



INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved
Death in Baltimore City on October 9, 2024

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Declination Report Concerning the Police-Involved Death of Robert Phillip Nedd, Jr. on October 9, 2024

The Independent Investigations Division of the Maryland Office of the Attorney General (the “IID”) is charged with investigating “police-involved incidents that result in the death of individuals or injuries likely to result in death.”¹ If the Attorney General determines that the investigation provides sufficient grounds for prosecution, then the IID “shall have exclusive authority to prosecute the offense.”²

I. Introduction

On October 9, 2024, at approximately 8:41 p.m., an officer with the Baltimore Police Department (“BPD”) encountered a sedan that traveled the wrong way on Pennsylvania Avenue and crashed into a parked car. The officer approached the sedan to speak with the driver, an adult male later identified as Robert Phillip Nedd, Jr., and asked Mr. Nedd to sit on a nearby curb. Shortly afterwards, Mr. Nedd ran from the officer; the officer pursued on foot and called for backup. Mr. Nedd ran into a wooded area near the intersection of Argyle Avenue and Pitcher Street, where the initial officer and two backup officers found him and began giving him verbal commands to show his hands. Mr. Nedd did not comply with the verbal commands and displayed a handgun, at which time the three subject officers discharged their firearms, striking him. The subject officers rendered emergency medical aid and requested emergency medical services (“EMS”). Mr. Nedd was pronounced dead on scene and a handgun was recovered near his body.

After completing its investigation and evaluating all the available evidence, the Office of the Attorney General has determined that the subject officers did not commit a crime under Maryland law. Accordingly, the Attorney General has declined to prosecute any of the subject officers in this case.

The IID’s investigation focused exclusively on potential criminal culpability relating to the subject officers’ conduct. By statute, the IID only has jurisdiction to investigate the actions of police officers, not those of any other individuals involved in the incident. Moreover, the IID’s analysis does not consider issues of civil liability or the department’s administrative review of the subject officers’ conduct. Compelled statements by subject officers may be considered in civil or administrative processes but may not be considered in criminal investigations or prosecutions due to the subject officers’ Fifth Amendment rights. If any compelled statements exist in this case, the IID has not considered them in this investigation.

This report is composed of a factual narrative followed by a legal analysis. Every fact in the narrative is supported by the evidence obtained in this investigation, including forensic and autopsy reports, police radio transmissions, police agency policies, dispatch records, police and EMS reports, police body-worn camera footage, photographs, department policy, and interviews with civilian and law enforcement witnesses. The subject officers in this case chose not to make statements to the IID, which had no impact on the prosecutorial decision.

¹ Md. Ann. Code, State Gov’t § 6-602 (c)(1).

² Md. Ann. Code, State Gov’t § 6-604 (a)(1).

The legal analysis explains why the IID will not bring charges under the relevant Maryland statutes.

This investigation involved one decedent and three subject officers:³

- A. The decedent, Robert Phillip Nedd, Jr., was 54 years old at the time of the incident. He was a Black male who lived in Baltimore, Maryland.
- B. Sergeant Thomas Gross has been employed by BPD since February 2014. He is a White male, and at the time of the incident, he was 35 years old.
- C. Officer Tyler-Joell Douglas has been employed by BPD since May 2022. He is a Black male, and at the time of this incident, he was 23 years old.
- D. Officer James Klein has been employed by BPD since December 2022. He is a White male, and at the time of the incident, he was 25 years old.

The IID reviewed all available departmental disciplinary records and criminal histories of these involved parties and where they existed, determined that none were relevant to this investigation.

II. Factual Summary

On October 9, 2024, just after 8:41 p.m., while driving a Kia sedan southbound in the 1500 block of Pennsylvania Avenue in Baltimore, Maryland, Robert Nedd, Jr. crossed over the double yellow line into the northbound lane and crashed head-on into an unoccupied parked vehicle. At the time of Mr. Nedd's crash, BPD Sergeant Thomas Gross was sitting in his marked patrol cruiser on McMechen Street near its intersection with Pennsylvania Avenue, approximately 200 feet from the crash scene. Sergeant Gross got out of the cruiser to investigate.

Approximately thirty seconds after the crash, Sergeant Gross approached the Kia's driver-side door. Sergeant Gross asked Mr. Nedd "Are you feeling alright?"



Image 1: A crime scene photograph of the Kia sedan that Mr. Nedd was driving, taken after the crash.

³ BCPD Officer William Bergeron was present during the incident and while he is named within this report, Officer Bergeron is not a subject of this investigation.

You okay?” as Mr. Nedd exited the Kia. When Mr. Nedd was completely out of the Kia, Sergeant Gross asked him to sit on the curb and relax. Mr. Nedd sat down on the curb, and at 8:42:22 p.m., Sergeant Gross radioed to dispatch, “I’ve got a thirty-two.⁴ 1500 block of Pennsylvania Avenue, someone just crashed.” While Sergeant Gross was on the radio, Mr. Nedd looked to his left and right, and at 8:42:28 p.m., gripped the Kia’s rear wheel well, pulled himself up from the ground, and then ran northbound on Pennsylvania Avenue toward Pitcher Street. Sergeant Gross immediately pursued Mr. Nedd on foot, while simultaneously radioing the direction of travel of the foot pursuit. Officers Tyler-Joell Douglas and James Klein—who were sharing a vehicle—headed toward the scene in a marked patrol cruiser. Additional BPD officers also began to respond.



Image 2: A still image from Sgt. Gross’ body-worn camera, showing the moment that Mr. Nedd grabbed the Kia’s rear wheel well (circled in red), and pulled himself off the curb to begin running away from Sgt. Gross.

At 8:42:42 p.m., Mr. Nedd turned left onto Pitcher Street, with Sergeant Gross approximately three seconds behind him. As they ran, Sergeant Gross shouted “Stop, let me see your hands! Don’t move! Don’t move! Let me see your hands! Put your hands up!” Mr. Nedd did not stop running or show Sergeant Gross his hands. At 8:43:21 p.m., Sergeant Gross stopped on the sidewalk at the edge of a grassy field on the 600 block of Pitcher Street. From there, Sergeant Gross’s body-worn camera captured him radioing dispatch to say that Mr. Nedd entered a wooded area near the intersection of Pitcher Street and Argyle Avenue and had “something in his hands.” Sergeant Gross remained on the sidewalk for approximately thirty seconds. At 8:43:28 p.m., Officers Douglas and Klein, still in their marked cruiser, turned onto Pitcher Street from Pennsylvania Avenue. Moments later, Sergeant Gross radioed directions to Mr. Nedd’s location.

⁴ According to BPD Policy 701 (Departmental Radio Communications), a Signal 32 is a possibly fatal car accident.



Image 3: The approximate path of the foot chase involving Mr. Nedd and Sgt. Gross from the site of the crash (Point 1) to the wooded area where Mr. Nedd stopped and was located by Sergeant Gross (Point 2).

Officer Douglas stopped the cruiser in the northbound lanes of the 1600 block of Argyle Avenue, and at approximately 8:43:46 p.m., both he and Officer Klein exited the cruiser, drew their weapons, and began to approach Mr. Nedd's location. Sergeant Gross then crossed the field and approached Mr. Nedd from within the wooded area, while Officers Douglas and Klein walked toward a hole in a chain link fence that separated Mr. Nedd and the wooded area from Argyle Avenue. All three subject officers had their weapons drawn and pointed at Mr. Nedd, and at 8:42:50 p.m. they repeatedly gave verbal commands instructing Mr. Nedd to show his hands.



Image 4: The approximate positions of Sergeant Gross (Point A), Officer Klein (Point B), and Officer Douglas (Point C), at the time of their approach and as they repeated verbal commands to Mr. Nedd (Point D). The chain link fence is outlined in red.

At 8:44 p.m., Officers Klein and Douglas were positioned on the sidewalk above Mr. Nedd, shining flashlights on him and ordering him to show his hands. At 8:44:04 p.m., Mr. Nedd raised his left hand but kept his right hand near his right thigh. As shown on Officer Klein's body-worn camera footage, Mr. Nedd held a handgun in his right hand. At 8:44:09 p.m., Officer Klein yelled "Drop it!" Mr. Nedd did not drop the handgun; instead, he began raising his right hand toward Officer Klein, and all three officers fired their weapons, striking Mr. Nedd.



Image 5: Still photographs from Officer Klein's body-worn camera, with the handgun outlined in red in both photographs.

(L) At 8:44:07p.m., Mr. Nedd held the handgun near his right thigh, circled in red, while officers gave verbal commands for him to show his hands.

(R) At 8:44:09 p.m., Mr. Nedd began to lift the handgun, outlined in red, above his waist with its barrel pointed toward Officer Klein.

Mr. Nedd fell to the ground onto his left side, and the handgun fell away from him. Several additional BPD officers arrived on scene as the shooting occurred, and at Sergeant Gross's direction, the responding officers administered medical aid to Mr. Nedd. Detective Clifford Strickland arrived after the shooting and recovered the handgun that was in Mr. Nedd's possession, a nine-millimeter Glock 19, from the ground near Sergeant Gross's foot. Detective Strickland's body-worn camera footage showed that when he recovered the handgun, its magazine was loaded, and there was a live round in the handgun's chamber. Mr. Nedd was pronounced dead on scene.

III. Supplemental Information

A. Autopsy

The Office of the Chief Medical Examiner (the “OCME”) performed an autopsy on Mr. Nedd on October 10, 2024. The Medical Examiner determined that gunshot wounds caused Mr. Nedd’s death and determined that the manner of death was homicide.⁵ Mr. Nedd suffered multiple gunshot wounds throughout his body, including to his head, torso, and limbs.

There was no evidence of soot deposition or gunpowder stippling on any of the wounds, meaning that Mr. Nedd was not shot at close range. Toxicology testing detected the presence of quinine and fentanyl in Mr. Nedd’s system at the time of the incident.

B. Firearms Recovery and Ballistics Information

Evidence recovered at the scene by BPD Crime Scene Unit⁶ investigators indicates that Sergeant Gross fired six rounds from his service handgun, Officer Douglas fired nine rounds from his service handgun, and Officer Klein fired four rounds from his service handgun.

Mr. Nedd did not fire any rounds from his handgun, but investigators determined that the handgun was loaded with a live round in the chamber and fourteen rounds in the magazine. Forensic testing confirmed that Mr. Nedd’s handgun was operable.

C. Department Policy

BPD has policies on the use of force, including the use of deadly force (Policy 1115) and the use of firearms (Policy 409).⁷ These two policies state an officer “shall use only the force Reasonable, Necessary, and Proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.”

The policies define those terms as follows:

⁵ Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The OCME 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. This term is not considered a legal determination; rather, they are largely used to assist in the collection of public health statistics. *A Guide for Manner of Death Classification*, First Edition, National Association of Medical Examiners, February 2002.

⁶ The IID and BPD have entered a Memorandum of Understanding (“MOU”), recognizing that on January 12, 2017, BPD entered a federal consent decree, which imposed certain obligations to investigate officer-involved fatalities. Given the IID’s statutory obligations pursuant to Maryland law, and for BPD to meet its obligations under the federal consent decree, the MOU states that both agencies’ investigators will investigate all officer-involved deaths while cooperating and communicating with one another. The MOU further states that if the IID determines that BPD cannot maintain the level of impartiality required to conduct a thorough investigation, the IID may take over sole investigative responsibility for the case. In the present case, the IID and BPD have collaborated throughout the investigation.

⁷ BCPD Field Manual 2023-01, Policies 11-10.0 “Barricade/ Hostage Incidents” and 12-1.0 “Use of Force Incidents” were reviewed during this investigation, but ultimately did not impact the legal analysis of this incident.

- Reasonable: “A member uses Reasonable Force when the member uses no more force than required to perform a lawful purpose.”
- Necessary: “Force is necessary only when no reasonably effective alternative exists.”
- Proportional: “Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.”

The use of force policy specifies that “[t]he use of Deadly Force/Lethal Force shall always be the last resort,” and shall occur only when officers “reasonably believe such action is immediately necessary to protect a member or another person from an Imminent Threat of death or Serious Physical Injury.” Before using deadly force, officers “shall consider environmental considerations such as field of fire, backdrop.”

IV. Legal Analysis

After a criminal investigation, prosecutors must determine whether to bring criminal charges against a person to hold them accountable pursuant to Maryland law. When making that determination, prosecutors have a legal and ethical duty to charge a person with a crime only when they can meet the State’s burden of proof; that is, when the available evidence can prove each element of that crime beyond a reasonable doubt. Prosecutors must also determine whether the accused person could raise an affirmative defense. In those cases, prosecutors not only need to prove the crime, but they also need to determine whether the evidence could *disprove* the defense beyond a reasonable doubt. Ultimately, the decision to bring any charges rests on whether the available evidence is sufficient for prosecutors to meet those standards.

Based on the evidence, three relevant offenses were considered in this case. First is the violation of Maryland’s Use of Force Statute, which makes it a crime for officers to intentionally use excessive force.⁸ The second and third offenses are homicide related charges due to the intentional killing of a person.

There is insufficient evidence to prove that the subject officers violated the aforementioned statutes. Accordingly, the IID will not pursue criminal charges against any of the subject officers. This report explains in further detail why, based on the evidence, a prosecutor could not prove beyond a reasonable doubt that any officer committed a crime.

A. Maryland Use of Force Statute

Proving a violation of the Use of Force Statute requires a prosecutor to establish beyond a reasonable doubt that a subject officer:

- (1) used force that was not necessary and proportional to prevent an imminent threat of physical injury to themselves or another person, or to accomplish a legitimate law enforcement objective;
- (2) intended to use force that was excessive, *i.e.* not necessary and proportional under the circumstances; and

⁸ See Md. Ann. Code, Public Safety §3-524(d)(1).

- (3) the use of excessive force resulted in serious bodily injury or death;⁹

First, prosecutors would need to establish that one or more of the officers used force that was not necessary and proportional under the circumstances. Second, prosecutors would need to establish that the officers intended to use the force that was excessive. Finally, prosecutors would need to establish that the excessive force used by the subject officers resulted in Mr. Nedd's death. It is undisputed that the subject officers fired their weapons and shot Mr. Nedd, which resulted in his death.

Determining whether an officer's use of force is "necessary and proportional" to prevent an imminent threat of physical injury to someone or accomplish a legitimate law enforcement objective is a fact-specific inquiry. Generally speaking, a use of force is considered "necessary and proportional" when an officer had no reasonable alternative available to the officer under the circumstances, the kind and degree of force was appropriate in light of the officer's legitimate law enforcement objective, and it was not likely to result in harm that was out of proportion or too severe in relation to the officer's law enforcement objective, given the context in which it was used.¹⁰ When a factfinder—either a judge or a jury—conducts this analysis, they must consider the totality of the circumstances, including, but not limited to, the nature of the call for service, what occurred in the moments before force was used, what the subject officers knew at the time force was used, and the time and distances involved.¹¹

Based on the totality of the circumstances, there is no evidence that the subject officers intended to use force that exceeded that which was necessary and proportional to prevent Mr. Nedd from being a danger to themselves or others. First, with respect to whether the use of force was necessary, Mr. Nedd's behavior posed a threat to the safety of the three subject officers at the time they discharged their weapons. When Sergeant Gross encountered Mr. Nedd at the scene of the crash, Mr. Nedd almost immediately fled on foot, ignoring repeated verbal commands to halt and show his hands. When Mr. Nedd arrived at the wooded area, Sergeant Gross stayed several feet away from Mr. Nedd but could tell that he had an object in his hands. When confronted by Officers Klein and Douglas, who ordered Mr. Nedd to show his hands, Mr. Nedd kept his right hand—holding the handgun—hidden while raising his left hand. When Officer Klein saw the handgun and ordered Mr. Nedd to "drop it," Sergeant Gross approached Mr. Nedd from the opposite direction at the same time. Mr. Nedd ignored the command and began raising his handgun, which created an imminent threat of death or injury to the subject officers. In short, Mr. Nedd's behavior required that the subject officers fire their guns at him for their own safety.

Second, with respect to whether the kind and degree of force used by the subject officers was proportional to the imminent threat of harm presented by Mr. Nedd, video evidence shows that the force used by Sergeant Gross and Officers Douglas and Klein was appropriate. As mentioned above, Mr. Nedd refused to discard his handgun throughout the encounter and began to raise the handgun in the direction of Officer Klein as Sergeant Gross moved closer to him.

⁹ MPJI-Cr 4:36.

¹⁰ For a more detailed discussion of the "necessary and proportional" standard, see [this opinion](#) written by the Office of the Attorney General. 107 Op. Atty. Gen. Md. 33

¹¹ *Id.*

Based on the evidence, a prosecutor could not prove beyond a reasonable doubt that the subject officers' use of force was not necessary and proportional to prevent an imminent threat of physical injury to themselves. Accordingly, the Office of the Attorney General will not charge the subject officers with a violation of the Use of Force Statute.

B. Homicide Offenses

When a person is killed, there are four homicide charges that a prosecutor may consider in the State of Maryland:

- First Degree Murder: the willful, deliberate, and premeditated killing of another.¹²
- Second Degree Murder: when the defendant intended to kill or inflict such serious injury that death would be the likely result and there was no justification or mitigating circumstances.¹³
- Voluntary Manslaughter: an intentional killing that is not murder because the defendant acted in partial self-defense.¹⁴
- Involuntary Manslaughter: when the defendant acted with gross negligence and that conduct caused the death of another.¹⁵

As the shooting of Mr. Nedd was intentional, but not premeditated, Second-Degree Murder and Voluntary Manslaughter are the homicide offenses that remain for consideration.

If the evidence indicates that there is legal justification or certain mitigating circumstances involved, such as self-defense, then a prosecutor could not prove the remaining homicide offenses against the subject officers.¹⁶ A police officer's use of deadly force is legally justified if it is in complete self-defense, defense of others, or in furtherance of law enforcement related duties.¹⁷

Complete self-defense, also known as perfect self-defense, exists when the accused: (1) was not the initial aggressor (or did not raise the level of force to deadly force); (2) had the subjective belief that they were in immediate or imminent danger of serious harm or death; (3) that belief was objectively reasonable; and (4) used force that was not more than what was reasonably necessary in light of the threat or actual force.¹⁸ Complete self-defense is an affirmative defense, which means that a prosecutor must prove beyond a reasonable doubt that one of the elements of self-defense is not applicable.

¹² MPJI-Cr. 4:17.

¹³ MPJI-Cr. 4:17.

¹⁴ MPJI-Cr 4:17.2.

¹⁵ MPJI-Cr. 4:17.8.

¹⁶ If a defendant has the requisite *mens rea* to uphold a claim of complete self-defense or defense of others, that is, a subjective belief that their or another's life was in imminent danger that was objectively reasonable under the circumstances, then the claims are valid regardless of any unintended consequences. See *Malaska v. State*, 216 Md. App. 492, 517-522 (2014).

¹⁷ MPJI-Cr. 4:17.8; MPJI-Cr 4:17.3.

¹⁸ *Porter v. State*, 455 Md. 220, 234-36 (2017); MPJI-Cr 4:17.2.

When an officer has sufficient probable cause to believe that a person poses a “threat of serious physical harm,” then the officer may use deadly force,¹⁹ and the reasonableness of that decision must be viewed from “the perspective of a reasonable police officer similarly situated.”²⁰ In practice, this means that a factfinder must consider that police officers often work under rapidly changing circumstances and that what constitutes a reasonable use of force may change from moment to moment.²¹

The evidence shows that Mr. Nedd was the aggressor. He was armed and began raising a handgun toward the subject officers. Even after receiving several loud verbal commands to show his hands and drop the weapon, he did not comply with the subject officers’ commands. Those facts provide a basis for the subject officers to believe that their lives were in danger, and that such a belief was reasonable. Since the subject officers faced a threat of death or injury from Mr. Nedd, their use of deadly force against him was reasonably necessary.

Based on the investigation, the actions of the subject officers do not constitute the crime of Second-Degree Murder. Prosecutors are unable to overcome any of the elements of complete self-defense. Moreover, because complete self-defense also applies to Voluntary Manslaughter²², a prosecutor would be unable to prove any homicide offense in this matter. Accordingly, the Office of the Attorney General will not charge the subject officers with a homicide offense.

VI. Conclusion

This report has presented factual findings, legal analysis, and conclusions relevant to the October 9, 2024, police-involved death of Robert Phillip Nedd, Jr. in Baltimore, Maryland. The Office of the Attorney General has declined to pursue charges in this case because, based on the evidence obtained in its investigation, the subject officers did not commit a crime.

¹⁹ *Estate of Blair*, 469 Md. at 23-24 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)).

²⁰ *State v. Albrecht*, 336 Md. 475, 501 (1994); *State v. Pagotto*, 361 Md. 528, 555 (2000) (quoting *Graham*, 490 U.S. at 397).

²¹ *Id.*

²² *State v. Faulkner*, 301 Md. 482, 485 (1984).