greene County Sheriff's Office vehicle driven by Snead, Morris' marked Scottsville Police Department patrol vehicle, and marked Albemarle County Police vehicles driven by Gluba, Fields, Marden, Seitz, Miller, and Baggett, among others. Emergency equipment was activated on most law enforcement vehicles.

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After the stolen patrol vehicle driven by Eppard came to a rest Eppard continued to fire on the law enforcement officers. One officer described Eppard as firing the weapon from the patrol vehicle "as soon as the car hit the ditch". Officers continually yelled to Eppard to put down his weapon. Eppard did not comply, however, and fired the shotgun at officers positioned both in front of and behind him. Officers in front of and behind Eppard describe hearing shot bounce on the pavement around them and through the trees overhead. The majority of the officers to the south of Eppard took cover behind the unmarked patrol vehicle driven by Snead which was just in front of the marked patrol vehicle driven by Skehan. After Eppard began firing from the vehicle as it rested on the side of Route 20 law enforcement officers fired on Eppard for the first time. After firing numerous shots at officers while inside the patrol vehicle Eppard exited the vehicle he had been driving and fired at law enforcement officers positioned to the south of

(behind) him. Law enforcement again returned fire. Eppard fell to the pavement with the shotgun underneath him. Officers from 3 agencies fired their weapons. They were Gluba, Fields, Marden, Miller, Baggett, Snead and Skehan.

After Eppard fell to the pavement officers approached, removed the shotgun from underneath his body in order to secure the area, and called for rescue. At this point, however, Eppard had no pulse. The time was 2:30.

The patrol vehicle driven by Eppard was continually observed but not touched by law enforcement until such time as the Virginia State Police arrived. All patrol rifles and shotguns used by law enforcement were collected by officers not involved in the shooting or pursuit. The shotgun which had been in Eppard's possession was continually in the sight of, but not touched by, an Albemarle County Police officer until the VSP arrived.

## INVESTIGATION

Virginia State Police investigators were notified by VSP dispatch, which was in phone contact with Albemarle County dispatch, immediately after officers fired shots. VSP investigators were on the scene by 4:30 to begin their investigation. The patrol vehicle driven by Eppard had suffered significant damage including numerous holes from gunfire in the front windshield, roof, lightbar, trunk, and rear bumper. The rear window had been broken out. All four tires were shredded off their rims. From inside the stolen patrol vehicle several empty 12 gauge ammunition boxes as well as spent 12 gauge cases were recovered. Additional spent 12 gauge cases were recovered outside the vehicle.

The marked patrol vehicle driven by Gluba, positioned to the north of Eppard, had a projectile strike in the windshield. The unmarked patrol vehicle driven by Snead positioned immediately to the south of Eppard had numerous holes in the front windshield, hood, front bumper and roof. The marked VSP vehicle driven by Skehan, positioned to the south of Eppard and immediately behind Snead, had a projectile strike in the windshield. One other VSP vehicle positioned to the south of Eppard had a projectile strike in the windshield. Numerous spent rifle and shotgun cases were recovered around the patrol vehicle driven by Snead and the patrol vehicle driven by Gluba.

VSP investigators collected the shotgun Eppard had used which was empty. Firearms used by law enforcement officers were also released to the VSP investigators. Investigators interviewed officers

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involved in the pursuit and each officer who discharged his weapon. Investigators collected and reviewed videos from dashboard cameras from the vehicle driven by Eppard and by other law enforcement vehicles. Also reviewed were audio recordings of Greene County, Albemarle County and VSP dispatch/radio traffic as well as a recording of a phone call between Albemarle County and VSP dispatch.

Eppard's body was taken to the Office of the Chief Medical Examiner for autopsy. Autopsy findings established that Eppard died from gunshot wounds. Pending at the time of this letter are the results of a lab analysis of Eppard's blood for drugs and alcohol as well as analysis of a gunshot residue collection kit taken from Eppard's hands.

All information collected by the VSP investigators was provided to me for review in this analysis. I also reviewed scene photographs, dispatch/radio traffic recordings, videos and a scale drawing of the scene.

## ISSUES

These facts require analysis of whether criminal charges should be brought against any officer who discharged his weapon at Eppard on January 1, 2010.

## LEGAL ANALYSIS

Law enforcement officers were initially alerted to the theft of a marked Greene County patrol vehicle by a person believed to be Colby Wade Eppard. While officers were searching for that vehicle, Eppard used the police radio in the vehicle to communicate his identity and that law enforcement would have to kill him in order to stop him. During the ensuing hour and a half Eppard continued to communicate through words and actions his refusal to submit to law enforcement authority or to return the stolen vehicle. Moreover, Eppard repeatedly communicated, again in both word and action, his intent to harm and kill law enforcement officers.

By the time the stolen patrol vehicle driven by Eppard came to rest on the side of Route 20, law enforcement officers from the Virginia State Police, Greene County Sheriff's Department, and the Albemarle County Police Department had been engaged in the pursuit of Eppard for numerous miles. Eppard had verbally communicated numerous threats to law enforcement over the police radio located in the stolen patrol vehicle. In addition, during the approximately 15 minutes which passed between the time Eppard swerved toward Seitz on Route 6 and the time the vehicle driven by Eppard came to rest on the side of Route 20, Eppard eluded law enforcement officers who were driving marked vehicles with emergency lights and sirens activated, swerved directly toward law enforcement officers several times, narrowly missed colliding with at least one uninvolved civilian, brandished the shotgun in his possession at law enforcement officers, and discharged that firearm at officers. Law enforcement officers who converged on the scene of the vehicle driven by Eppard as it came to rest in the ditch were aware of Eppard's actions in the minutes immediately preceding either through personal experience or radio communications.

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Once Eppard's vehicle came to rest, surrounded by 14 law enforcement vehicles, Eppard continued to refuse to submit to the verbal commands being given by law enforcement to put down his weapon. Instead, Eppard fired on law enforcement officers from within the vehicle then exited the vehicle in what one officer described as a "combat ready" stance and again fired on law enforcement. Officers present on the scene were identified visually, if not verbally, as law enforcement by their uniforms, badges of authority, marked patrol vehicles (with the exception of Snead's unmarked vehicle), emergency lights and sirens. Eppard's verbal statements made over the radio in the stolen patrol vehicle also make it clear that he knew he was being pursued by law enforcement. Eppard's actions presented an imminent threat of death or serious bodily harm to law enforcement.

When Eppard continued to fire his weapon, law enforcement officers present on the scene had no choice but to return fire in order to protect themselves and others. Their actions in doing so eliminated the continuing threat presented by Eppard. As a result, it is my determination that no charges be brought against the law enforcement officers who fired their weapons.

It is not legally relevant to this analysis to know which officer or officers fired fatal shots because each law enforcement officer present on the scene was in the same position with regard to Eppard. The number of officers who fired their weapons or number of shots fired by law enforcement is also not relevant to this inquiry. Each officer who fired, each of whom was lawfully present on the scene that day in the lawful

performance of his duties, was in danger of being injured or killed by the shots fired by Eppard. Each officer had a responsibility eliminate the continuing danger.

The result of the lab analysis of the gunshot residue kit collected from Eppard's hands would not be useful in this analysis in light of the fact that Eppard was the only occupant of the stolen patrol vehicle and was personally observed firing the shotgun in his hands by numerous officers. Finally, the results of the lab analysis of Eppard's blood for drugs or alcohol would be beneficial in knowing what might have led him to engage in the dangerous and criminal behavior on this day but is not factually relevant to the analysis at hand. Even if the facts as they appeared to law enforcement on the scene indicated that Eppard was substantially impaired by drugs or alcohol, which they did not, his other actions still presented an imminent threat of death or serious bodily harm to everyone present.

## CONCLUSION

My office will not attempt to obtain indictments against the Virginia State Police Officer, the Greene County Sheriff's Deputy, or the Albemarle County Police Officers who fired on Colby Wade Eppard on January 1, 2010 on Route 20 in Albemarle County.

Once again, Paul, I very much appreciate the prompt response and investigation by the Virginia State Police on behalf of Albemarle County. Dino Cappuzzo's work as well as that of Special Agent John Rieger and the other investigators who assisted with this matter was both thorough and efficient. I am also appreciative of the response by the Troopers present on the scene as well as VSP dispatch who worked with Albemarle County Police and others in responding to this sad and unfortunate situation.

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Along with this letter I am returning to you the case file and discs provided to me by Dino for my review in performing this analysis.

Sincerely and respectfully,

Denise Y. Lunsford  
Albemarle County Commonwealth Attorney

cc: Albemarle Police Chief John Miller  
Greene County Sheriff Scott Haas  
First Sergeant Lisa Roakes, Virginia State Police  
Kelly Hobbs, Esq.  
Special Agent Dino Cappuzzo