



# INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Shooting Death in  
Baltimore County on January 31, 2023

April 11, 2023

**Interim Report of the Independent Investigations Division of the Maryland Office of the Attorney General Concerning the Officer-Involved Death of Brian Roger McCourry, on January 31, 2023**

Pursuant to Md. Code, State Gov't § 6-602, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this report to Baltimore County State's Attorney Scott D. Shellenberger regarding officer-involved shooting of Brian Roger McCourry.

The IID is charged with "investigat[ing] all police-involved incidents that result in the death of a civilian or injuries that *are likely to result in the death of a civilian*"<sup>1</sup> and "[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-602(c)(1), (e)(1). Due to the delay between the shooting and Mr. McCourry succumbing to his injuries, an autopsy was not performed until March 4, 2023. The IID and the State's Attorney's Office agreed that an interim report would be useful. This interim report is being provided to the Baltimore County State's Attorney on April 11, 2023. The IID will supplement this interim report when it receives the results of the autopsy examination from the OCME.

## **I. Introduction**

On January 31, at 6:07 a.m., detectives with the Baltimore County Police Department's Criminal Apprehension Support Team (CAST) were in the 10700 Block of Pulaski Highway in White Marsh, at the Royal Farms store, conducting surveillance on a SUV occupied by Brian Roger McCourry and [REDACTED]. Detectives were searching for both Mr. McCourry and [REDACTED] as they had outstanding warrants and were also separately wanted in connection with two shootings that had occurred in December 2022. Detectives attempted to perform a vehicle block and pin the SUV between their cars and the gas pump. The driver of the SUV, Mr. McCourry, maneuvered out of the block, and struck an unmarked, unoccupied police vehicle in front of him before continuing through the parking lot. One detective, Jonathan Trenary, discharged his firearm, striking Mr. McCourry in the neck. The SUV continued traveling through a parking lot and struck an unrelated civilian vehicle, causing only property damage. Mr. McCourry was taken to Johns Hopkins Bayview Hospital, [REDACTED]. He died at the hospital on March 3.

This report includes an analysis of Maryland statutes that could be relevant in a case of this nature. The IID considered the elements of each possible criminal charge, the relevant departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Baltimore County State's Attorney's Office—not the Attorney General's Office—retains prosecution authority in this case, this report does not make any recommendations as to whether any individuals should or should not be charged.

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<sup>1</sup> The decision of whether an injury is "likely to result in death" falls exclusively with the IID. State Gov't § 6-602(b)(2).

## II. Factual Findings

The following findings are based on an examination of the shooting scene as well as a review of surveillance video and body camera footage; ██████████ computer-aided dispatch records; police reports; interviews with civilian and law enforcement witnesses; forensic analysis of the firearm; and Mr. McCourry's medical records. Unless otherwise noted, the facts in the below summary come from the Royal Farms surveillance video and interviews with civilian witnesses and CAST detectives.<sup>2</sup> All materials reviewed in this investigation are being provided to the Baltimore County State's Attorney's Office with this report and are listed in Appendix A.

### A. Initial Investigation and January 26 attempted apprehension

Baltimore County Police Department ("BCPD") detectives with the Criminal Apprehension Support Team were tasked in early January with assisting Violent Crimes Unit detectives with an investigation into two shootings in December 2022.<sup>3</sup> The BCPD Administrative Manual details that the Criminal Apprehension Support Team is tasked with investigating, conducting surveillance, and apprehending criminals actively involved in current crime trends or crimes of violence. They further are called upon to attempt to apprehend fugitives and serve outstanding warrants for high profile cases.

Sergeant James Conaboy, the sergeant of one of the two CAST teams, said that he first became aware of an investigation into the December 23 and 29 shootings, and more specifically Mr. McCourry and ██████████ when VCU detectives ██████████  
██████████

CAST detectives were tasked with locating and apprehending Mr. McCourry and ██████████ ██████████ for the first time in late January. Sergeant Conaboy and his squad met with Violent Crimes detectives on January 24 for a briefing by VCU detectives. This included an information packet related to Mr. McCourry and ██████████ prior criminal history, details about both shootings, forensic analysis of the December 23 shooting that indicated there were two guns used in the incident, ██████████. When interviewed by IID investigators, CAST detectives provided this packet to the IID for review. Sergeant Conaboy told investigators that ██████████ he had concerns that there might be weapons in the vehicle during any apprehension. After the briefing, Sergeant Conaboy said that he was concerned that he did not have sufficient people for that operation and the next day, on January 25, he briefed Sergeant Brad Bakhsh, the sergeant with the other CAST team, and asked him for assistance.

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<sup>2</sup> CAST detectives work in a plain-clothes capacity and are not equipped with body cameras.

<sup>3</sup> The December 23 shooting in Essex involved an individual being shot in the buttocks. Forensic investigators recovered fifteen spent cartridge casings from two different guns. The victim confirmed that at least one of the shooters was a male, and later identified Mr. McCourry as one of the shooters. The December 29 shooting, also in Essex, was a road rage incident where Mr. McCourry allegedly shot at the victim and his daughter, while ██████████ drove the Kia. No one was struck in the second incident.

CAST and Violent Crimes detectives told IID investigators that they had created an operational plan, which was also later provided to the IID. The plan involved taking Mr. McCourry and [REDACTED] into custody while they were in their vehicle, as they did not appear to live or spend enough time at a residence to make it possible to obtain a search warrant for an address. Violent Crimes detectives had obtained a search and seizure warrant for the residence they had been known to frequent in the past, but based on surveillance they were not believed to be currently staying there.

In the early morning hours on January 26, both CAST teams attempted to apprehend Mr. McCourry and [REDACTED] in the Kia. The detectives said that they confirmed [REDACTED] the location of the Kia and Sergeant Conaboy attempted to get “eyes” on the vehicle. [REDACTED] When he first drove past the Kia, Sergeant Conaboy told investigators that he did not believe Mr. McCourry saw him, but a trash truck pulled in after Sergeant Conaboy and the Kia immediately left the parking lot. Mr. McCourry, who was driving, then seemed “very paranoid” and detectives said that when a car passed his location, he would move the Kia to another location and park. The Kia finally parked on a road that had only one way in and one way out. CAST detectives said that was when they decided to move in and attempt an apprehension. Both CAST teams moved into position, and a detective drove by to confirm that they were still in the vehicle. As the detective was performing the drive-by, Mr. McCourry once again drove away and passed all five CAST cars—Sergeant Bakhsh’s team—that were driving, in a line, towards his location. Detectives said that they believed that upon seeing all the cars on the road at 4:45 a.m. Mr. McCourry was aware that officers were trying to arrest him. Detectives later told IID investigators that the Kia then took a series of evasive maneuvers and drove throughout Baltimore County without an obvious destination. CAST detectives said they continually followed the Kia for the remainder of the morning, [REDACTED] Every time the detectives said they would get close to the Kia’s location, Mr. McCourry would drive away. Ultimately, Sergeant Conaboy said that the vehicle was abandoned in Baltimore City near Patterson Park, and they discontinued their surveillance that day in the hopes that Mr. McCourry would return to the vehicle [REDACTED]

#### B. January 31 apprehension at Royal Farms

On January 31 at approximately 5:30 a.m., Sergeant Bakhsh’s squad—Sergeant Bakhsh, Detective Gregory Depew, Detective Scott Fischer, Detective Phillip Wilson, Detective Jonathan Trenary, and Detective Bryan Lange—again began surveillance on the Kia Sportage. CAST detectives [REDACTED] once again [REDACTED]

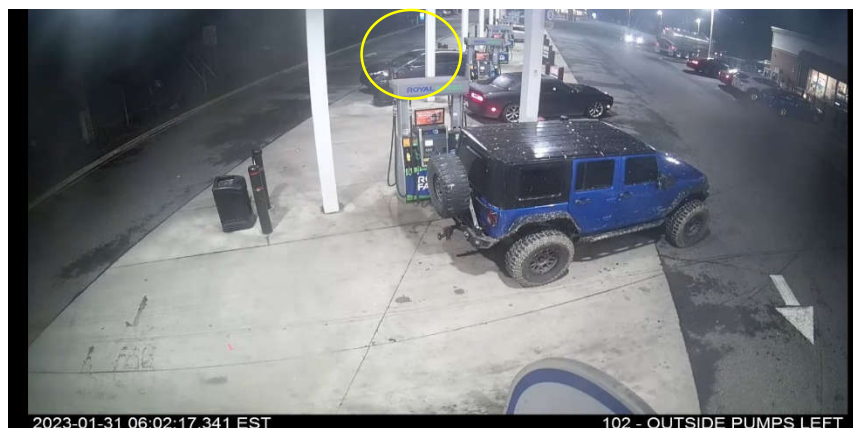
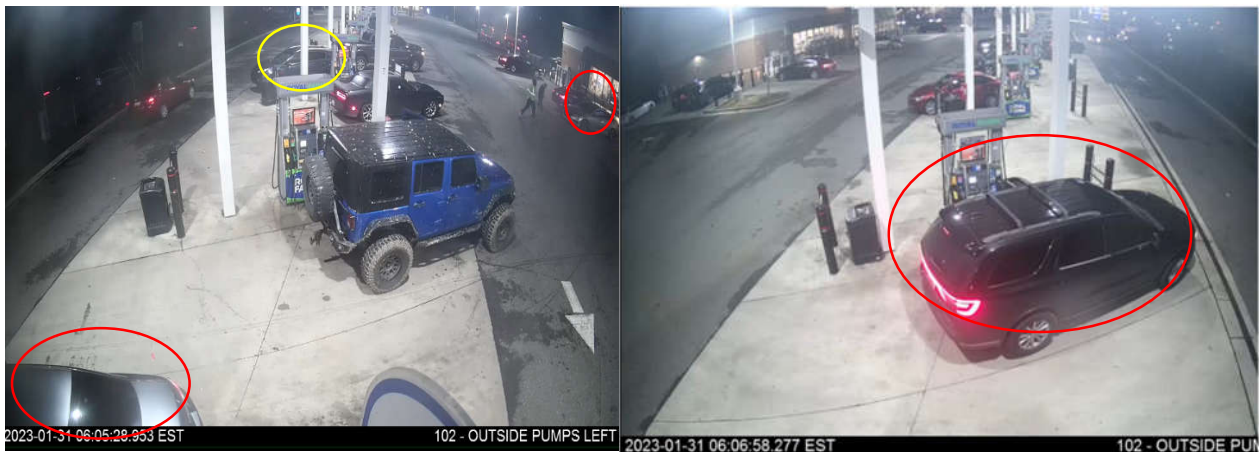


Figure 1. Still photograph taken from Royal Farms surveillance of the Kia at the gas pump.

██████████ that the Kia was located at the Colony Motel in White Marsh. ██████████  
██████████ The CAST detectives went to that location and later told IID investigators that they were planning to apprehend Mr. McCourry and ██████████ at the motel. Before they could do so, Detective Depew said that he watched the pair leave the motel room and get into the Kia. Mr. McCourry was driving, and ██████████ was in the passenger seat. CAST detectives followed the vehicle down Pulaski Highway and watched it turn into the Royal Farms convenience store at the corner of Pulaski Highway and Ebenezer Road. Royal Farms surveillance video recorded the Kia pulling into the gas station at 6:02 a.m. The Kia went to pump #6, and neither Mr. McCourry nor ██████████ exited the vehicle to pump gas or go inside the convenience store.

Based on review of the surveillance video, CAST detectives followed and pulled into the gas station, setting up in parking spaces around the Kia at 6:04 a.m. None of the officers seen on camera exited their vehicles to pump gas or went inside the Royal Farms store.



Figures 2 and 3. Royal Farms surveillance showing the CAST vehicles in red circles and the Kia in a yellow circle. These pictures are taken from surveillance cameras on the two opposite ends of the parking lot, facing each other.

The surveillance video shows that at 6:07 a.m. Detective Lange began to inch forward from his parking space. That action was noted by a nearby civilian who was pumping his gas at pump #4. Detective Lange began the “vehicle block” at 6:07:29 a.m. The CAST detectives surrounded the Kia at pump #6 and attempted to block it into the space on all sides. The detectives were in unmarked cars, but the surveillance video showed



Figure 4. Royal Farms surveillance showing the CAST vehicles beginning the vehicle block.

that at least the back two vehicles activated their emergency lights, located in the dashboard, grill, and top of the windshield, as they swarmed the Kia. Additionally, when interviewed by IID investigators, some of the CAST detectives said that Detective Fischer briefly activated his siren.<sup>4</sup> The surveillance video shows that at 6:07:32, the SUV driven by Detective Trenary struck

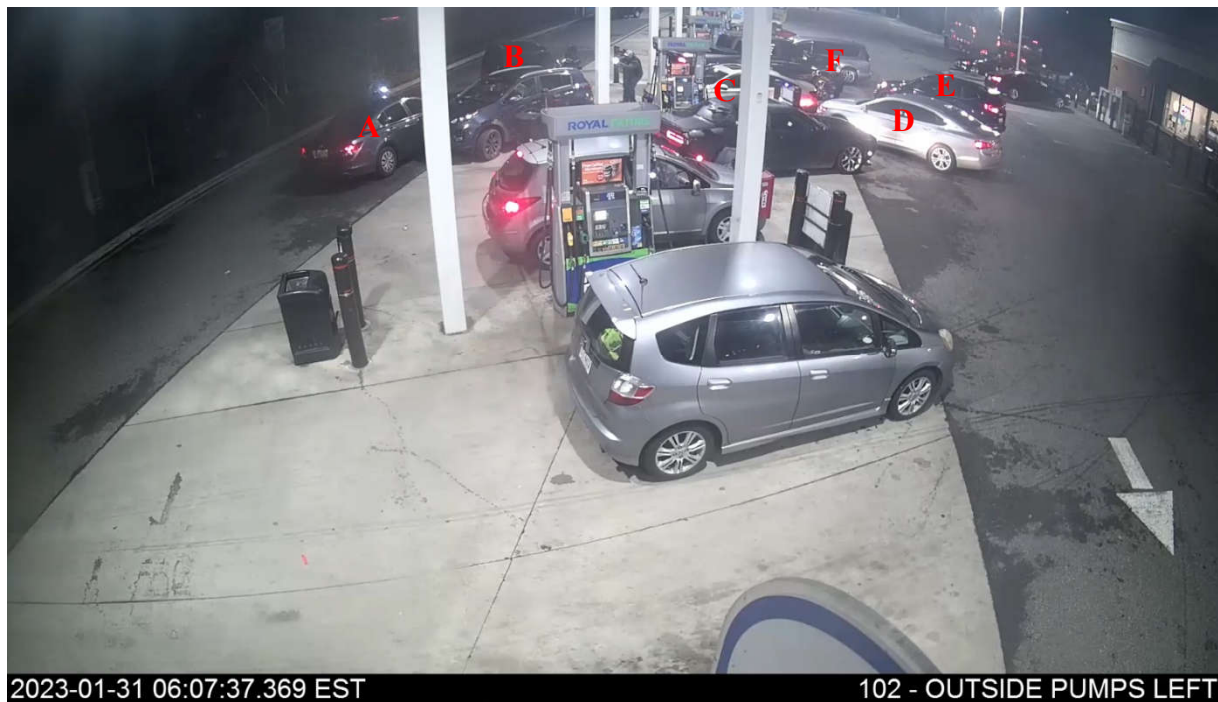


Figure 5. Surveillance video showing Detective Depew standing to the side of his car while the Kia is striking it. Letters A-F represent the CAST vehicles. A: Detective Depew, B: Detective Trenary, C: Detective Fischer, D: Detective Wilson, E: Detective Lange, F: Sergeant Bakhsh.

<sup>4</sup> When interviewed, numerous CAST detectives said that he did not keep the siren on longer, because they had recently been in a similar situation and kept their sirens on, but no one on scene—officers or civilians—were able to hear commands over the noise.

the right front passenger side of the Kia. Detectives Wilson and Fischer, Sergeant Bakhsh, and [REDACTED] all later told IID investigators that the Kia was initially pinned against the black pillar protecting the gas pumps. Based on a review of surveillance video, the Kia then drove forward and struck the sedan driven by Detective Depew at 6:07:35. At the time the Kia drove forward, Detective Depew was out of the vehicle, standing at the driver's side door with his gun drawn. Detective Depew moved back and away from his vehicle at 6:07:37.

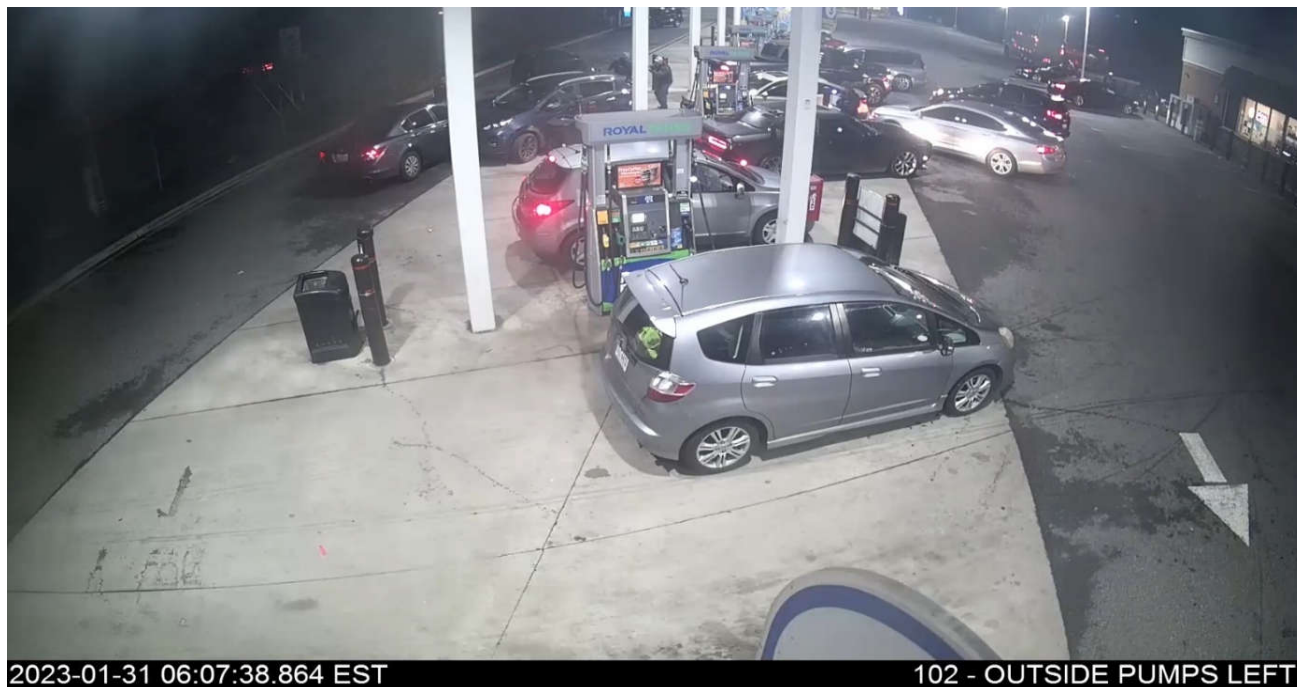


Figure 6. Surveillance video showing the Kia backing up towards Sergeant Bakhsh and Detective Trenary.

The Kia is then seen on the surveillance backing up at 6:07:38; at the time, Sergeant Bakhsh was standing behind the Kia with his gun drawn. Detective Trenary then came from Sergeant Bakhsh's right side, crossing in front of him while Sergeant Bakhsh had his gun drawn, and towards the reversing Kia at 6:07:39. The Kia did not strike the officers. The surveillance video shows that at 6:07:40, the Kia once again drove forward and again struck the vehicle that had been occupied by Detective Depew, who at that time was standing at the front of his car at the left front hood. The Kia was able to maneuver so that it was no longer blocked by Detective Depew's vehicle.

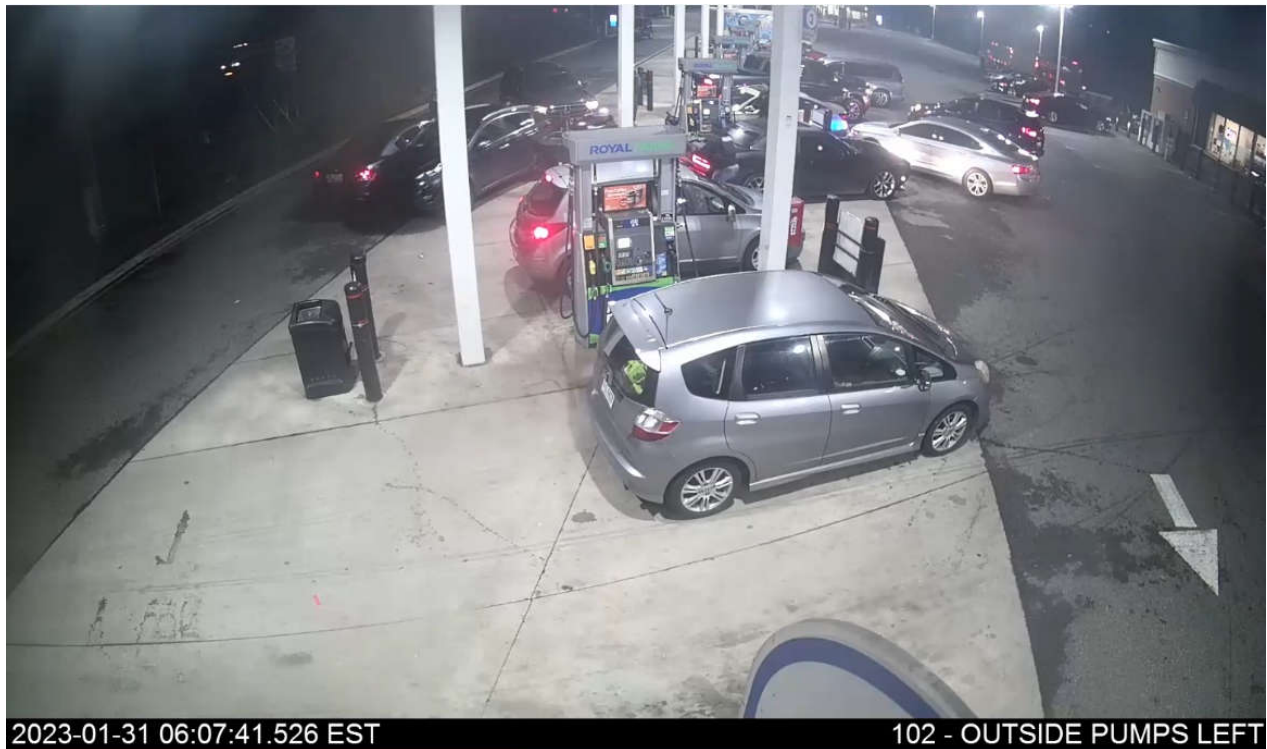


Figure 7. Surveillance video showing the Kia drive past Detective Depew's vehicle. Detective Trenary can be seen on the driver's side of the Kia.

The surveillance video shows that at 6:07:41, as the vehicle started driving away from the gas pump, Detective Trenary can be seen alongside the driver's side of the Kia and fired one shot from his service weapon into the driver's-side window. The video is not clear enough to confirm when the shot was fired, but a defect in the driver's side window can be seen at 6:07:41:359 that was not present at 6:07:39:863. After the shot, the Kia drove straight ahead approximately 150 feet, struck a curb, entered the intersection, and hit a truck that was driven by a civilian.

CAST detectives approached the Kia slowly and obtained a shield from the back of Sergeant Bakhsh's van. The detectives told IID and MSP investigators that they first removed [REDACTED] who was not injured. They then attempted to extricate Mr. McCourry. Three detectives were needed to remove Mr. McCourry from the Kia, as the impact of the crash had wedged his feet below the pedals and jammed the driver's side door closed. When they got him out of the car, they laid him on the ground and immediately began performing CPR [REDACTED] [REDACTED] Sergeant Bakhsh called for paramedics at 6:10 a.m.; the detectives continued CPR until EMS arrived at 6:19 a.m. and transported Mr. McCourry to the hospital. Body-camera footage from patrol officers who responded to the shooting call also confirmed that CAST detectives were performing CPR when they arrived on scene at approximately 6:12 a.m.

Investigators subsequently searched the Kia, and no weapon or gun was found inside. Mr. McCourry was taken to Johns Hopkins Bayview Hospital where doctors determined that the bullet struck him on the left side of the neck, [REDACTED] [REDACTED] He died on March 3, 2023.



### C. Civilian Witness Statements

#### 1. [REDACTED]

[REDACTED] was interviewed twice during this investigation. She was first interviewed by BCPD detectives on the morning of January 31,<sup>5</sup> and IID investigators conducted a follow-up interview on February 6.<sup>6</sup> [REDACTED] told BCPD investigators on January 31 that she and Mr. McCourry went to the Royal Farms store to get gas and “a bunch of detectives pulled up.” She told the investigators that both she and Mr. McCourry knew they were detectives, as they were “coming from everywhere.” She could not hear them yelling anything or announcing that they were police, and she said that she did not see any police lights. She further stated that the windows of the detectives’ vehicles were blacked out. [REDACTED] told the BCPD detective that Mr. McCourry said something to the effect of, “oh shit” when the officers attempted to block them in and that she said, “oh my God.” [REDACTED] described a black SUV “ramming the front of them” as another car came from the side and boxed them in. She said that Mr. McCourry “hit the gas” and “they shot him in the head” as his foot was on the gas. She was not aware that Mr. McCourry had been hit until after their car hit another vehicle and the air bags deployed.

[REDACTED] confirmed to the BCPD detective that she knew that she was wanted, but that she did not believe that Mr. McCourry was aware that he also had outstanding warrants. She was aware that he had a court date sometime in December that he did not appear for, so she assumed that he had a warrant. When asked about the attempted apprehension the Thursday before, [REDACTED] admitted that she was “probably” with him but did not remember any police with lights or sirens.

[REDACTED] further told BCPD investigators that when Mr. McCourry was attempting to get away at the gas pump, and contrary to the surveillance footage, he did not strike the car in front of him as he hit the gas pedal. She estimated that after the car came to a stop it took approximately 10 minutes for officers to render medical aid to Mr. McCourry, which is also contrary to EMS records and body camera footage from patrol officers responding to the shooting.

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<sup>5</sup> At the time that she was interviewed by BCPD, she had been arrested and was in police custody. BCPD homicide detectives *Mirandized* her prior to interviewing her, but only questioned her about the shooting earlier that morning. They later re-*Mirandized* her and asked about the December shooting incidents, although she declined to speak about those. She was subsequently charged with firearms-related offenses on January 31.

<sup>6</sup> [REDACTED] was still in custody when she was interviewed by IID investigators and agreed only to speak about the January 31 incident.



Figure 8. Damage to the Kia's driver side from the concrete piling.

When [REDACTED] was interviewed by IID investigators, she confirmed much of the above statement. She further clarified that the vehicle block caused their car to be “stuck against the gas pump”—between the pole and the pump—before Mr. McCourry tried to drive away. She once again stated that she did not see any police lights or hear any commands until after Mr. McCourry was shot but said that he knew he had an open warrant for failing to appear at a court date.

[REDACTED] told IID investigators that they “didn’t know they were being followed or watched,” as she assumed that Mr. McCourry would have said something if he knew. [REDACTED] also remembered that “a couple of days before” Mr. McCourry believed they were being followed. She had been asleep in the car, and he woke her up and said they were being chased. She then recalled the next day that they were in the car at a convenience store and a car “tried to ram the front” of them, but they “got out of there.”<sup>7</sup> She did not believe anyone had their lights on during that previous incident, but Mr. McCourry told her that he thought it had been the police. [REDACTED] also told IID investigators that Mr. McCourry sometimes carried a gun when they were out in public and that they had guns at his mother’s house, but that it was rare for him to take guns out of the home.

## 2. [REDACTED]

[REDACTED] was interviewed by a BCPD detective while on scene at the Royal Farms on the morning of January 31 and again by IID investigators on February 22. He said that he stopped at the Royal Farms most mornings for coffee on his way to work. On the morning of the incident, he pulled into pump #4 and was getting out of his car when he noticed a silver car that was repeatedly inching forward “2-3 inches” and stopping, but not pulling out. He next heard a car “banging through the pumps” and saw Mr. McCourry’s vehicle “coming through the lot, trying to snake through” and then hit “a couple cars.” [REDACTED] recalled hearing the officers say, “stop, stop, get out of the car, get out of the car, put your hands up, put your hands up, get out of the car.”

[REDACTED] was not aware of anything that had transpired prior, as he first noticed the car when he heard the noise from the “crash.” He said that he saw Mr. McCourry’s car “trying to get through” and that “he did get through by banging into the other car.” [REDACTED] heard one gunshot, but he was not sure who fired it. Afterwards, he saw Mr. McCourry’s car crash into another vehicle and heard officers telling him to “get out of the car, get out of the car.”

[REDACTED] was aware that there were two people in the car, but never saw anyone get out. He further recalled seeing the officers in “police gear.”

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<sup>7</sup> There is no indication that there was a third encounter between Mr. McCourry and [REDACTED] and law enforcement. All evidence indicates that the only attempted apprehensions occurred on January 26 and 31.

3. [REDACTED]

[REDACTED] was interviewed by MSP and IID investigators on February 7. [REDACTED] was on his way to work at approximately 6:05 a.m. when he got to the traffic light next to the Royal Farms. [REDACTED] heard “something like a pop” and saw a car “coming at [him] in a dust cloud.” The car hit a curb and then struck [REDACTED] vehicle. He sustained no injuries, but his vehicle was damaged in the accident. [REDACTED] then saw a minivan or SUV pulled up and plain-clothes



Figure 9. Cell phone photo taken by [REDACTED] just after the Kia crashed into his vehicle.

police officers with guns drawn and officers with shields get out and approach the vehicle that had just struck him. [REDACTED] did not observe anything that occurred in the Royal Farms parking lot prior to the collision.

[REDACTED] said the officers were not in uniform and that he did not see anything that would indicate to him that they were police, although the photograph he took (Figure 9) reflects that they were wearing vests with “POLICE” on them. [REDACTED] did recall that after he was struck, an ambulance arrived on scene “pretty quickly,” approximately 15 minutes later.

[REDACTED] did not see anyone get into the ambulance but noted that it was only on scene briefly before it left and a BCPD police car followed.

#### D. Law Enforcement Statements

Under Maryland law effective July 1, 2022, a police officer must “fully document all use of force incidents that the officer observed or was involved in.” Public Safety § 3-524(e)(4). The law does not provide further guidance about what “fully document” means. The Baltimore County Police Department’s Use of Force Policy requires that officers complete a report before the end of their shift when they were involved in a use of force incident such as this. *See* Appendix B.

All subjects of criminal investigations—including police officers—have a right under the Fifth Amendment not to make any statement. That right also applies to written statements. Thus, if a statement is ordered, the result of threat, or otherwise compelled (*i.e.*, not voluntary), it cannot be used against an officer in a criminal investigation and should not be considered by criminal investigators. *Garrity v. State of N.J.*, 385 U.S. 493 (1967) (holding that officers’ statements made under threat of termination were involuntary); *Department of Public Safety and Correctional Services v. Shockley*, 142 Md. App. 312, 325 (2002) (“the dispositive issue is

whether [the supervisor] *demanded* that the appellee answer the questions”) (emphasis in original).

Here, Detective Trenary did not make a statement to IID or MSP investigators. He did provide a written statement to BCPD at the direction of his supervisor and pursuant to departmental policies. That statement was provided to a screening team, who reviewed it and determined the statement met the criteria for a compelled statement. As such, the statement was not reviewed by the investigators in this case, and neither Detective Trenary’s statement nor any information derived from it was used in this investigation.

The remaining five members of the CAST team—Sergeant Brad Bakhsh, Detective Gregory Depew, Detective Scott Fischer, Detective Phillip Wilson, and Detective Bryan Lange—also authored statements pursuant to departmental policy and provided interviews. Those statements have been incorporated, where appropriate, in the narrative above and below. Sergeant Bakhsh confirmed to IID investigators that the CAST team sat down together and created the first two paragraphs of their statement, which describe background information about the investigation. Sergeant Bakhsh said that CAST team members then individually wrote the final paragraph based on their respective roles in the incident. They also watched the Royal Farms surveillance video together before writing their statements.

Witnessing officers were generally consistent that the detectives pinned the Kia at pump #6, and that it struck Detective Depew’s car once, before backing up and striking Detective Depew’s car again. Depending on their positions at the gas station, some detectives were able to see inside the car while others were not. Some detectives were also able to see Detective Depew in front of his vehicle, but others had their views obscured by objects and cars.

#### 1. Sergeant James Conaboy

Sergeant James Conaboy was interviewed by MSP and IID investigators on February 16 and provided the background information in Section (II)(A) above. Additional relevant details from his interview are included in this section. Sergeant Conaboy has been a BCPD officer for 34 years and supervises one of the two CAST teams.

Sergeant Conaboy told investigators that Detective Daniel O’Shea, the lead shooting detective, provided information about Mr. McCourry and ██████████ background to Sergeant Conaboy. That information included details of both shooting investigations, prior criminal history, location information, and a vehicle description. Sergeant Conaboy also independently reviewed Mr. McCourry’s criminal history and was “well aware that he had just been arrested in Essex, [he thought] in 2022 for narcotics and a handgun in vehicle” and that Mr. McCourry had prior arrests for resisting arrest, CDS offenses, and assault. Sergeant Conaboy watched body-camera footage from the handgun arrest in Essex to get a better understanding of Mr. McCourry’s behavior. Sergeant Conaboy was further aware that one of the shootings being investigated appeared to be “truly a stranger road rage incident. Somebody opened fire on this victim’s vehicle.” Sergeant Conaboy said that he relayed all this information to Sergeant Bakhsh and his team, prior to the attempted apprehension on January 26.

Sergeant Conaboy and his team were not present or involved in the January 31 incident at the Royal Farms.

## 2. Sergeant Brad Bakhsh

Sergeant Brad Bakhsh was interviewed by MSP and IID investigators on February 16 and provided the following information. Sergeant Bakhsh has been a BCPD officer for 28 years and supervises one of the two CAST teams. Sergeant Bakhsh confirmed that his unit was aware that Mr. McCourry and [REDACTED] were under investigation for two shootings. [REDACTED]

[REDACTED] Ultimately, on January 25, Sgt. Bakhsh said that Sergeant Conaboy asked him for his team's help to locate and apprehend Mr. McCourry because he had "firearms in his background, drugs...three open warrants." Sergeant Bakhsh was also aware that [REDACTED] had open warrants and a history with firearms. He said that Sergeant Conaboy requested his team's assistance, because he was concerned about the nature of the apprehension as there was "a high probability" that the arrest would be in a vehicle, that Mr. McCourry would resist their attempts, and that he would be armed.

On January 26, both teams set up to apprehend the Kia. Sergeant Bakhsh detailed to IID and MSP investigators the series of events that was referenced in Section (II)(A) above. On January 30, Sergeant Bakhsh's team conducted surveillance on the Kia starting around noon. But they ultimately called it off when they could not place him in the vehicle.

On January 31 in the early morning hours, the team confirmed [REDACTED] that the Kia Sportage was located at the Colony Motel in White Marsh. Sergeant Bakhsh said that Detective Depew got to the Colony first and confirmed that the Kia Sportage was parked outside room #7. The CAST team planned to take Mr. McCourry and [REDACTED] into custody at the motel, but before they could get into tactical position, CAST detectives observed Mr. McCourry and [REDACTED] leave the motel room and get into the Kia Sportage.

Sergeant Bakhsh said the Kia left the parking lot and made a U-turn on Route 40, before it pulled into the Royal Farms store parking lot. The Kia went to pump #6 and parked. Sergeant Bakhsh said CAST detectives followed the car and "got on the lot;" Detective Fischer relayed to the team that he could see both Mr. McCourry and [REDACTED] in the vehicle looking down at something in the car and "not paying attention." The CAST team made the decision to get into position and "shock him" and "overwhelm them with resources."

Sergeant Bakhsh said that the team had created a plan that involved Detective Fischer making contact with the vehicle from the back so the Kia would be unable to move or "get momentum." When they began the vehicle block, Sgt. Bakhsh said he saw Detectives Wilson

and Fischer turn their lights on and Detective Fischer “flicked his siren on” briefly. The detectives were wearing their department-issued “POLICE” vests and radios. When they exited their vehicles, Sergeant Bakhsh said that detectives were yelling various commands, including: “police, police, police,” “Baltimore County Police,” and “show us your hands.”

Sergeant Bakhsh recalled getting out of his vehicle, a van, and seeing Mr. McCourry “pull forward striking Detective Depew’s vehicle” and then stop. Sergeant Bakhsh believed that Detective Depew was either still getting out of his vehicle or standing at the door when that happened, because “I remember seeing his [gun] light go up.” Sergeant Bakhsh said he came from the back of the Kia but was unable to see inside because of the tinted windows. Detective Trenary came towards Sergeant Bakhsh and the Kia backed up in their direction. “That’s when we had to kind of scatter and...get out of the way.” Sergeant Bakhsh believed that he and Detectives Fischer and Wilson had to back up to get out of the way of the reversing vehicle. “When he back[ed] up, that’s when Detective Trenary had to come around to the driver’s side of the vehicle.” Sergeant Bakhsh recalled that was “when [Mr. McCourry] made his full-on straight push” and Detective Trenary was on the driver’s side of the vehicle, yelling commands.

Sergeant Bakhsh believed that when the Kia began going forward again it used the concrete pillar as a fulcrum and spun, getting out of the block. Sergeant Bakhsh said he was watching and “Trenary had to like go back, because he was on the door” and that is when he fired the shot. Sergeant Bakhsh estimated that Detective Trenary was even with the driver’s side door when the shot was fired.

The Kia travelled through the parking lot before getting into a collision in the intersection. The detectives approached the car with a shield “in seconds,” issued verbal commands, and were able to get both occupants out of the car. He said the detectives assessed Mr. McCourry’s injuries and began trying to stop the bleeding. Sergeant Bakhsh called for medics on the radio and recalled Detective Trenary doing CPR.

Sergeant Bakhsh recalled that his team had performed numerous tactical vehicle blocks and trained for that scenario numerous times. CAST was not required to obtain authorization to perform the block from any supervisor, and he was the one who made the decision to perform the vehicle block that day. He told investigators that the statements the CAST team wrote on January 31 were done pursuant to departmental policy requiring us of force reports be completed by the end of the shift, and at the request of supervisors.



Figure 10. Photograph of the police vest and insignia all officers were wearing during the incident.

### 3. Detective Gregory Depew

Detective Gregory Depew was interviewed by MSP and IID investigators on February 16 and provided the following information. Detective Depew has been a BCPD officer since 2007.

[REDACTED]  
[REDACTED]  
[REDACTED]

On January 31, Detective Depew said that he monitored [REDACTED] the Kia Sportage and saw that it was located at a motel near Route 40, the Colony Motel. [REDACTED]

[REDACTED] He said that CAST detectives went to that location and were able to observe the Kia parked “head-in” in front of room #7. Detective Depew went into the motel and confirmed with the manager that a civilian and [REDACTED] rented the room earlier that night and that Mr. McCourry could be seen on video surveillance driving the Kia. Detective Depew said that the detectives made a plan to apprehend Mr. McCourry and [REDACTED] at the motel.

While Detective Depew was putting his tactical police vest on, he said the other detectives observed Mr. McCourry and [REDACTED] leaving the room and getting into the vehicle. The other detectives were too far away, and Detective Depew was not going “to do a stop by myself.” The Kia pulled out of the parking lot, turned up Route 40, made a U-turn and then drove back the other way, before stopping at Royal Farms.

Detective Depew pulled into the Royal Farms and parked at a gas pump. He was unable to see into the Kia, but he said that another detective drove by and confirmed that both Mr. McCourry and [REDACTED] were in the vehicle, and they were looking down, “not paying attention.” The other detectives got into position to do a vehicle block. Detective Depew pulled around to block the front of the Kia. Because he was the front vehicle, he said he did “not waste time with lights and sirens,” but instead pulled up and got out of his car and yelled “police.” He said that he heard a detective in the back of the vehicle block utilize a siren and then shut it off and saw the vehicles in the back with their lights on.

When he got out of the vehicle directly in front of the Kia, Detective Depew had his firearm drawn and his gun light on and was standing in between his car and the door. Detective Depew said that he began addressing Mr. McCourry and yelling “police,” but Mr. McCourry just looked back at him, and Detective Depew “never [saw] his hands go up.” Mr. McCourry drove “right at me and as he hit [the] car I had to go back, because my car was now being push at me.”

Detective Depew believed that, at least initially, Mr. McCourry would not have been able to get out of his spot without going through Detective Depew’s car. Detective Depew said he thought they had Mr. McCourry contained, but still could not see Mr. McCourry’s hands and he knew that “all these crimes he’s done, all these cases, are shootings involved with this vehicle.” Detective Depew said he believed that Mr. McCourry was reaching for something in the car.

Detective Depew recalled yelling “police” and trying to keep Mr. McCourry’s attention focused on him, as the officer at the front of the vehicle block. He further said that it was his job

to stay out of the way in case “it goes bad” and his car comes towards him. Detective Depew said that the situation happened so quickly that he did not have time to yell to the other officers that he could see Mr. McCourry reaching down.

Detective Depew said his car never hit him and then clarified to say that he did not think it hit him and he had no injuries, but he could not be certain from watching the video.

After the initial hit, Detective Depew was still standing by the hood and thought they had gained compliance and then “he’s coming at me again pushing through the car.” He further clarified that he had to get out of the way and backed up away from the Kia coming towards him, because he believed that his car would have hit him after being struck by the Kia. And he thought “he was going to run me over.” He did not fire his weapon because, “I know they’re on the other side. The whole entire team is on the other side.”

The second time the Kia struck Detective Depew’s car the detective said he had “backed off” to avoid getting hit and he heard one shot. He had no idea who shot, but the car went straight and got into a collision. He said the officers approached the car on foot and waited for a shield as they did not know whether anyone was injured or armed. Detective Depew pulled [REDACTED] out of the vehicle, and then the detectives focused on getting Mr. McCourry out. They struggled to get his door open, and Detective Depew said that he had to lift him from under his shoulders. They immediately started CPR rotating between Detectives Trenary, Fischer, and Depew until medics arrived.

#### 4. Detective Scott Fischer

Detective Scott Fischer was interviewed by MSP and IID investigators on February 16 and provided the following information. He has been a BCPD officer for 24 years and is a member of the CAST team. [REDACTED]

On January 31, Detective Fischer was driving a gold Honda. [REDACTED] Detective Fischer was the first one to the motel and able to verify the location of the Kia. Detective Depew went into the motel to talk to the manager about who was staying there. They were coordinating for a takedown at the motel, but then Detective Fischer said that he saw the car lights come on and in less than a minute Mr. McCourry and [REDACTED] got into the vehicle and left the parking lot. The car went out to Pulaski Highway and made a U-turn before turning into the Royal Farms and parking at pump #6.

Detective Fischer said that he drove past the car and saw both people in the car looking down towards the center console area. He looped around and parked behind the car facing away from the store. Detective Fischer said that he told his other teammates the location of the car and what he observed inside. He believed they were “not paying attention” and focused on whatever they were doing in the car rather than what was happening around them. Detective Fischer said that once he made his way around the car, he could not see what was happening inside. Detective



Fischer believed “it was a good time to do this,” referencing the apprehension, as they were not paying attention to their surroundings.

Detective Fischer said the team began to “pinch up,” and he hit both the lights and siren on his car. He quickly turned the siren off but left the lights on. Detective Fischer said that his car made contact with the back of the Kia, Detective Trenary’s car made contact with the passenger side, and Detective Depew was at the front. Detective Fischer got out of his car while everyone was yelling “police” and “let me see your hands.” He said he could not see in front of him, until he saw the Kia “lurch up” and pull forward into Detective Depew’s car. Detective Fischer said that he pulled forward to prevent the Kia from “ping ponging back and forth.” He saw detectives moving and he stopped his vehicle so as not to pin them in between the cars.

The Kia stopped for “a couple seconds” and Detective Fischer started to get out of his car again. He said that he could see Detective Depew on the other side of his car, and from what he “could see [Detective Depew’s] gun light goes back.” Detective Fischer said that he believed at that point that the vehicle had struck Detective Depew. Detective Fischer then saw the Kia reverse back towards where Sergeant Bakhsh was standing. He saw the Kia go forward again, and Detective Trenary “made his way between [Detective Fischer’s] vehicle and the target vehicle.” After that, Detective Fischer said he lost sight of Detective Depew in the front. Detective Fischer said that the Kia spun as if using the metal support pole as a fulcrum. He did not see Detective Trenary fire the shot but heard it. Detective Fischer said the Kia then rapidly accelerated, hit the curb, crashed, and hit the car on Ebenezer.

The detectives approached the Kia on foot and then Detective Fischer got a shield from the back of Sergeant Bakhsh’s car. He and Detective Lange approached the car and could see Mr. McCourry lying on [REDACTED]. Detectives removed [REDACTED] and opened the driver’s door using the handle inside of the car. Detective Fischer said they extricated Mr. McCourry and got gauze to stop the bleeding [REDACTED]. Detective Trenary started CPR, and Sergeant Bakhsh requested medics.

## 5. Detective Phillip Wilson

Detective Phillip Wilson was interviewed by MSP and IID investigators on February 16 and provided the following information. He has been a BCPD officer for 16 years and is a member of the CAST team. On January 31, he was driving a silver Impala. Detective Wilson told investigators that he was aware that the car they were tracking had parked at the gas pump, and both Mr. McCourry and [REDACTED] were in the car. The team communicated and were told to get ready to approach the vehicle and conduct a “vehicle takedown.”

When Sergeant Bakhsh gave the signal to begin the takedown, Detective Wilson said that he approached from the left rear. He activated emergency lights in the grill of his vehicle. He was wearing his tactical vest and firearm. When he got out, Detective Wilson said that he approached the vehicle and heard numerous other officers say “police, let me see your hands.” Detective Wilson said that he approached the driver’s side of the Kia by going around the opposite side of the gas pump and gave verbal commands, with his firearm pointed towards the Kia. When he got closer to the Kia, while standing on the passenger side of a civilian’s Dodge

Charger, he “noticed the driver reaching down towards the center console of the vehicle.” Detective Wilson was repeating “let me see your hands.” He said that the driver looked at Detective Wilson and other detectives and “the next thing I knew, the vehicle was in motion towards [Detective Depew’s car].” He then saw the Kia collide with Detective Depew’s vehicle “pretty hard.” He then saw Mr. McCourry put the car in reverse, back up, and accelerate forward. He said the Kia once again struck Detective Depew’s vehicle, before maneuvering out of the block.

Detective Wilson said that he saw Detective Trenary come around to the driver’s side of the Kia. As he came around, Detective Wilson could see Detective Trenary standing at the driver’s side door and giving commands. This happened in a matter of “seconds, maybe a minute.” The Kia moved and “[was] trying to break free from containment.” Detective Wilson heard and saw Detective Trenary fire “one single shot at the driver.” After the shot, the Kia broke free and accelerated through the parking lot. Detective Wilson said that they ran on foot to the Kia and made a plan for getting the occupants out of the vehicle, as they did not know if there were weapons inside. Detective Wilson said that he did not know that Mr. McCourry was injured until they approached the car. Mr. McCourry was extricated from the car and treated by Detectives Fischer, Trenary, Lange, and Depew.

#### 6. Detective Bryan Lange

Detective Bryan Lange was interviewed by MSP and IID investigators on February 16 and provided the following information. He has been a BCPD officer for 17 years and is currently assigned to the CAST team.

On January 31, he recalled entering the Royal Farms parking lot in his blue CRV. He remembered hearing over the radio that the occupants of the Kia were looking down in the car. Detective Lange said that he assumed Mr. McCourry had a firearm on him, because “all of his crimes were firearm related and the reason we were there was for a VCU [Violent Crimes Unit] shooting” and he “was aware of another road rage incident prior to that where he shot at somebody and [...] a juvenile was involved in that.”

Detective Lange activated his emergency lights in his car’s grill and the front and back windshield when he moved in position. He said he got out of his car after the initial block and was making his approach when he saw the Kia strike Detective Depew’s vehicle, while Detective Depew was on the other side. He saw the Kia hit Detective Depew’s car again, before he “squeezed out” in between Detective Depew’s car and the black support pole. Detective Lange said that he was concerned that Detective Depew was in danger of being struck by his car. Detective Lange heard commands from the other officers. Det. Lange said that all the officers on scene were wearing their tactical vests.

Detective Lange got out of his car and moved towards the gas pump area. He said that he could not see inside the Kia, based on his positioning behind the cars. Although he thought Detective Depew was in danger, he said that he did not fire his gun, because he did not feel it was safe to do so, given the proximity of other people in the backdrop, specifically Detective

Depew, and cars on Pulaski Highway. He said that he did not feel that he was able to fire his weapon or prevent the car from leaving based on his position.

#### E. Medical Examination and Autopsy

Mr. McCourry was transported to Johns Hopkins Bayview Hospital from the scene. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. McCourry died on March 3, 2023. His autopsy was conducted on March 4, 2023 by Dr. Pamela Southall, M.D., the Deputy Medical Examiner for the State of Maryland. The results of the autopsy are still pending. This report will be supplemented upon receipt of the examination report.

#### F. BCPD Records

BCPD provided the IID with records relating to their investigation of both the December 23 and 29 shootings. [REDACTED]

[REDACTED] IID investigators were also able to corroborate the above timeline with the use of CAD records, body camera footage from officers responding to the shooting, and EMS records. Those details are incorporated, where appropriate, above.

As indicated above, CAST detectives are not equipped with body cameras or in car video. Additionally, they communicate via a radio channel that is not recorded, so the IID was not able to obtain their radio traffic.

#### G. Forensic Firearm Examination

Detective Trenary's firearm was recovered as part of the investigation. The projectile was not recovered from Mr. McCourry until the autopsy was performed. The cartridge casing was recovered from the gas station. The recovered casing matched the type of ammunition in Detective Trenary's service weapon. On February 23, an MSP forensic analyst examined and successfully fired Detective Trenary's firearm. The MSP firearms analyst found it to be in normal working condition.

### **III. Involved Parties' Backgrounds**

As part of its standard investigative practice, the IID obtained information regarding all involved parties' criminal histories, and the department internal affairs records and relevant training of the involved officer(s). To the extent it exists, any criminal history is being provided to the State's Attorney's Office with this report.

A. Brian McCourry

Brian McCourry was 37-year-old white male who had a last known address in Essex.

B. [REDACTED]

[REDACTED] is a 30-year-old white female who had a last known address in Dundalk.

C. Detective Jonathan Trenary

Detective Trenary was a 38-year-old white male at the time of the shooting. He has been employed by BCPD since June 10, 2006, and has sixteen total years of law enforcement experience. Officer Trenary has five disciplinary complaints or internal affairs records with the Department. His actions were found to be “sustained” in four of those incidents. The IID reviewed those four incidents and concluded that they had no bearing on this investigation.

[REDACTED]

**IV. Applicable Policies**

This section discusses Baltimore County Police Department policies and training concerning officers’ use of force, including their decisions to use deadly force. The complete policies are attached as Appendix B.

A. Field Manual, General Order 2021-01, Article 12: Firearms

BCPD policy states that an officer may only discharge a firearm in the performance of their duties under circumstances that include self-defense from death or serious injury, in defense of another person from death or immediate danger of serious physical injury, and when all other reasonable means have been exhausted to apprehend or prevent the escape of a person who is known or believed to have the potential to cause imminent death or serious injury.

A law enforcement officer “may only justify use of a firearm by the facts known at the time a decision to use the firearm is made. Facts unknown, no matter how compelling, cannot be considered later when determining if the use of a firearm was justified.” Furthermore, the officer “must communicate to a suspect their identity, purpose, and intention to fire, unless the circumstances are such that the suspect already knows or unless such communication cannot be reasonably made.”

## B. Field Manual, General Order 2021-01, Article 12: Use of Force Continuum

This policy states: “deadly force may be applied in immediate danger situations, where present peril or jeopardy exists, and the officer has a reasonable belief that action must be taken instantly or without considerable delay.” The policy instructs that the “determining factor[s]” in evaluating whether deadly force is appropriate are “the level of force being used” and “the immediate potential for death or serious bodily injury to the officer or innocent bystanders/victims.”

## C. BCPD CAST Policies and Training

CAST does not have a formal policy manual or participate in formal training as it relates to any aspect of their assignment. All officers interviewed indicated that training within the unit is informal. IID investigators spoke to Sergeant Bakhsh and his supervisor, Lieutenant Bing, about the policy surrounding vehicle blocks. Lieutenant Bing confirmed that CAST is not required to obtain prior authorization to conduct a block and the decision to perform a block rests with Sergeant Bakhsh.

CAST trains monthly on the core parts of their assignment: vehicle takedowns, room entries, and medical aid for trauma. Additionally, Sergeant Bakhsh told investigators that the team performs approximately 10-15 vehicle blocks a month and evaluates each block after the fact. Sergeant Bakhsh explained that his officers are trained to get “as close as they can to the target vehicles” to prevent the target car from maneuvering out of the block. CAST detectives referred to this as a “pinch,” with the target car surrounded on all sides by police cars. If a vehicle maneuvers out of the block, or anything appears to go wrong during the block, Sergeant Bakhsh said that common practice required them to “bail out” or withdraw from the maneuver.

## VI. Applicable Law and Analysis

The IID analyzed Maryland statutes that could be relevant in a shooting of this nature. This section presents the elements of each possible criminal charge, analyzes these elements, and reviews any potential defenses considering the findings discussed above.

### A. Excessive Force

Effective July 1, 2022, the Maryland Use of Force Statute makes it a crime for officers to intentionally use force that is not, “under the totality of the circumstances . . . necessary and proportional to: (i) prevent an imminent threat of physical injury to a person; or (ii) effectuate a legitimate law enforcement objective.” Public Safety § 3-524(d)(1). The statute also requires that “when time, circumstances, and safety allow, [officers shall] take steps to gain compliance and de-escalate conflict without using physical force.” Public Safety § 3-524(e)(1).

To prove excessive force, the State must prove: (1) that the defendant was a police officer;<sup>8</sup> (2) that the defendant used force against Mr. McCourry; (3) that the force used was not necessary and proportional to prevent an imminent threat of physical injury to the defendant, another person, or to effectuate a legitimate law enforcement objective; (4) that the defendant intended to use such force; and (5) that the use of force resulted in serious bodily injury or death to Mr. McCourry. MPJI-Cr 4:36 Unlawful Use of Force by a Police Officer, MPJI-Cr 4:36 (2d ed. 2022). In determining whether the defendant’s use of force was necessary and proportional, the factfinder should consider all the surrounding circumstances. *Id.*

Before the Use of Force Statute was enacted, Maryland had no specific crime punishing officers’ use of excessive force. Instead, officers could be charged with the same crimes as any civilian, including force-related crimes such as murder, manslaughter, and assault. Officers could not be convicted of these offenses if they had acted reasonably; that is, if they acted as a reasonable officer would given the circumstances. Now, with the Use of Force Statute, officers may still face these traditional charges, but they may also face the specific charge of using excessive force if the force they used was not necessary and proportional given the totality of the circumstances.

The third element of the jury instruction requires the State to prove that the force used by Detective Trenary was not necessary and proportional to prevent an imminent threat of physical injury to Detective Trenary, other individuals, or to effectuate a legitimate law enforcement objective. Public Safety § 3-524(d)(1). The terms “necessary” and “proportional” are not defined by statute or by Maryland caselaw. However, [an opinion](#) issued by the Office of the Attorney General concluded that the “necessary and proportional” standard “involves three core principles”:

First, the use of force is not “necessary” unless there is no reasonable alternative to using force that, under the circumstances would safely and effectively achieve the same legitimate ends. Second, even when the use of some force is necessary, the degree and amount of force must correspond to, and be appropriate in light of, the objective that the officer aims to achieve. Third, the proportionality requirement further prohibits an officer from using force if the harm likely to result is too severe in relation to the value of the interest that the officer seeks to protect.

107 Md. Op. Att’y Gen. 33, 66 (Feb. 25, 2022) (emphasis added).

As mentioned above, the statute also provides that the use of necessary and proportional force may be appropriate to “prevent an imminent threat of physical injury to a person” or to “effectuate a legitimate law enforcement objective.” Public Safety § 3-524(d)(1)(i), (ii). “Imminent” is defined as “likely to occur at any moment; impending.” *Howell v. State*, 465 Md.

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<sup>8</sup> A “police officer” includes any police officer as defined in Public Safety § 3-201 or a special police officer as defined in Public Safety § 3-301. Public Safety § 3-524(b)(3)(i), (ii).

548, 564 n. 15 (2019).<sup>9</sup> Officers must have probable cause to believe that an individual poses such an imminent threat. *Estate of Blair*, 469 Md. at 23. Probable cause “means something less than ‘more likely than not.’” *Whittington v. State*, 474 Md. 1, 41 n. 29 (2021) (quoting *Freeman v. State*, 249 Md. App. 269, 301 (2021) (cleaned up)).

The Use of Force Statute does not define “legitimate law enforcement objective,” but other sections of the Public Safety Article provide some guidance. For example, Section 3-701 defines “legitimate law enforcement objective” as “the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal.” Public Safety § 3-701(a)(7); *see also* Public Safety § 3-509(a)(8) (defining a “legitimate law enforcement purpose” as “the investigation, detection, or analysis of a crime or a violation of the Maryland vehicle laws or the operation of terrorist or missing or endangered person searches or alerts”).

The Use of Force Statute specifically provides that an officer must cease the use of force when either of the above conditions is no longer met, or when the target of the force is under the officer’s control. Physical restraint is not a prerequisite to “control.” *Michigan v. Long*, 463 U.S. 1032, 1051 (1983) (“During any investigative detention [*i.e.*, a *Terry* stop], the suspect is ‘in the control’ of the officers in the sense that he may be briefly detained against his will.”) (cleaned up). An individual who is complying with an officer’s commands without physical restraint is under the officer’s control because the officer has a “directing influence” over them. *See Bryant v. State*, 229 Md. 531, 537 (1962) (citations omitted) (applying dictionary definitions of “control,” *i.e.*, “to exercise restraining or directing influence over”); *cf. Bailey v. State*, 412 Md. 349, 371 (2010) (“Although the display of force often involves placing the individual who is seized in handcuffs, application of handcuffs is not a necessary element of an arrest.”); *Henderson v. State*, 89 Md. App. 19, 23 (1991) (suspect was not seized where he “was neither under the physical control of the officers, nor was he acquiescing to their authority”).

The fourth element of the jury instruction requires that Detective Trenary intended to use such force. While it is possible the General Assembly meant only that the officer’s actions must have been intentional, it is more likely the General Assembly meant to require that the officer knew the level of force that would have been permissible and intentionally crossed that threshold. The Office of the Attorney General’s Opinions Division stated in a January 18, 2023, advice letter to the Prince George’s County State’s Attorney’s Office that this latter interpretation was better supported by the plain language of the statute.<sup>10</sup> Letter of Assistant Attorney General Rachel A. Simonsen to State’s Attorney Aisha N. Braveboy, Prince George’s County State’s Attorney’s Office (Jan. 18, 2023).

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<sup>9</sup> “Imminent” differs from “immediate,” which means “occurring or accomplished without lapse of time; instant; of or relating to the present moment.” *Howell*, 465 Md. at 564 n. 15. However, imminence still requires a reasonable degree of proximity and specificity; a threat that may occur “sometime in the future” is not imminent. *Madrid v. State*, 474 Md. 273, 339 (2021).

<sup>10</sup> The Opinions Division is a unit within the Office of the Attorney General that is responsible for answering significant legal questions involving Maryland law or other law that governs the actions of Maryland public officials. The Division issues both formal opinions and less formal advice letters; neither serves as binding precedent, though they may be used as persuasive authority.

The fifth element of the jury instruction requires that the use of force resulted in serious bodily injury or death to Mr. McCourry. “Serious bodily injury” is not defined in this statute, but a definition for “serious physical injury” is provided. Public Safety § 3-524(b)(4). “Serious physical injury” is injury that “(1) creates a substantial risk of death; or (2) causes permanent and protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ.” Public Safety § 3-201(d).

In addition to analyzing the elements of the statute, given the circumstances in this case, a factfinder could also consider a justification for the use of force based on the fleeing felon doctrine. The United States Supreme Court has held that deadly force may not be used unless it is necessary to prevent an escape and the officer must have probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. *Tennessee v. Garner*, 471 U.S. 1 (1985). The Supreme Court further held that an officer's use of deadly force is unlawful where the suspect poses no immediate threat to the officer and no threat to others. *Id.* at 11. However, where an officer has probable cause to believe that a suspect poses a risk of serious harm to the officer or surrounding individuals, threatens the officer with a weapon, or the officer has probable cause to believe that the suspect has committed a crime involving serious bodily harm the use of deadly force may be necessary to prevent escape. *Id.* Under *Garner*, a fleeing felon inquiry revolves, first, around a determination as to the reasonableness of an officer's actions. *Id.* at 7. As there has been no judicial analysis of this statute, it is unclear exactly how, or even if, courts would apply this doctrine under this statute. But it is analyzed here, given the overlap between the potential charges and the elements.

There is no dispute that Detective Trenary was acting in his capacity as a police officer when he fired at the Kia. Nor is there any dispute that Detective Trenary's bullet struck Mr. McCourry and caused serious bodily injury that resulted in paralysis from the neck down. The remaining questions for the factfinder are whether Detective Trenary intentionally used excessive force and whether the use of force was necessary and proportional to counteract an imminent threat to another individual or pursuant to a legitimate law enforcement objective.

An analysis of whether Detective Trenary intentionally used excessive force requires the factfinder to examine the totality of the surrounding circumstances. As discussed above, to prove excessive force beyond a reasonable doubt, the State is required to prove that Detective Trenary knew that his use of force was impermissible, and then intentionally used that impermissible force anyway. When making that determination, a factfinder can look to Detective Trenary's actions, the actions of other officers, BCPD policies, Detective Trenary's training history and prior use of force incidents, and any information that he knew about the suspect. If, given those circumstances, the factfinder found that Detective Trenary actually believed his use of force was permissible, it is unlikely that the State could satisfy the fourth element. However, if a factfinder determined that, based on the totality of the circumstances, Detective Trenary did not actually believe that his use of force was permissible, the analysis would shift to whether the use of force was necessary and proportional to counteract an imminent threat, as discussed below.<sup>11</sup>

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<sup>11</sup> This analysis is similar to an imperfect self-defense analysis; however, it seems unlikely that Detective Trenary would be able to assert imperfect self-defense or defense of others as a justification under this



As to the question of whether there was an imminent threat, the video surveillance provides some evidence that Detective Depew was threatened by the path of the Kia, at least initially. All witnesses to the block, law enforcement and ██████ agree that, at least initially, the Kia was pinned between the concrete piling and Detectives Depew and Trenary's vehicles. Mr. McCourry reversed the Kia, before driving into Detective Depew's car. At the time of the first strike at 6:07:34 (see Figure 11), Detective Depew appeared, based on surveillance video and witness interviews, to be standing in between his car and the door. He only appeared to back up and to the side once the Kia began backing up (see Figure 12).

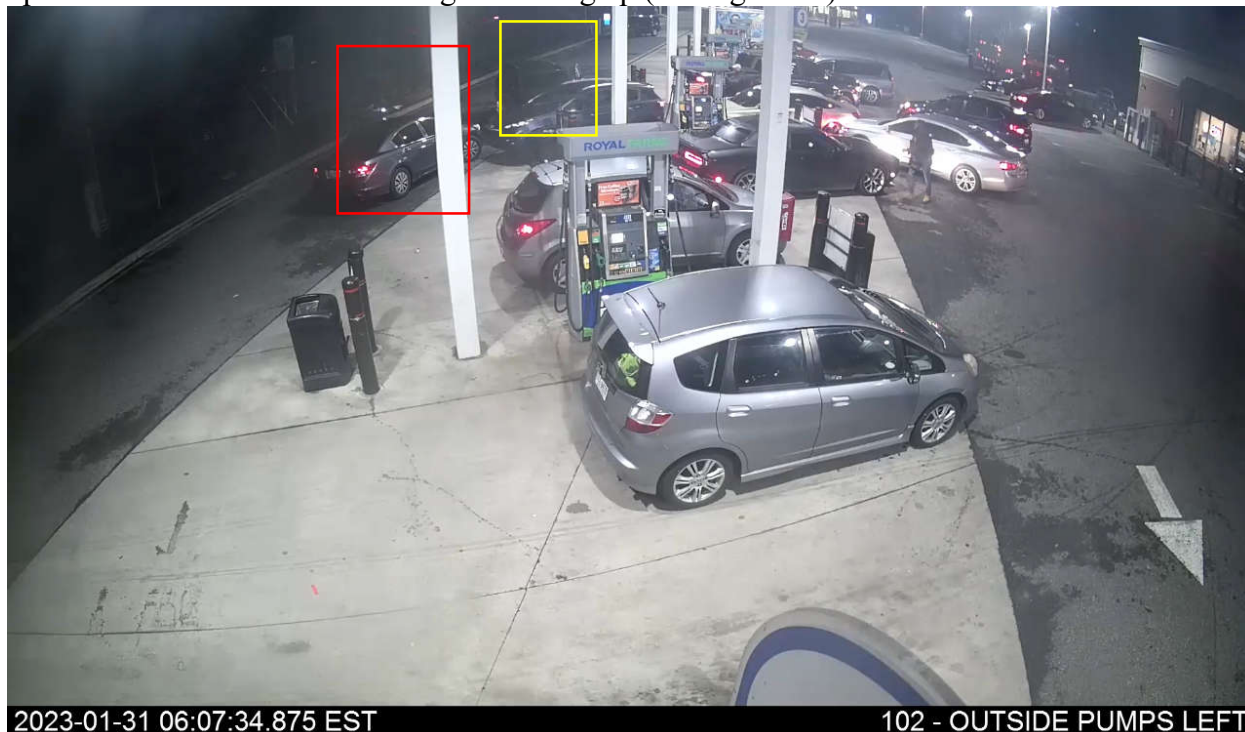


Figure 11. Still photograph from Royal Farms surveillance at the moment of the first strike. Detective Depew (red box) is in the door jamb of his car. Detective Trenary has not yet exited his vehicle (yellow box).

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statute. In *Jones v. State*, the now-Supreme Court of Maryland held that those defenses apply “only to criminal homicide and its shadow forms, such as attempted murder. It has no applicability to other assaultive crimes.” 357 A.2d 396, 422-23 (internal quotations omitted). The newly created excessive force crime does not appear to fall into the former category of crimes to which the defense would apply.

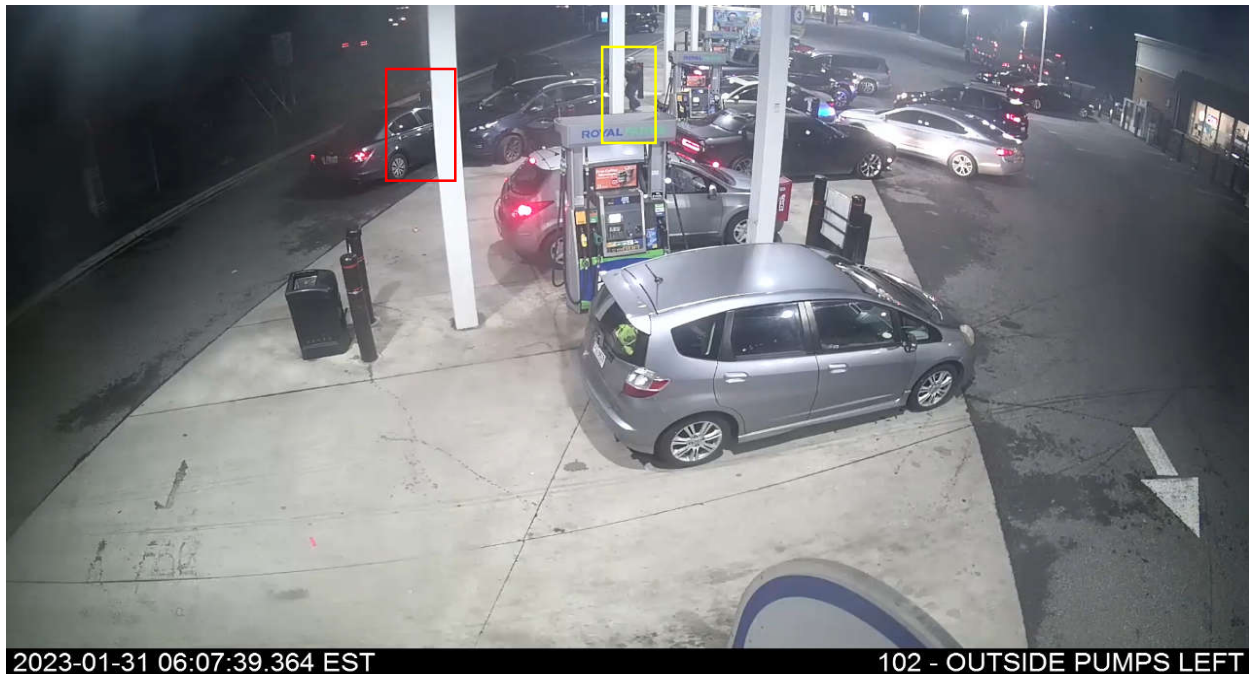


Figure 12. Still photograph showing Detective Depew (red box) moving to the front of his car, as the Kia is backing up. Detective Trenary (yellow box) can be seen moving around the back of the reversing Kia.

However, a factfinder could find that none of the detectives were at imminent risk of harm once the Kia broke free from the vehicle block. At the time the shot was fired, the Kia was no longer striking Detective Depew's vehicle, it was no longer reversing towards any officers, and there was no one in the Kia's path of travel. Similarly, although the detectives were aware that Mr. McCourry and ██████████ had criminal histories involving firearms, there was no indication that they were carrying guns on that day. Indeed, no officer saw them brandish a gun or threaten the use of a gun. A factfinder could weigh these factors against a finding of imminence, which would also negate any finding of necessity.

The fleeing felon analysis requires that the use of deadly force is reasonable to prevent the escape of a fleeing suspect who poses an imminent risk of harm to others. Here, the detectives were aware that Mr. McCourry and ██████████ were wanted in connection with two shootings a month earlier, did not have a fixed address and were living out of the Kia, had prior firearms-related arrests, and had fled from an attempted apprehension days earlier. Detectives told IID investigators that Mr. McCourry and ██████████ seemed distracted and were looking down at the center console and once they initiated the block, numerous detectives said Mr. McCourry and ██████████ did not comply with commands to show their hands. However, during the attempted apprehension days earlier, the surveillance at the motel and the gas station, and during the block there was no indication that either Mr. McCourry or ██████████ possessed any weapon or was attempting to injure anyone in the immediate area. All witnesses agree that neither of them said anything that could be heard by the officers. The factfinder must evaluate those facts and determine whether the fleeing felon doctrine is even applicable. If a factfinder determined that there was no imminent threat to the officers or other people, Detective Trenary's use of deadly force would be unlawful and likely also a violation of this statute. If a factfinder were to determine that Detective Trenary's actions were justified under to the fleeing felon

doctrine, the analysis of potential culpability under this charge would still require the evaluation of the facts and circumstances involving the heightened standard as discussed above.

## B. Second-Degree Murder & Voluntary Manslaughter<sup>12</sup>

Criminal Law § 2-204 states: “A murder that is not in the first degree under § 2-201 of this subtitle is in the second degree.” Intentional second-degree murder differs from first-degree murder in that it is not “willful, deliberate, and premeditated.” MPJI-Cr 4:17.2 Homicide—First Degree Premeditated Murder, Second Degree Specific Intent Murder and Voluntary Manslaughter (Perfect/Imperfect Self-Defense and Perfect/Imperfect Defense of Habitation), MPJI-Cr 4:17.2 (2d ed. 2021). It is, however, a killing conducted with “either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result.” *Id.*

To prove intentional second-degree murder, the State must establish: “(1) that the defendant caused the death of Mr. McCourry; (2) that the defendant engaged in the deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result; (3) that the killing was not justified; and (4) that there were no mitigating circumstances.” *Id.* Second-degree murder and voluntary manslaughter require the State prove a specific intent to kill. *Chisum v. State*, 227 Md. App. 118, 135-36 (2016). But, “[i]f a man voluntarily and wil[l]fully does an act, the natural consequences of which is to cause another’s death, an intent to kill may be inferred from the doing of the act.” *Lindsay v. State*, 8 Md. App. 100, 105 (1969); *see also Chisum*, 227 Md. App. at 133, 136.

Intentional second-degree murder may be reduced to voluntary manslaughter if a defendant acted pursuant to a partial self-defense, partial defense of others, or law enforcement justification. Manslaughter is a common law crime in Maryland. *Bowers v. State*, 227 Md. App. 310, 314 (2016). To prove voluntary manslaughter, the State must prove that the defendant: (1) caused the death of the decedent; and (2) intended to kill the decedent. MPJI-Cr 4:17.2; MPJI-Cr 4:17.3. The State must also disprove complete self-defense or complete defense of others, as discussed in the section below.

### 1. Potential Defenses and Mitigating Circumstances

Self-defense is one possible justification or mitigating circumstance. Self-defense may be either complete (*i.e.*, the use of deadly force was completely justified) or partial (*i.e.*, the use of deadly force was partially, but not completely, justified). Complete self-defense exists where: (1) the defendant was not the aggressor; (2) the defendant actually believed that [he was] in immediate or imminent danger of death or serious bodily harm; (3) the defendant’s belief was reasonable; and (4) the defendant used no more force than was reasonably necessary to defend [himself] in light of the threatened or actual force. MPJI-Cr 4:17.2; *see also Porter v. State*, 455 Md. 220, 234-36 (2017). Partial self-defense exists where the first two of these elements are present, but the defendant either unreasonably believed danger to be imminent or unreasonably

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<sup>12</sup> This report will not separately analyze the charge of first-degree assault because that offense merges with the crimes of intentional second-degree murder and voluntary manslaughter, either attempted or consummated. *Sifrit v. State*, 383 Md. 116, 137 (2004); *Dixon v. State*, 364 Md. 209, 239-40 (2001).

believed the amount of force he used was necessary. MPJI-Cr 4:17.2. If the defendant acted in complete self-defense, no charge is appropriate. *Id.* If the defendant acted in partial self-defense, the appropriate charge is voluntary manslaughter rather than second-degree murder. *Id.*

Defense of others is an additional possible justification or mitigating circumstance. Complete defense of others exists where: “(1) the defendant actually believed that the person [he was] defending was in immediate or imminent danger of death or serious bodily harm; (2) the defendant’s belief was reasonable; (3) the defendant used no more force than was reasonably necessary in light of the threatened or actual force; and (4) the defendant’s purpose in using force was to aid the person [he was] defending.” MPJI-Cr 4:17.3 Homicide—First Degree Premeditated Murder, Second Degree Specific Intent Murder and Voluntary Manslaughter (Perfect/Imperfect Defense of Others), MPJI-Cr 4:17.3 (2d ed. 2021). Partial defense of others exists where the defendant actually, though unreasonably, believed that the person defended was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed; or the defendant used greater force than a reasonable person would have used, but the defendant actually, though unreasonably, believed that the force used was necessary. *Id.* If the defendant acted in complete defense of others, no charge is appropriate. MPJI-Cr 4:17.3. If the defendant acted in partial defense of others, the appropriate charge is voluntary manslaughter rather than second-degree murder. *Id.*

Another possible defense is law-enforcement justification. This defense provides that an officer may use “that force necessary to discharge his official duties” and “[i]n so doing, he is not liable civilly or criminally for the assault or battery that may result, including, if necessary, the use of deadly force.” *Wilson v. State*, 87 Md. App. 512, 519-20 (1991). The rationale for this justification is that officers’ duties are “markedly different” from those of ordinary citizens, requiring that officers “threaten deadly force on a regular basis.” *Koushall v. State*, 249 Md. App. 717, 728-29 (2021), *aff’d*, No. 13, Sept. Term, 2021 (Md. Feb. 3, 2022).

For any of these defenses—self-defense, defense of others, or law-enforcement justification—the reasonableness of the officers’ actions “must be evaluated not from the perspective of a reasonable civilian but rather from the perspective of a reasonable police officer similarly situated.” *State v. Albrecht*, 336 Md. 475, 501 (1994). A court will consider “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.” *State v. Pagotto*, 361 Md. 528, 555 (2000) (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)). To reasonably use deadly force, an officer must have “probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.” *Estate of Blair by Blair v. Austin*, 469 Md. 1, 23-24 (2020) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)). If an officer used more force than was reasonably necessary, “the privilege is lost.” *French v. Hines*, 182 Md. App. 201, 265-66 (2008).

When analyzing the reasonableness of an officer’s actions, the United State Supreme Court and Maryland appellate courts have looked to the surrounding circumstances. “Determining whether the [level of] force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at

stake.” *Randall v. Peaco*, 175 Md.App. 320, 331 (2010) (citing *Graham*, 490 U.S. at 396). “The test of reasonableness under the Fourth Amendment [...] requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* However, “an objectively reasonable officer would use deadly force *only* when threatened with serious physical harm.” *Estate of Blair by Blair*, 469 Md. at 24 (emphasis in original). Violations of departmental policy are one “factor to be considered in determining the reasonableness of police conduct.” *Pagotto*, 361 Md. at 557 (citations omitted).

There has not yet been any judicial analysis of how the Maryland Use of Force Statute, discussed above, affects the applicability of this common law reasonableness analysis as it pertains to these three defenses. The Use of Force Statute, as detailed above, provides that officers may only use necessary and proportional force. It is possible that the new “necessary and proportional” standard supplants reasonableness as the benchmark against which officers’ conduct should be measured. But it is also possible that the new standard applies only to the new excessive force offense created by the Maryland Use of Force Statute, leaving reasonableness as the appropriate standard for other offenses. The Office of the Attorney General’s Opinions Division concluded that this latter interpretation is more likely for several reasons, including the fact that the General Assembly did not express an intent to supersede the existing reasonableness standard for offenses other than the newly created excessive force crime. [Letter](#) of Assistant Attorney General Rachel A. Simonsen to State’s Attorney Aisha N. Braveboy, Prince George’s County State’s Attorney’s Office (Jan. 18, 2023).

The Opinions Division noted, however, that necessity and proportionality may still be salient factors in the reasonableness determination because the new standard has now been incorporated into law enforcement policies and training statewide. *Id.* The advice letter states: “Maryland’s appellate courts have often considered an officer’s compliance with police department policies or training guidelines when assessing the reasonableness of the officer’s use of force.” *Id.* (citing *Koushall*, 479 Md. at 152, 156 & n.11 (non-compliance with departmental policy “highlight[ed] the [officer’s] unreasonable use of force under the circumstances”); *Albrecht*, 336 Md. at 477-78, 487, 502-03 (noting that “the record [was] replete with evidence . . . that [the officer] did not comply with . . . departmental guidelines, procedures or practices” and, thus, did not act as “act as a reasonable police officer under the circumstances” but, rather acted “in a grossly negligent and reckless manner”); *Pagotto*, 361 Md. at 550-53 (considering three departmental guidelines about how to approach a suspect when analyzing convictions for involuntary manslaughter or reckless endangerment)).

Any analysis of Detective Trenary’s criminal culpability for second-degree murder or manslaughter centers on whether, at the time he fired his weapon, he was acting in self-defense, defense of others, or pursuant to a law enforcement justification.

There are certain factors that weigh against a finding of reasonableness, thereby overcoming a complete self-defense, defense of others argument, or law enforcement justification. BCPD policy, for example, instructs that deadly force may only be used in cases of self-defense or defense of others from death or immediate serious injury. When Detective

Trenary fired the shot, witness interviews and surveillance video show that he was standing to the side of the Kia, away from its path of travel. The Royal Farms video further shows that Detective Depew had, approximately 7 seconds before, moved out of the Kia's path of travel. There is no indication that there were any civilians in front of the Kia at that time of the shooting. Indeed, the Kia proceeded forward through the parking lot, jumped a curb, and only struck another vehicle once it entered the adjacent highway. And so, it is possible that a factfinder could conclude that at the time he had escaped the vehicle block, Mr. McCourry no longer posed an immediate threat to any officer or civilian and, thus, Detective Trenary's decision to shoot was unreasonable.

It is also possible that a factfinder could find Detective Trenary was acting within the leeway contemplated by *Graham*. Based on a review of the surveillance video, Detective Depew exited his vehicle and moved to the front of his car and away from the path of the striking Kia at 6:07:34. At 6:07:37 Detective Trenary exited his vehicle, moving towards the driver's side of the Kia, and roughly three seconds later, at 6:07:41, he fired his weapon. There is no doubt that this was a "tense, uncertain, and rapidly evolving" situation and the question of reasonableness is one for the factfinder. A factfinder would have to determine whether the gap between the time at which the threat to Detective Depew existed and the time at which Detective Trenary fired was sufficient to recognize the initial threat had passed or whether it was too quick for Detective Trenary to have time to reevaluate the situation. The relevant legal question is not whether Detective Trenary had good or malicious intentions; the relevant question is solely whether it was reasonable for Detective Trenary to use deadly force, given that neither he nor Detective Depew faced an imminent threat at that moment of the shooting, but had seconds before. If a factfinder determined that Detective Trenary's actions were reasonable, then no charge is appropriate.

If the State could prove that Detective Trenary's belief was unreasonable, the charge would shift from second-degree murder to voluntary manslaughter based on partial self-defense and partial defense of others. As stated above, partial self-defense exists where the defendant was not the aggressor and actually believed that he faced an imminent threat of serious harm, but that belief was unreasonable, or the defendant used more force than necessary to defend himself. It is unclear if the State could show that Detective Trenary was the aggressor, given that Mr. McCourry drove the car towards Detective Depew and then in the vicinity of Detective Trenary. *See Pagotto*, 127 Md. App. at 363-64. It is similarly unclear that the State could show that Detective Trenary did not actually believe he or Detective Depew was in imminent danger, given that the situation unfolded in mere seconds. [REDACTED]

[REDACTED] The detectives had been tracking the Kia for days and had previously attempted an unsuccessful apprehension, resulting in Mr. McCourry and [REDACTED] leaving their car for a few days.

In addition to addressing reasonableness, the State would have to prove Detective Trenary's shot was intentional, not accidental. As Detective Trenary did not provide a statement to investigators, there is no conclusive evidence indicating whether he accidentally or intentionally fired his weapon. However, the Royal Farms video surveillance shows that, as he approached the driver's side of the Kia he pulled his firearm from the holster, held it in his gun

hand with his arm extended, and after the shot, he subsequently moved in the direction of the vehicle as it drove away. Further, forensic testing of the firearm found the weapon to be in normal operating condition. There is currently no evidence that would support the contention that the shot was unintentional.

## 2. *Tennessee v. Garner* and the Fleeing Felon Doctrine

As discussed above in Section VI(A), Detective Trenary's action also must be analyzed considering the fleeing felon doctrine. The crux of the fleeing felon analysis requires that the use of deadly force is necessary to prevent the escape of a fleeing suspect who poses an imminent risk of harm to others. *Garner*, 471 U.S. at 1.

The United States Supreme Court has analyzed this doctrine further since deciding *Garner*. In *Mullenix v. Luna*, the Supreme Court held that a state trooper who encountered an intoxicated motorist who fled from police, twice threatened to shoot officers, and who was about to encounter another officer, did not violate clearly established law regarding excessive force under Fourth Amendment. 577 U.S. 7, 13-4 (2015). In *Brousseau v. Haugen*, the United States Supreme Court held that it was not clearly established that the officer used excessive force by shooting a suspect as he fled in his vehicle, due to the risk to persons in the immediate area. 543 U.S. 194 (2004).<sup>13</sup> There, the officer was aware that there was an outstanding felony arrest warrant out for Haugen. *Id.* at 195. When she encountered Haugen in a vehicle, the officer believed he was retrieving a weapon and attempted to apprehend him. *Id.* at 196. Haugen was able to start his car and the officer jumped back and to the left, firing one shot through the rear driver's side window and hitting Haugen in the back. *Id.* The officer later said that she was concerned about other officers, occupied vehicles, and civilians who could be in the area. *Id.* at 197. The question of reasonableness is one for the factfinder and is unique to each case's specific facts.

There are factors that could support an argument that Detective Trenary acted reasonably to prevent Mr. McCourry from fleeing. BCPD policy, following the language of *Garner*, allows for the use of deadly force "when all other reasonable means have been exhausted to apprehend or prevent the escape of a person who is known or believed to have the potential to cause imminent death or serious injury." Numerous officers told IID investigators that, based on Mr. McCourry and [REDACTED] criminal histories, outstanding warrants, the details surrounding the prior shootings, and the lack of fixed address, they believed Mr. McCourry and [REDACTED] could be in possession of firearms. Detective Lange told investigators that they were aware of a "road rage" shooting and Sergeant Bakhsh had fully briefed his team on both [REDACTED] and Mr. McCourry's criminal history. CAST detectives had attempted to apprehend Mr. McCourry and [REDACTED] days prior and had been unsuccessful. The detectives further told investigators that they believed if they were unsuccessful at the Royal Farms Mr. McCourry and [REDACTED] would leave the car and their phones and they would not get another chance to apprehend them. A

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<sup>13</sup> When deciding *Brousseau* and *Mullenix*, the US Supreme Court did not weigh in on whether there was a Fourth Amendment violation, rather they were tasked with determining whether the use of force violated the "clearly established" standard. A Fourth Amendment inquiry is a lower standard and the one that must be met for a criminal analysis.

factfinder must determine whether those factors amounted to probable cause to believe that Mr. McCourry and ██████████ had committed the shootings and had the potential to cause imminent death or serious injury to another and there were no additional options to apprehend them other than by discharging his firearm.

However, at the time that Detective Trenary fired his weapon, the Kia was driving away and did not appear to be endangering any officers or civilians, although it arguably had been mere seconds earlier. If a factfinder found that the Kia posed an imminent deadly threat to Detective Trenary or another individual, the factfinder could find that Detective Trenary's use of deadly force was appropriate to counteract a similarly deadly threat and that any less-lethal force would not have been sufficient to control that threat. Conversely, if a factfinder were to find that there was no risk of imminent harm posed by the fleeing Kia, the factfinder could determine that Detective Trenary's shooting was not a reasonable response to detain the fleeing car.

#### C. Use of a Firearm in the Commission of a Crime of Violence

Criminal Law § 4-204(b), Use of a Firearm in Commission of a Crime of Violence, states: "A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony ...." Second-degree murder and voluntary manslaughter are crimes of violence. Pub. Safety § 5-101(c). Second-degree murder and voluntary manslaughter are also felonies. Crim. Law §§ 2-204, 2-207. The State could only pursue a charge for use of a firearm in the commission of a crime of violence if it could prove one of those predicate offenses.

#### D. Misconduct in Office

The common-law crime of misconduct in office requires that the State prove: (1) that the defendant was a public officer; (2) that the defendant acted in his official capacity or took advantage of his public office; and (3) that the defendant corruptly did an unlawful act (malfeasance), corruptly failed to do an act required by the duties of their office (nonfeasance), or corruptly did a lawful act (misfeasance). MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and Nonfeasance), MPJI-Cr 4:23 (2d ed. 2021). "[T]he conduct must be a willful abuse of authority and not merely an error in judgment." Comment to *id.* (citing Hyman Ginsberg and Isidore Ginsberg, *Criminal Law & Procedure in Maryland* 152 (1940)).

Unless the State could prove one of the above charges, it would be difficult to establish the corrupt intent necessary to prove misconduct in office. *See Sewell v. State*, 239 Md. App. 571, 604 (2018) (malfeasance is conduct that "falls outside the official's discretion and authority, and if done willfully, is corrupt on its face. The factfinder can therefore infer the element of corruption with direct evidence of the official's intent to act corruptly...."). There does not appear to be any evidence that Detective Trenary was specifically motivated by "depravity, perversion, or taint." *Id.* However, if the State were able to prove one of the crimes discussed above, the State could argue that evidence of corruption can be inferred from the wrongfulness of Detective Trenary's actions.

#### E. Reckless Endangerment



Criminal Law § 3-204(a), Reckless Endangerment, states: “A person may not recklessly [] engage in conduct that creates a substantial risk of death or serious physical injury to another.” To prove reckless endangerment, the State must establish: “(1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; (2) that a reasonable person would not have engaged in that conduct; and (3) that the defendant acted recklessly.” MPJI-Cr 4:26B Reckless Endangerment, MJPI-Cr 4:26B (2d Ed. 2021).

To prove recklessness, the State must show that the defendant “consciously disregarded” the substantial risk to others. *Marlin v. State*, 192 Md. App. 134, 166 (2010) (citation omitted). “The test is whether the [defendant’s] misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk the statute was designed to punish.” *Minor v. State*, 326 Md. 436, 443 (1992). In the context of officers’ interactions with civilians, relevant factors include: an officer’s modifications to their service weapon; an officer aiming their gun at the civilian; the officer’s placement of their trigger finger; the officer’s knowledge of the threat, or lack thereof, posed by the civilian; and the proximity of bystanders. *Pagotto*, 361 Md. at 554-55 (finding these factors to have been determinative in *Albrecht*, 336 Md. at 505, but not present in the incident involving Sergeant Pagotto).<sup>14</sup>

A reckless endangerment charge with respect to Detective Trenary’s endangerment of Mr. McCourry would merge with the charges discussed above, and is therefore, not discussed separately here. *Williams v. State*, 100 Md. App. 468, 490-91 (1994). The State may, however, still consider a reckless endangerment charge with respect to Detective Trenary’s shooting and the risk to ██████████ the only other individual in the area.

At the time Detective Trenary fired, the vehicle was moving away from him, and he appeared to be moving towards the car. Even if a factfinder determined Detective Trenary’s conduct created the required substantial risk of harm, a factfinder would still need to decide whether Detective Trenary’s conduct itself was reckless and not merely, for example, unnecessary or ineffective. However, as stated above, an officer’s policy violation can be evidence of recklessness.

## VII. Conclusion

This interim report has presented factual findings and legal analysis relevant to the shooting of Brian McCourry that occurred on January 31, 2023, in White Marsh, Maryland. The IID will supplement this report when it receives the results of the autopsy examination from OCME, but please feel free to contact the IID if you would like us to supplement this report in any other way through further investigation or analysis.

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<sup>14</sup> While *Albrecht* and *Pagotto* considered the *mens rea* for gross negligence involuntary manslaughter rather than for reckless endangerment, courts have indicated that the two *mentes reae* are functionally identical. See *State v. Morrison*, 470 Md. 86 (2020).

## Appendices

### **Appendix A – Materials Reviewed**

911 Calls (12 audio recordings and 3 additional items)  
Body-Worn Camera Video (36 recordings, 1 key, 1 table of contents)  
CAD Reports (2 items)  
Civilian Witness Statements (8 interviews, 2 audit logs, and 1 table of contents)  
Communications Audio (7 recordings and two additional items)  
Departmental Policies (7 policies)  
IA History and Training Records (17 items)  
Lab Reports (1 item)  
Medical Records (9 items)  
MSP Reports (2 reports)  
OAG Reports (22 reports)  
Officer Witness Statements (3 interviews)  
Other Video (264 recordings and 1 custodian of records certification)  
Photographs (986 photos)  
Police Reports (12 items)  
Subpoenas (5 items)

*All materials reviewed have been shared with the Baltimore County State's Attorney's Office via a secure filesharing service.*

### **Appendix B – Relevant Baltimore County Departmental Policies**

See attached policies.

**Appendix B**  
Relevant Baltimore County Departmental Policies

- Will be inspected monthly for:
  1. Proper accountability.
  2. Assurance that the “pull ring” is in place and properly seated in the safety clip.
  3. Any signs of corrosion or damage to the grenade.
  4. Expiration date.
    - NOTE:** The shelf life of white smoke grenades is four years from the date of manufacture. Expired, undamaged canisters will be removed from the armory by Special Response Team personnel.
- Are considered pyrotechnic aerosols and burn at 1600 to 2000 degrees Fahrenheit. Therefore, they will only be deployed outdoors, and where the foreseeable risk of fire is minimal or outweighed by a compelling need to deploy smoke to protect against the threat of imminent loss of life or serious personal injury.
- In the event of a misfired device, the Hazardous Devices Team will be contacted to respond and dispose of the device.
- Usage must be documented:
  1. In the appropriate incident report.
  2. In a detailed [Form 12L](#), Intra-Department Correspondence, by a shift/unit commander.
    - NOTE:** [Forms 12L](#) will contain the existing circumstances when deployment was authorized, who authorized the deployment, and the effect deployment had on the situation.
  3. In a photograph(s) that shows the area around the spent grenade after deployment.

#### **12-4.0 FIREARMS**

##### **DEFINITIONS**

- Apply only to this article unless otherwise stated.
- Firearms:
  1. Department-issued firearms.
  2. Privately owned, Department-approved firearms.
- Firearms discharge:
  1. Intentional discharge.
  2. Unintentional discharge.
  3. Discharge of a member’s firearm by another person.

##### **SWORN MEMBERS**

- May only justify use of a firearm by the facts known at the time a decision to use the firearm is made. Facts unknown, no matter how compelling, cannot be considered later when determining if the use of a firearm was justified.
- Must communicate to a suspect their identity, purpose, and intention to fire, unless the circumstances are such that the suspect already knows or unless such communication cannot be reasonably made.
- May discharge a firearm in the performance of their police duties only in the following circumstances:
  1. Self-defense from death or serious injury.
  2. In defense of another person from death or immediate danger of serious physical injury.
  3. When all other reasonable means have been exhausted to apprehend or prevent the escape of a person who is known or believed to have the potential to cause imminent death or serious injury.
  4. When an officer is on foot and a vehicle is being used against the officer, or another person, and the safety of innocent persons would not be jeopardized.
  5. To dispose of or humanely destroy an injured animal.
  6. During training/qualifications at the Department’s or any other approved range facility.

- Will not discharge a firearm in the performance of their duties in the following circumstances:
  1. From a moving vehicle.
 

**EXCEPTION:** When the occupants of another moving vehicle are using or attempting to use deadly force against an officer and the safety of innocent persons would not be jeopardized (e.g., ricocheting bullets, out-of-control vehicle, etc.).
  2. To fire warning shots.
  3. To call for assistance, except in extreme emergency. Justification for this exception rests solely with the member involved.

#### **12-4.1 AUTHORIZED FIREARMS**

##### **SWORN MEMBERS**

- Ensure Department-issued firearms and privately owned, Department-approved firearms are kept in a secure place when not in use. Access must be limited to ensure safety.
- Carry their issued firearm at all times while on duty, unless otherwise authorized by their commander or current procedures.
- Conceal their firearms from public view when not in uniform, except when present at crime scenes, assignments at law enforcement facilities where their official police identification is visible and they are readily identifiable as police officers, or when prior approval has been allowed by their commanders.
- May be armed when off duty with their:
  1. Department-issued firearm.
  2. Privately owned, Department-approved firearm.
 

**EXCEPTION:** Officers who have not completed the Field Training Program unless they were hired under the Lateral Entry Program or are performing a work-related function (e.g., traveling to/from work assignment, court, etc.).
  3. Privately owned firearm if they are authorized to possess the weapon by a valid concealed weapons permit or legislation (i.e., Law Enforcement Officers Safety Act of 2004).

#### **12-4.2 SERVICE FIREARMS**

##### **SWORN MEMBERS**

- Are issued firearms authorized by the Chief of Police.
- Are issued firearms by the Materials & Facilities Management Unit.
- Must be cognizant of the type of people they may be dealing with when at local institutions or hospitals, and, if the circumstances are appropriate, make every effort to secure the firearm to protect themselves and others.
- Are responsible for the condition of their issued firearms and will:
  1. Keep the firearm clean and ready for use at all times.
  2. Not modify any Department-issued firearm.
  3. Obtain repair, maintenance, and adjustments as necessary from a certified Firearms Training Team (FTT) armorer.
 

**EXCEPTION:** Tactical Unit special weapons.
  4. Keep firearms loaded with ammunition approved by the Training Section.
  5. Keep a round chambered when carried on duty.
 

**NOTE:** Topping-off the magazine by adding an additional round is prohibited.

##### **SUPERVISORS**

- Inspect service firearms weekly to ensure they are properly maintained.

##### **REFERENCE**

- [Non-Departmental Equipment Guidelines.](#)

## **12-4.3 PRIVATELY OWNED, DEPARTMENT-APPROVED FIREARMS**

### **GENERAL**

- Sworn members may carry a privately owned, Department-approved firearm, only after qualifying on a Department-approved course of fire. The member must also meet all Maryland Police Training and Standards Commission (MPTSC) requirements before being allowed to carry the firearm.
- Failure to maintain qualification on an annual/semi-annual basis or meet firearms requirements will result in cancellation of the member's privilege to carry a privately owned, Department-approved firearm.
- Probationary officers not hired under the Lateral Entry Program must complete field training prior to obtaining approval to carry a privately owned, Department-approved firearm.  
**NOTE:** Officers may submit their request during field training, but will only be approved at the completion of field training.
- Firearms must meet all requirements listed in the [Non-Departmental Equipment Guidelines](#) to be approved for use, unless the specific firearm was previously approved by the Training Section for the member and the member has continuously maintained certification with that firearm.
- When a member's privately owned, Department-approved firearm is submitted into evidence due to its use during an incident, the firearm will be returned to the member as soon as practicable.  
**NOTE:** When a member's privately owned, Department-approved patrol rifle is being held as evidence, and the member's patrol rifle certification is not suspended or revoked, the Department will issue the member a patrol rifle to use, if one is available.

### **FIREARMS CRITERIA**

- Must meet the specifications listed on the [Non-Departmental Equipment Guidelines](#).

### **FIREARMS PROHIBITIONS**

- Altering or otherwise modifying a Department-approved firearm without the authorization of the FTT.  
**NOTE:** The addition of an approved accessory listed in the Non-Departmental Equipment Guidelines is not considered a modification.

### **AMMUNITION CRITERIA**

- Ammunition type and caliber will be determined and posted by the Training Section with the approval of the Training Section Commander.
- Refer to the [Non-Departmental Equipment Guidelines](#).

### **APPROVED PATROL RIFLE ACCESSORIES**

- Listed on [Non-Departmental Equipment Guidelines](#).
- All approved patrol rifle accessories must be inspected by a member of the FTT prior to use on duty.  
**EXCEPTION:** Pistol Grip Sleeves.

### **SWORN MEMBERS**

- Must be able to demonstrate field disassembly, assembly, and a function check of the firearm.
- Are provided ammunition for qualification, only if the privately owned, Department-approved firearm is of the same caliber as the Department-issued service firearm.
- Keep privately owned, Department-approved firearms in excellent working condition and loaded with ammunition approved by the FTT.

- May have a maximum of two privately owned, Department-approved handguns approved for off duty use.
- May have only one privately owned, Department-approved patrol rifle approved for on duty use.
- Notify their commanders immediately, and in writing, when their privately owned, Department-approved firearm has been lost, stolen, sold, etc.
- Are responsible for all service, maintenance, knowledge, care, and safe and proper storage of all privately owned, Department-approved firearms.
- Working a plain clothes assignment or special detail may carry their privately owned, Department-approved handgun, in lieu of their issued handgun, when the member meets the qualifications outlined in this article and the member's bureau chief approves the request.

### **TRAINING SECTION**

- Develops and maintains the criteria and prohibitions for privately owned, Department-approved firearms and accessories.
- Provides updates to the [Non-Departmental Equipment Guidelines](#), as needed.
- Inspects the mechanical condition of privately owned, Department-approved firearms prior to qualification and ensures that the weapons conform to policy.
- May inspect the mechanical condition of privately owned, Department-approved firearms prior to re-qualification to ensure the firearm conforms to policy.
- Monitors qualifications for passing scores.
- Indicates approval and signs the Form 145, Weapons Request/Registration, if the member has qualified with the privately owned, Department-approved firearm described, or indicates disapproval and notifies the member's commander in writing that the member did not qualify.
- Conducts re-qualification for a privately owned, Department-approved firearm when the member is regularly scheduled for Department issued firearms qualifications.  
**EXCEPTION:** Privately owned, Department-approved patrol rifle re-qualification will be completed on a patrol rifle re-qualification date.
- Maintains a file of approved Forms 145.
- Has final authority for privately owned, Department-approved firearm approval.

### **TRAINING SECTION COMMANDER**

- Provides revisions to the [Non-Departmental Equipment Guidelines](#), as needed.

### **REFERENCE**

- [Non-Departmental Equipment Guidelines](#).

### ***12-4.3.1 APPROVAL/QUALIFICATION PROCESS FOR OFF DUTY USE OF HANDGUNS***

#### **GENERAL**

- A member's commander may approve the request for a sworn member to carry a privately owned, Department-approved handgun while off duty.

#### **SWORN MEMBERS**

- Desiring to carry a privately owned, Department-approved handgun off duty must:
  1. Complete a Form 145, Weapons Request/Registration, to their commander requesting permission to carry an off duty firearm.
  2. Report to the range with the preliminarily approved weapon, and the Form 145, during their scheduled semi-annual qualification, or at a time designated by the Firearms Training Team (FTT) with:
    - a. An approved holster.
    - b. Two magazines.

- c. Approved ammunition (if required).
  - d. Documented specifications (i.e., manual) for the firearm.
  - 3. Qualify with the firearm after it has been inspected and approved by the FTT.
  - 4. Return the Form 145 to their commander for final approval after posting passing scores on Maryland Police Training and Standards Commission (MPTSC) approved day and reduced light firearm qualification courses.
  - Failing to qualify with a privately owned, Department-approved handgun may not carry the firearm until qualification mandates are met and their commander approves the Form 145.
  - Whose commander has denied their request, may appeal their commander's decision to their division commander.
- NOTE:** Members whose chain-of-command does not include a division commander will appeal their commanders' decisions to their bureau chief.

### **COMMANDERS**

- Distribute approved and disapproved Forms 145 as follows:
  1. Original - to the Professional Standards Bureau.
  2. Copy - to the member's command file.
  3. Copy - to the FTT.
  4. Copy - to the member.

### **DIVISION COMMANDERS**

- Review appeals from members whose commanders have denied their requests to carry a privately owned firearm off duty.

### **REFERENCE**

- Non-Departmental Equipment Guidelines.

## ***12-4.3.2 APPROVAL/QUALIFICATION PROCESS FOR ON DUTY USE OF HANDGUNS***

### **GENERAL**

- A member's bureau chief may approve the request for a sworn member to carry a privately owned, Department-approved handgun in lieu of the service handgun while on duty.
 

**NOTE:** Members whose chain-of-command does not include a bureau chief will submit their requests to the Bureau Chief of the Professional Standards Bureau.
- Requests to carry a privately owned, Department-approved handgun in lieu of a member's issued handgun will be submitted using a Form 12L, Intra-Department Correspondence.
- A member's authorization to use a privately owned, Department-approved handgun on duty is assignment specific. Members transferred to a new assignment must be approved by their bureau chief to continue their use of the handgun on duty.
- Members will review the [Non-Departmental Equipment Guidelines](#) for specifications detailing which handguns will be considered for on duty use.

### **SWORN MEMBERS**

- Desiring to carry a privately owned, Department-approved handgun on duty will:
  1. Submit a Form 12L, and a Form 145, Weapons Request/Registration, through their chain of command to their bureau chief requesting preliminary approval to carry their privately owned, Department-approved handgun, in lieu of their issued handgun.
 

**NOTE:** Submitted Forms 12L must include an explanation identifying an operational necessity supporting the member's request.



2. Report to the range with the weapon, and the preliminarily approved Form 145, during their scheduled semi-annual qualification, or at a time designated by the Firearms Training Team (FTT) with:
    - a. An approved holster.
    - b. Two magazines.
  3. Qualify with the firearm after it has been inspected and approved by the FTT.
  4. Return the Form 145 to their commander for final approval after posting passing scores on Maryland Police Training and Standards Commission (MPTSC) approved day and reduced light firearm qualification courses.
 

**NOTE:** Members approved to carry privately owned, Department-approved handguns on duty are required by the MPTSC to fire additional rounds of ammunition for qualification.
- Failing to qualify with a privately owned, Department-approved handgun, may not carry the firearm until qualification mandates are met and their commander and bureau chief approve the Form 145.

### **COMMANDERS**

- Approve submitted Forms 12L with Forms 145 only when the request is supported by an operational necessity.
- Submit approved Forms 12L and Forms 145 to their bureau chief for final approval.
- Provide members with a copy of their approved Form 12L and Form 145.
- Ensure a copy of the Form 12L approved by the bureau chief is attached to each copy of the Form 145.
- Distribute approved and disapproved Forms 145 as follows:
  1. Original - to the Professional Standards Bureau.
  2. Copy - to the member's command file.
  3. Copy - to the FTT.
  4. Copy - to the member.

### **BUREAU CHIEFS**

- Approve or deny requests to carry privately owned, Department-approved handguns on duty.

### **REFERENCE**

- [Non-Departmental Equipment Guidelines](#).

### ***12-4.3.3 APPROVAL/QUALIFICATION PROCESS FOR ON DUTY USE OF PRIVATELY OWNED PATROL RIFLES***

### **GENERAL**

- A sworn member's bureau chief may approve their request to carry a privately owned, Department-approved patrol rifle while on duty.
 

**NOTE:** Members whose chain-of-command does not include a bureau chief will submit their requests to the Bureau Chief of the Professional Standards Bureau.
- Requests to carry a privately owned, Department-approved patrol rifle will be submitted using a Form 12L, Intra-Department Correspondence.
 

**NOTE:** If the member is not currently certified as a patrol rifle operator, the member will indicate that they wish to also participate in the patrol rifle program and carry their privately owned, Department-approved patrol rifle.
- A sworn member's authorization to use a privately owned, Department-approved patrol rifle on duty is assignment specific. Members transferred to a new assignment must be approved by their bureau chief to continue their use of the firearm on duty.

- Should a member's privately owned, Department-approved rifle become unavailable (e.g., sold, damaged, etc.), he/she may continue to participate in the Patrol Rifle program using a Department-issued rifle, if one is available.

### **SWORN MEMBERS APPROVED TO PARTICIPATE IN THE PATROL RIFLE PROGRAM**

- May submit a request to their bureau chief to carry a privately owned, Department-approved patrol rifle while on duty.
- Desiring to carry a privately owned, Department-approved patrol rifle on duty will:
  1. Submit a Form 12L and a Form 145 through their chain of command to their bureau chief requesting preliminary approval to carry their privately owned, Department-approved patrol rifle.  
**NOTE:** If only requesting to participate in the program, only a Form 12L is needed.
  2. Report to the range with the rifle, and the preliminarily approved Form 145, at a time designated by the Firearms Training Team (FTT) with:
    - a. A case with a tether and a lock.
    - b. Three magazines.
    - c. Documented specifications (i.e., manual) for the rifle.
  3. Qualify with the rifle after it has been inspected and approved by the FTT.
  4. Return the Form 145 to their commander for final approval by the commander and bureau chief after posting passing scores on Maryland Police Training and Standards Commission (MPTSC) approved day and reduced light firearm qualification courses.
- Failing to qualify with a privately owned, Department-approved patrol rifle, may not carry the firearm until qualification mandates are met and their commander and bureau chief approves the Form 145.

### **COMMANDERS**

- Submit approved Forms 12L and Forms 145, Weapons Request/Registration, to their bureau chief for preliminary and final approval.
- Forward a copy of all Forms 12L and Forms 145 approved by the bureau chief to the FTT.
- Provide members with a copy of their approved Form 12L and Form 145.
- Ensure a copy of the Form 12L approved by the bureau chief is attached to each copy of the Form 145.
- Distribute approved and disapproved Forms 145 as follows:
  1. Original - to the Professional Standards Bureau.
  2. Copy - to the member's command file.
  3. Copy - to the FTT.
  4. Copy - to the member.

### **BUREAU CHIEFS**

- Approve or deny requests to carry privately owned, Department-approved rifles on duty.

### **REFERENCE**

- [Non-Departmental Equipment Guidelines](#).

## **12-4.4 SPECIALIZED FIREARMS/WEAPONS**

### **GENERAL**

- Specialized firearms/weapons are not standard issued firearms or weapons and require specific selection, training, and certification standards.
- Units requiring the use of a firearm or weapon other than standard issue will submit documentation through the unit commander detailing the reasons, to include:
  1. Description of the firearm/weapon requested.

2. Approval of the firearm by the Maryland Handgun Review Board and the Training Section.

- Each command level within the requesting bureau will review and comment on the request.
- The bureau chief, after reviewing all documentation, will approve or deny the request.
- If the request is approved, the requesting unit commander will ensure that all weapons training and qualification mandates are met prior to the weapons being issued or exchanged.
- The Training Section will be responsible for the training, maintenance, and certification records of specialized weapons issued to all members not assigned to the Tactical Unit.
- The Tactical Unit is responsible for the training, and maintenance of all specialized weapons assigned to the Unit. A written Standard Operating Procedure (SOP) will be maintained for each type of specialized weapon placed in service by the Tactical Unit and approved through the proper channels.

**NOTE:** The Tactical Unit will provide its members' weapon qualification dates and scores to the Training Section for forwarding to the Maryland Police Training & Standards Commission (MPTSC).

## **12-4.5 SHOTGUNS**

### **GENERAL**

- Shotguns are issued to most marked patrol units and selected support units and will be inspected:
  1. And cleaned on a weekly basis.
  2. Annually by a Firearms Training Team certified armorer to ensure the firearms are functioning properly.
- The shotgun will be an optional weapon for all sworn members of the Department. Members with recruit status will be trained to use the shotgun during initial firearms training. Upon graduation from the Training Academy, the qualification will become optional.
- This policy will not release non-certified officers from the responsibility of safety. All officers will be given safety briefings at In Service Training, providing instruction on how to safely unload, handle and clean a shotgun.
- Only shotgun-certified officers will deploy the shotgun. However, all officers will inspect the shotgun for safety and security during their daily vehicle inspection to ensure it is properly secured in the electronic rack with the safety on.
- The shotgun will be deployed for situations in accordance with the Department's firearms policy as outlined in this article.

### **CERTIFIED OFFICERS**

- Will qualify on a Maryland Police Training and Standards Commissions (MPTSC) approved course of fire with the shotgun during the calendar year.
- If the weapon is deployed during the shift, will remove the live round from the chamber and load it back in the magazine tube. After ensuring the safety is on, secure the shotgun back into the electronic rack.
- At the end of the tour of duty, will ensure the shotgun is secured in the patrol vehicle.
- Conduct daily inspections on the condition of the shotgun ammunition.
- May submit a Form 145A, Request to Carry Non-Departmental Equipment, for approval of privately owned accessories.

**NOTE:** Refer to the [Non-Departmental Equipment Guidelines](#).

### **SHIFT/UNIT COMMANDERS**

- Maintain a list of shotgun-certified officers assigned to their shift/unit.
- Ensure that shotguns are cleaned on a weekly basis.

- Monitor the deployment of the shotgun by officers assigned to their shift/unit.

### **PRECINCT/SECTION COMMANDERS**

- Maintain a current list of shotgun certified officers in their command, obtained from the Training Section.
- Maintain a record of all shotguns and ammunition issued to his/her command and ensure the weapons and ammunition are properly stored, inspected and maintained.
- Establish a proper storage area and protocol for weapon accessibility.

### **TRAINING SECTION**

- Provides all training required for entry-level users of the shotgun and In Service qualifications for established users.
- Maintains all training records of qualified shotgun users and provides qualification information to the MPTSC.
- Repairs, as necessary, all Department owned shotguns and conducts maintenance on an annual basis.
- Provides safety briefings during yearly In Service Training to instruct all officers in the proper methods of unloading and safe handling of the shotgun along with instructions for cleaning the shotgun.
- Suspends the certification of an officer who fails to maintain minimum qualification scores and notifies the officer's commander by telephone followed by written notification. This suspension will be in effect until minimum scores have been achieved.
- Establishes a list of approved accessory items.

### **REFERENCE**

- [Non-Departmental Equipment Guidelines](#).

## **12-4.6 PATROL RIFLES**

### **GENERAL**

- The Department will permit the deployment of a patrol rifle by a certified sworn member to assist officers responding to an incident or situation where the weapon can be utilized in a support position against a suspect(s) who is believed to be a potential threat to officers and the public.
- Only certified, sworn members will deploy the weapon, and will do so consistent with the Department's firearms policy as outlined in this article.
- The patrol rifle is for limited use as defined in this policy. When the Tactical Unit assumes responsibility for the situation, specific instructions will be provided by the Incident Commander to the sworn members who are deployed with their patrol rifles.
- Sworn members approved to participate in the Department's Patrol Rifle Program, may request the approval of their bureau chief to carry a privately owned, Department-approved patrol rifle on duty.

**NOTE:** Sworn members receiving approval to carry a privately owned patrol rifle will immediately return their Department-issued patrol rifle and associated equipment (e.g., magazines, case, etc.) to the Materials & Facilities Management Unit, if applicable.

### **SELECTION CRITERIA AND PROCESS**

- The bureau chief will determine the number of patrol rifles and certified sworn members assigned to each precinct/section.

- Sworn members requesting certification training will submit a Form 12L, Intra-Department Correspondence, through the chain-of-command to the precinct/section commander.  
**NOTE:** Members will also include a Form 145 if requesting to qualify with a privately owned rifle.
- The precinct/section commander will assess the sworn member's qualifications to participate in the program after consultation with the Training Section Commander, or designee.
- Commanding officers will recommend selected sworn members to their division commander for review. The division commander will make recommendations to the bureau chief. The bureau chief will make the final determination as to which members will be selected for certification training.
- Sworn members selected to train with the patrol rifle must successfully complete and maintain satisfactory scores as prescribed by Maryland Police Training and Standards Commission (MPTSC).  
**NOTE:** MPTSC requires certified officer to successfully complete two courses of fire for qualification (i.e., one during each half of the calendar year).
- The Training Section will issue/assign the Department's patrol rifles to certified, sworn members for deployment as per this policy.

### **DEPLOYMENT CRITERIA**

- Deployment will be at the discretion and approval of the shift/unit commander or higher ranking member and will be deployed only by a sworn member certified for its use. Shift/unit commanders may deploy the patrol rifle for an unplanned, spontaneous field incident, and/or when circumstances exist where they determine the deployment of the patrol rifle would allow for a tactically superior advantage. Considerations for deployment include but are not limited to potential threats of suspects who are:
  1. Believed to be wearing protective body armor.
  2. Armed with, or have immediate access to a weapon.
  3. Situated in a tactically superior position.**EXCEPTION:** When a certified, sworn member encounters an immediate life-threatening situation that meets the deployment criteria he/she may deploy the patrol rifle without prior approval.
- When requesting a patrol rifle, an officer will broadcast his or her unit number, location, and the fact that a patrol rifle is needed.

### **CERTIFIED SWORN MEMBERS**

- Only certified, sworn members are authorized to deploy a patrol rifle in the field. Sworn members who are equipped with the patrol rifle will:
  1. Upon beginning their tour of duty, notify communications that they are available and patrol rifle equipped.
  2. Properly secure (i.e. locked in a tethered case or secured in a departmental installed retention device) the unloaded patrol rifle, three magazines, and 90 rounds of ammunition in their police vehicle until approval is obtained for its deployment.  
**NOTE:** Sworn member using a locked, tethered case will secure it to the vehicle.
  3. Respond to requests for a patrol rifle as needed.
  4. Ensure that each situation meets the deployment criteria and that approval is obtained prior to deploying the patrol rifle at an incident, unless exigent circumstances exist.
  5. Verbally report the deployment circumstances to the shift commander as soon as possible. The details of the incident justifying deployment will thereafter be submitted via a Form 12L through the chain-of-command prior to the end of the member's tour of duty.
  6. Clean, maintain, and properly secure the patrol rifle when not in use.  
**NOTE:** Department-issued rifles will be stored in the assigned precinct/section's armory/vault when not in use.

- Who are promoted to the rank of Corporal may elect to retain their Department-issued patrol rifle at the discretion of their assigned precinct/section commander.
- At or above the rank of sergeant will not be assigned a Department-issued patrol rifle.  
**NOTE:** Sworn members at or above the rank of sergeant may continue to participate in the Patrol Rifle program, but must do so using a privately owned, Department-approved rifle.
- May elect to maintain their certification even if a patrol rifle is no longer assigned to them.
- Who are de-certified or whose certification is suspended or revoked, will return their assigned Department-issued equipment to the Materials & Facilities Management Unit.  
**NOTE:** Members who are de-certified, or whose certification is suspended or revoked, will not possess their privately owned, Department-approved patrol rifle during their tour of duty until their certification has been restored.
- Will ensure they are immediately identifiable as a law enforcement officer by wearing an identifiable outer garment that displays "POLICE" (e.g., issued traffic vest, issued uniform jacket, etc.) prior to deploying a patrol rifle.  
**NOTE:** Non-uniformed members deploying patrol rifles will notify the dispatcher of this fact and relinquish their position to a uniformed patrol rifle operator at the first opportunity.

### **SHIFT/UNIT COMMANDERS**

- Respond to all patrol rifle requests.
- Determine if deployment of the patrol rifle is appropriate.  
**NOTE:** Generally, the shift/unit commander's decision to deploy the patrol rifle will be made at the scene. However, in exigent circumstances, authorization may be given via telephone or police radio prior to arrival.
- Ensure non-uniformed members deploying patrol rifles are replaced with uniformed patrol rifle operators at the first opportunity.
- Make the necessary notifications and documentation if the patrol rifle is discharged.
- Ensure that appropriate documentation is completed.
- Ensure any patrol rifle discharged during a member's tour of duty is inspected by the FTT.

### **PRECINCT/SECTION COMMANDERS**

- May suspend or revoke a sworn member's patrol rifle certification at any time.
- Monitor certified, sworn members' shift assignments within his/her command to ensure adequate patrol rifle certified officer coverage.
- Maintain a current list of sworn members within his/her command who are certified to deploy the patrol rifle (obtained from the Training Section).
- Maintain a record of all patrol rifles issued to his/her command and ensure that the weapons are properly stored and maintained.
- Establish a proper storage area and weapon/accessories protocol for maintenance, accounting and accessibility.
- Of certified, sworn members transferring to other assignments will confirm and advise the new commanding officer, via a Form 12L, that the member is currently certified, approved, and authorized to use the weapon.  
**NOTE:** If the sworn member is authorized to use a privately owned, Department-approved patrol rifle on duty, the:
  1. Current commander will include this information in his/her Form 12L.
  2. Receiving commander will ensure approval of the bureau chief is obtained prior to the sworn member carrying the rifle on duty in his/her new assignment.
- Critique all situations involving the deployment of the patrol rifle for appropriateness.
- Ensure a copy of the Form 12L documenting the deployment is sent to the Firearms Training Team (FTT).

## **9-1-1 COMMUNICATIONS CENTER**

- Broadcasts the need for a patrol rifle and the location of the request.
- Assigns the patrol rifle equipped unit to the call as backup.
- Notifies and assigns the shift commander to respond.

## **12-5.0 HOLSTERS**

### **DEFINITIONS**

- Duty holster - a holster issued by the Department for the issued service weapon for use by any member.
- Administrative holster - a holster issued by the Department for the issued service weapon for use by:
  1. On duty members conducting plain clothes or administrative duties.
  2. Any member while off duty.
- Privately owned pre-approved holster - a holster that has been pre-approved by the Training Section for on duty use by members conducting plain clothes or administrative duties.
- Privately owned holsters that have not been pre-approved - holsters that have not been pre-approved by the Training Section for on duty use. Prior to use of these holsters on duty, requesting members must obtain the approval of their bureau chief, the Training Section, and their precinct/section commander.

**NOTE:** Consult the [Non-Departmental Equipment Guidelines](#) for the list of privately owned pre-approved holsters and the specifications used to evaluate privately owned holsters that have not been pre-approved for on duty use.

### **MEMBERS**

- Use the Department's issued duty holster while on duty.

#### **EXCEPTIONS:**

1. Members conducting plain clothes or administrative duties may:
    - a. Choose to use the Department's issued administrative holster in lieu of the duty holster.
    - b. Obtain approval via a Form 145A, Request to Carry Non-Departmental Equipment, to use a privately owned holster that has been pre-approved for on duty use by members conducting plain clothes or administrative duties in lieu of the duty holster.
  2. Members conducting plain clothes duties may obtain permission to use a privately owned holsters that are not pre-approved for on duty use in lieu of the duty holster if:
    - a. There is a specific operational necessity supporting use of the holster; and
    - b. Use of the holster has been approved by the member's Bureau Chief, the Training Section, and their precinct/section commander.
- Must use an issued holster or a privately owned holster complying with the specifications displayed on the [Non-Departmental Equipment Guidelines](#) when qualifying at the Department's range.
  - Are encouraged to contact the Training Section prior to the purchase of any holster they intend to submit for Department approval for on duty use, or for use during qualifications at the Department's range, to ensure it complies with all of the specifications displayed on the [Non-Departmental Equipment Guidelines](#).
  - Submit a Form 145A, Request to Carry Non-Departmental Equipment, to their commander to request permission to use a privately owned pre-approved holster on duty.
  - Submit a Form 12L, Intra-Department Correspondence, with the Form 145A if they are requesting permission to use a privately owned holster that is not pre-approved for on duty use on duty.

**NOTE:** Submitted Forms 12L must include an explanation identifying an operational necessity supporting the member's request.

## **USE OF FORCE / WEAPON SYSTEMS**

### **12-1.0 USE OF FORCE INCIDENTS**

#### **DEFINITIONS**

- **Active Resistance** - physically evasive movements or behaviors to defeat an officer's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- **Deadly Force** - the amount of force reasonably calculated to cause death or serious bodily injury.
- **De-Escalation** - the use of techniques or tactics in an attempt to diffuse a potentially hostile, emotional, or violent situation. De-escalation, may, among other things, be used by members, if circumstances allow, to mitigate the need to use physical force. In the use of force context, the goal of de-escalation is to gain compliance.
- **De-Escalation Techniques** - techniques designed to diffuse a situation as described above. These include, but are not limited to: using verbal communication skills to transfer a sense of empathy and calm to an agitated person; building a sense of rapport and understanding with an individual experiencing a crisis; providing time and space to an agitated individual when appropriate; using non-verbal communication skills and active listening skills; on-going assessments of evolving situations; additional/specialized resources and various other techniques as instructed by the Training Section.
- **Force** - any execution of a physical act to control a person, overcome resistance and/or defend oneself or another. Force may entail the use of body parts, issued departmental equipment, or an instrument of necessity.  
**EXCEPTION:** Routine use of handcuffs or similar restraining devices used to ensure officer safety.
- **Immediate Danger** - present peril or jeopardy, such that action must be taken either instantly or without any considerable loss of time.
- **Imminent Death** - immediate death, such as is apparent, present, and/or immediate and must be dealt with instantly.
- **Instrument of Necessity** - an item at hand or in close proximity that can be used immediately without delay (e.g. flashlight, clipboard, etc.).
- **Neck Restraint** - any hold or restraint of the neck which is intended to restrict the ability to breathe or restrict the flow of blood to the brain. Neck restraints include, but are not limited to: strangle holds, choke holds, lateral vascular neck restraints, carotid restraints, and sleeper holds.
- **Reasonable Belief** - both a belief and the existence of facts that would persuade a reasonable officer on the scene to that belief.
- **Serious Physical Injury** - physical injury that creates a substantial risk of death or causes permanent or protracted serious disfigurement, loss of the function of any bodily member or organ, or the impairment of the function of any bodily member or organ.
- **Substantial Force** - use of force (excluding firearms discharges) which causes injury to an individual.

#### **GENERAL**

- It is the policy of the Department that officers hold the highest regard for the sanctity of human life, dignity, and liberty of all persons. Our members are trained and retrained in the areas of Constitutional policing, and the lawful use of force.
- Officers are trained to use only that force reasonable and necessary to accomplish their lawful duties. As such, the use of deadly force will only be used when reasonable and necessary to protect the safety and lives of others, and/or the members themselves.



- Officers must communicate to the subject their identity, purpose and intention, unless the circumstances are such that the subject already knows, or unless such communication cannot be reasonably made.
- Officers will utilize de-escalation techniques along with their training (e.g., Integrating Communications, Assessment, and Tactics (ICAT), etc.), when safe and practical to do so, to ensure they:
  1. Are communicating, re-assessing the situation, and using the best tactics to defuse a situation, and
  2. Use the least amount of reasonable and necessary force needed to safely control a situation.
- Officers using force resulting in an injury will immediately render first aid when safe and practical to do so.
- A copy of the Form 253, Use of Force Report, will be submitted through the officer's chain of command to the Internal Affairs Section (IAS) within 72 hours by the officer's precinct/section commander.  
**EXCEPTION:** Uses of force involving firearms discharges by a member. Refer to Field Manual, Article 12, Section 7.0, Firearms Discharges.
- The use of neck restraints is prohibited.  
**EXCEPTION:** Neck restraints may only be used under exigent circumstances, in defense against serious bodily injury or death. Justification for this exception rests solely with the member.
- All members must recognize and act upon their Duty to Intervene and to Report any member conducting an act that violates the law or constitutes gross misconduct (e.g., excessive force, theft, fraud, sexual misconduct, harassment, falsifying documents, etc.). Intervention may be verbal and/or physical. The failure to intervene and/or report the incident may subject a member to disciplinary action.  
**EXCEPTION:** When intervening was not safe and/or practical or another member was already taking action to intervene and additional intervention was not necessary.

## **OFFICERS**

- Immediately notify the shift commander of the precinct wherein the incident occurred.  
**NOTE:** If the use of force occurred within another jurisdiction, the member will immediately notify the Baltimore County 9-1-1 Communications Center for notification of the member's commander and their on-duty shift/unit commander via the 9-1-1 Police Liaison.
- May voluntarily give a public safety statement in reference to the circumstances surrounding uses of force that result in an unusual occurrence (Refer to Field Manual, Article 12, Section 7.2, Public Safety Statements).  
**NOTE:** Involved members may decline to answer the public safety statement questions.
- Complete and submit a Form 253 prior to the end of their tour of duty when any of the following circumstances exist:
  1. Force is used involving Department-issued equipment, personal equipment, or an instrument of necessity.  
**NOTE:** For firearms discharges, see Field Manual, Article 12, Section 7.0 (Firearms Discharges).
  2. A member's body part (e.g., fist, elbow, knee, foot, head, etc.) is used to administer a strike (e.g., defensive, compliance, etc.) to an individual.
  3. A Department canine intentionally bites or purposefully inflicts injury to an individual the canine team intended to seize.
  4. An individual in custody has visible or apparent injuries inflicted due to police action that indicate medical treatment may be necessary. This includes when treatment is refused.
  5. Force is used, and a shift/unit commander requests completion of a Form 253.

- Place a written narrative detailing the use of force actions and justification in the appropriate incident report, and not in the Statement of Charges and/or attached to the Form 253.
- Submit appropriate incident and medical injury reports detailing the incident.  
**NOTE:** Medical injury reports must be completed even if medical treatment is refused.

### **SUPERVISORS**

- For all uses of force that result in an unusual occurrence (i.e., uses of force resulting in serious physical injury or death), will not conduct formal administrative interviews of the member(s) involved. They will only ask the involved member(s) the Public Safety Statement questions outlined in Field Manual, Article 12, Section 7.2, Public Safety Statements, when applicable.

### **SHIFT/UNIT COMMANDERS**

- Immediately notify the precinct commander of the precinct where the incident occurred, and if different, the commander of the member involved when a use of force requiring completion of a Form 253 has occurred.
- If force results in death or whenever death is imminent, notify the:
  1. Homicide/Missing Persons Unit.
  2. Forensic Services Section (FSS).
  3. Precinct commander and member's commander.
  4. 9-1-1 Police Liaison.
  5. Internal Affairs Section (IAS).
  6. Legal Section.

**NOTE:** During non-business hours have the 9-1-1 Police Liaison notify the above commands.

- For all uses of force that result in an unusual occurrence, will not conduct formal administrative interviews of the member(s) involved. They will only ask the involved member(s) the Public Safety Statement questions outlined in Field Manual, Article 12, Section 7.2, when applicable.
- Prepare a written summary including statements made and recorded in the original police report by the:
  1. Officer using force.
  2. Witnesses and other officers.
  3. Victim, when applicable.
- **EXCEPTION:** Written summaries for uses of force that were unusual occurrences will not be completed.
- Ensure the Form 253 has been completed.
- Ensure photographs of the officer(s) and suspect(s) injuries and/or impact areas are taken, regardless of whether an injury is visible.

**NOTE:** If an injury is:

1. Visible, the photographs will be taken by the FSS, unless the FSS is in Restricted Response Mode.
  2. Not visible, the shift/unit commander will decide if the photographs will be taken by a member of the FSS or a member of their command.
- Forward the Use of Force package to the member's commander to include the:
    1. Written summary.
    2. Completed Form 253.
    3. All photographs of the officer(s) and suspect(s) injuries and/or impact areas or reference numbers to obtain photographs from the FSS.
    4. Form 273, Sick or Injured Person Medical Report.
    5. Prisoner Incarceration Log.
    6. Form 91, Daily Summary Report.

7. Prisoner medical records and/or authorization for release of medical records from the prisoner.
8. Completed police reports, including the Form 166, Arrest Report.

### **MEMBER'S COMMANDER**

- Reviews the written summary and police reports of the incident for accuracy and completeness.
- Determines if any violation(s) of Department policy or procedure has occurred and initiates a Form 258, Statement of Incident, if the use of force appears to be in violation of Department policy.
- If violations are present, consults with their division commander and the IAS to determine what investigative action is warranted.
- If no violation occurred, makes an assessment and endorsement of the incident and forwards the completed investigation for review.
- Forwards all completed investigations to their division commander for review.
- If force results in a serious physical injury, may recommend, after consultation with their chain of command and the IAS Commander:
  1. If the member should continue at present duty status or be placed in a non-line function.
  2. When the member will return to regular duty, if the member is placed in a non-line function.

**NOTE:** Recommendations will be presented to the Chief of Police who will determine whether a member will be placed in a non-line function, and will determine when members placed in a non-line function may return to regular duty.

- If substantial force results in death or serious physical injury:
  1. Places the member in a non-line function.
  2. Refers the member to the appropriate psychological services caregiver.

**NOTE:** The above actions will be documented in the appropriate report.

3. May recommend return of the member to regular duty:
  - a. When deemed appropriate, after consultation with their chain of command and the IAS Commander; and
  - b. After the member obtains a release from the psychological services caregiver.

**NOTE:** Recommendations will be presented to the Chief of Police who will determine when members placed in a non-line function may return to regular duty.

### **DIVISION COMMANDERS**

- Forward completed investigations to the IAS.

**NOTE:** If the use of force investigation identifies serious policy violations or concerns, the division commander will forward the completed investigation to their bureau chief for review prior to forwarding it to the IAS.

### **TRAINING SECTION**

- Ensures that the mandates of this Department and the Maryland Police Training and Standards Commission (MPTSC) will be followed for the courses of instruction, and met by each member in order to use any Department-issued weapon.
- Maintains a record of members who are qualified with authorized Department weapons and establishes courses of instruction.
- May be consulted by commanders for questions regarding use of force/weapon systems training/tactics in relationship to an incident.

### **INTERNAL AFFAIRS SECTION (IAS)**

- Maintains statistics on use of force incidents.

- Advises the Chief of Police of use of force statistics.
- Is authorized to initiate investigations concerning the use of force by Department members.
- Reviews all use of force incident reports.
- Conducts administrative investigations for uses of force that result in an unusual occurrence in accordance with Administrative Manual, Article 3 (Administrative Investigations and Reports).

### **BUREAU CHIEF OF THE CRIMINAL INVESTIGATIONS BUREAU (CIB)**

- Determines which section or unit within the CIB will complete the criminal investigation, when a criminal investigation is required in reference to a use of force that did not involve the discharge of a departmental firearm or a privately owned, Department-approved firearm.

### **REFERENCES**

- Administrative Manual, Article 2 (Discipline).
- Administrative Manual, Article 3 (Administrative Investigations and Reports).

## ***12-1.1 USE OF FORCE CONTINUUM***

### **GENERAL**

- The Training Section will be responsible for training officers in the proper application of the Use of Force Continuum.
- Officers must evaluate the immediate circumstances and select the appropriate level of force for each situation.
- Officers in close proximity are reminded that officer safety is paramount and officers are not required to confront an adversary without having an advantage. Officers need the ability to disengage, or escalate to a higher force option, to escape injury and/or maintain control.
- Officers are not required to start at the lowest level of the force continuum. The officer's goal in any use of force situation is two-fold:
  1. Self-protection, the protection of other officers and the public.
  2. To control a person through arrest, seizure, custody, or detention.
- Certain factors and circumstances surrounding a confrontation (officer vs. subject) will impact the use of force decision. Specific factors and circumstances include, but are not limited to:
  1. Differences in age, gender, size, fitness, or skill level.
  2. The presence of multiple subjects.
  3. The proximity of a weapon.
  4. Disability or injury to the officer.

### **VERBAL TACTICS**

- Directives and/or commands that tell the subject what action is required for compliance. Verbalization should continue throughout the incident when reasonable.

### **PHYSICAL TACTICS**

- Comprises hands-on contact techniques which may be used for escort, guidance, restraint, compliance holds or strikes.

## **12-1.2 USE OF DEADLY FORCE**

### **GENERAL**

- The use of deadly force is most commonly associated with firearms, but is not limited to such weapons. It may include other less lethal weapons, issued equipment, hands/feet, or any instrument of necessity such as a flashlight or any object at hand.

### **SWORN MEMBERS**

- Deadly force may be applied in immediate danger situations, where present peril or jeopardy exists and the officer has a reasonable belief that action must be taken instantly or without considerable delay.
- The determining factor in a deadly force decision is not the crime being committed, but the level of force being used, along with the immediate potential for death or serious bodily injury to the officer or innocent bystanders/victims.

## **12-1.3 FORM 253 PREPARATION INSTRUCTIONS**

**Block # (Blocks not listed below are considered self-explanatory).**

- 5** The Original Call Title is what the call was dispatched as and the Type of Incident is what is being reported under Maryland law (e.g., burglary, robbery, etc.).
- 8** Reporting Area number.
- 9** If no address is available, list the closest cross reference (e.g., wooded area 200ft south of 415 Main Street, etc.).
- 13** Animal Type: Dog, Cat, etc. Force Option: Conducted Electrical Weapon (CEW), Baton, etc. Result: No Injury, Death, etc.
- 15** The reason that force was used in this incident.
- 16** List only the force options that you used. "Other" could be a body part (e.g., knee, head, etc.) or an instrument of necessity (e.g., flashlight, pen, etc.). List all that apply.
- 17** Same as 16.
- 25A** "Behavior" is the subject's appearance based on your training, knowledge, and experience. If CEW risk considerations are present (e.g., pregnant, elderly, etc.) they must be listed under "other."
- 25B** Threatened force - Could be verbal, gestures, furtive movements, stance, etc.  
Physical force - Could be grabbing, pushing, attacking, etc.  
Other non-compliant - Could be passive resistance, ignoring commands, fleeing, etc.
- 25D** Subject injured - If yes, describe the injury and include if it is visible or non-visible.  
Was First Aid Administered - Water for pepper aerosol restraint spray is considered first aid. Check all that apply and list the first aid administered and explain what was performed (e.g., ice bag, bandage, etc.).
- 25-26** Digital photographs of injuries and/or impact areas must be taken of both the subject and officer regardless of whether an injury is visible.
- 27** Approval Section - The shift/unit commander must list the total number of Forms 253 that were submitted for the incident.

## **12-2.0 HANDCUFFING PROCEDURES**

### **GENERAL**

- This section applies to investigative detention, arrest, emergency evaluation, and any other appropriate situation.
- Authorized restraining devices include: handcuffs, flex cuffs, leg irons, belly belts, and leg bars.

### **5-6.3 PERSONS CRIMES SECTION**

#### **SECTION ENTITIES**

- Crimes Against Children Unit (CACU).
- Homicide/Missing Persons Unit (HMPU).
- Robbery Unit (RU).
- Special Victims Unit (SVU).
- Violent Crimes Unit (VCU).

#### **CRIMES AGAINST CHILDREN UNIT (CACU) ENTITIES**

- Child Pornography & Exploitation Team.
- Missing or Abducted Children Team.
- Physical Child Abuse/Neglect Team.
- Sex Offender Registration Team.
- Sexual Child Abuse Team.

#### **CHILD PORNOGRAPHY & EXPLOITATION TEAM**

- Investigates possession, production, solicitation, and distribution of child pornography.
- Responsible for intercepting internet child pornography trafficking and seizing assets used to facilitate the production and distribution of child pornography.
- Investigates sexual solicitation of children, child prostitution, and child prostitution rings.
- Responsible for conducting preliminary on-site forensic review of digital media storage devices used to traffic child pornography and solicit children for sex.

#### **MISSING OR ABDUCTED CHILDREN TEAM**

- Responsible for:
  1. Missing children.
  2. Child abductions (children abducted by family members).
  3. Custody disputes.
- Conducts follow-up investigations of cases open beyond 48 hours of missing children under the age of 18 and critical cases, as directed by the CACU Commander.
- Conducts follow-up investigations for children abducted from custodial relationships by a non-custodial relative.
- Reviews and/or investigates custody dispute cases whether or not they are resolved at the precinct level.

#### **PHYSICAL CHILD ABUSE/NEGLECT TEAM**

- Conducts preliminary and follow-up investigations of physical child abuse.
- Acts as liaison between the Department of Social Services (DSS) and the State's Attorney's Office regarding charges of child neglect.

#### **SEX OFFENDER REGISTRATION TEAM (SORT)**

- Tracks the registration of sex offenders in Baltimore County.
- Ensures the Department's compliance with all state and local laws pertaining to the registration of offenders and required notifications.
- Has final authority over matters pertaining to registration and enforcement of sex offender registration.

- Prepares information for members investigating non-compliant offenders.
- Represents the Department in court for cases involving registered offenders.
- Conducts criminal investigations of non-compliant sex offenders.
- Coordinates investigations with other units when a registered sex offender is involved in a case.

### **SEXUAL CHILD ABUSE TEAM**

- Investigates offenses involving:
  1. Sexual child abuse.
  2. First and second degree rapes where the victim is under the age of 13.  
**NOTE:** The Team may conduct investigations of attempts of the above offenses at the discretion of a CACU supervisor.
  3. Adult-survivor cases reported later in the victim's life.

### **HOMICIDE/MISSING PERSONS UNIT (HMPU)**

- Investigates all homicides, deaths of a suspicious nature, and all juvenile deaths resulting from violence, suicide, casualty, or occurring suddenly, and not as a result of traffic collisions.
- Evaluates solicitations to commit murder.
- Investigates all on duty and off duty police-involved shootings within the County that are intentional, result in injury or death, or involve police personnel from other jurisdictions.  
**EXCEPTIONS:** As described in Field Manual, Article 12, Section 7.1, Investigative Responsibility.
- Reviews all deaths referred to the Office of the Chief Medical Examiner.
- Conducts follow-up investigations of cases open beyond 96 hours of missing persons 18 years or older or critical cases, as directed by the HMPU Commander.

### **ROBBERY UNIT (RU)**

- Conducts follow-up investigations of:
  1. Commercial/business robberies (and attempts).  
**EXCEPTION:** Shopliftings where an assault occurs as the suspect flees from the scene (See Field Manual, Article 1, Section 4.5.1, Shoplifting).
  2. Robberies/attempts of financial institutions.
  3. Armored truck/carrier robberies/attempts.
  4. Hijackings of commercial carriers.
  5. Home/hotel room invasion robberies involving a specific or a targeted group of victims (e.g., jewelry, pharmaceutical representatives, etc.).
  6. Business deposit robberies.
  7. Robberies/trends in which other jurisdictions may be involved, as determined by the Robbery Unit Commander.
  8. Kidnappings (includes children abducted by strangers).
- Conducts all line-ups in accordance with established procedures.

### **SPECIAL VICTIMS UNIT (SVU)**

- Conducts follow-up investigations of all first and second degree rapes where the victim is 13 years of age or older.  
**NOTE:** May conduct investigations of attempts of the above offenses at the discretion of a SVU supervisor.
- Assists precinct officers with investigations of sex offenses upon request due to case complexity or nature of the offense.

## **VIOLENT CRIMES UNIT (VCU)**

- Investigates all incidents where someone is shot, including self-inflicted gunshot wounds, and the injuries do not result in death.

### **EXCEPTIONS:**

1. Shootings resulting from an attempted suicide will be handled at the precinct level.
2. Self-inflicted gunshot wounds where there are no indications of criminal activity will be handled at the precinct level as directed by the VCU Supervisor.

**NOTE:** An on-scene supervisor will contact the VCU Supervisor in reference to all self-inflicted gunshot wounds. Upon contact, the VCU Supervisor will determine if there are indications of criminal activity (e.g., the firearm is legally possessed, the victim is not prohibited from possessing the firearm, there is no reason to believe the circumstances of the discharge are being falsely reported, etc.) that require the Unit to respond and assume the investigation.

- Investigates all criminal incidents, to include domestic-related assaults, where someone receives a life-threatening injury, regardless of the weapon used.  
**NOTE:** The VCU Supervisor will be contacted anytime an on-scene supervisor has a concern that a victim's injuries may be life threatening. Upon contact, the VCU Supervisor will determine if the Unit will respond and assume the investigation.
- Responsible for the criminal investigation of intentional firearm discharges occurring within Baltimore County by a commissioned law enforcement officer of any other jurisdiction where no injury or death results.  
**EXCEPTIONS:** As described in Field Manual, Article 12, Section 7.1, Investigative Responsibility.
- Responsible for the Criminal Apprehension Support Team.

## **CRIMINAL APPREHENSION SUPPORT TEAM**

- Investigates, conducts surveillance, and apprehends criminals actively involved in current crime trends or crimes of violence.
- Actively attempts to apprehend fugitives and serve outstanding warrants for high profile cases.
- Will follow-up and apprehend sexually violent offenders who have failed to register with the State of Maryland Sexual Offender Registry.
- Conducts special investigations including criminal Internal Affairs Section (IAS) investigations as determined by the Bureau Chief of the CIB.
- May assist with apprehending escapees from detention.
- Assists, when requested, with the investigation of domestic violence cases involving Baltimore County law enforcement officers and other County domestic violence incidents on a case-by-case basis.





# INDEPENDENT INVESTIGATIONS DIVISION

Supplemental Report Concerning the Officer-Involved  
Shooting of Brian Roger McCourry, on January 31, 2023

June 15, 2023

**Supplemental Report of the Independent Investigations Division of the Maryland  
Office of the Attorney General Concerning the Officer-Involved Shooting of Brian Roger  
McCourry, on January 31, 2023**

The Office of the Attorney General’s Independent Investigations Division (the “IID”) is charged with “investigat[ing] all police-involved incidents that result in the death of a civilian” and “[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State’s Attorney of the county that has jurisdiction to prosecute the matter.” Md. Code, State Gov’t § 6-602(c)(1), (e)(1).

Due to the delay in receiving the autopsy report, in contrast to the finality of all other aspects of the investigation, the IID and the Baltimore County State’s Attorney’s Office (“SAO”) agreed that an interim report would be useful. The IID agreed to supplement the interim report upon receipt of the autopsy report. On April 11, 2023, the IID transmitted its interim report to the SAO.

This supplemental report provides the results of the previously outstanding examination and concludes the IID’s investigation.

**I. Autopsy Examinations**

Brian McCourry’s autopsy was conducted by Dr. Pamela Southall, pathologist at the Office of Chief Medical Examiner, on March 4, 2023. The IID received the final autopsy report on June 14, 2023. Dr. Southall identified Mr. McCourry’s cause of death as complications of a gunshot wound to the neck. Because he had ongoing complications related to the gunshot wound and did not recover from his injuries, she determined that Mr. McCourry’s manner of death was homicide.<sup>1</sup>

During the autopsy, Dr. Southall observed a gunshot wound on the back of the left side of Mr. McCourry’s neck. The bullet fractured the upper cervical spine and lacerated the spinal cord at the level of C2, before coming to rest within the soft tissue on the posterior-lateral right side of the neck. She further observed evidence of cerebral spinal fluid leakage during the autopsy. The wound path was observed to be back to front, left to right, and downward. The bullet fragment was recovered.

[REDACTED]

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<sup>1</sup> Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The Office of the Chief Medical Examiner of Maryland uses five categories of manner of death: natural, accident, suicide, homicide, and undetermined. “Homicide” applies when death results from a volitional act committed by another person to cause fear, harm, or death. These terms are not considered a legal determination, rather they are largely used to assist with public health statistics. “A Guide for Manner of Death Classification”, First Edition, National Association of Medical Examiners, February 2002.

## **II. Conclusion**

This supplemental report has presented additional factual findings relevant to the investigation into the officer-involved death of Brian McCourry in White Marsh, Maryland. Nothing in this supplemental report alters the legal analysis provided in the interim report. This report concludes the IID's investigation into this matter. Please contact the IID if you would like us to undertake any additional investigative steps.