



INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Fatal Incident in
Baltimore City on June 29, 2023

December 20, 2023

Report of the Independent Investigations Division of the Maryland Office of the Attorney General Concerning the Officer-Involved Death of Darryl Gamble on June 29, 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 City State's Attorney Ivan Bates regarding the officer-involved fatal shooting of Darryl Gamble on June 29, 2023, in Baltimore, Maryland.

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" and "[w]ithin 15 days after completing an investigation ... transmit[ing] 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). The IID completed its investigation on December 8, 2023, after receiving on November 21, 2023, all relevant information related to the firearms analysis performed by the Baltimore Police Department ("BPD"). This report is now being provided to the Baltimore City State's Attorney on December 20, 2023.

I. Introduction

On June 29, 2023, at around 5:30 p.m., four officers with BPD saw Darryl Gamble near a convenience store and gas station in Southeast Baltimore. Two of these officers had previously arrested Mr. Gamble in April 2023, and Mr. Gamble had open warrants. Mr. Gamble was driving a black Toyota Camry, and the four officers followed him in an unmarked black BPD cruiser, calling out on the radio that he was wanted and providing his location and direction of travel, before losing sight of the car. A BPD officer in an unmarked SUV was in the area, saw the black Toyota Camry, and began to follow it. Less than a minute later, the black Toyota Camry stopped, and Mr. Gamble got out of the car and fired a shot at that officer, striking the window of his unmarked SUV. The black Toyota Camry was abandoned with disabling damage at the intersection of E. Fairmount Avenue and N. Milton Avenue. Mr. Gamble ran to the 100 block of N. Milton Avenue as officers approached him from both the north and south directions. While on this block, Mr. Gamble fired more than 30 rounds, both up and down the street, and the four officers that were initially following Mr. Gamble, plus one additional BPD officer who had arrived at the location, fired a total of 51 rounds, resulting in 15 gunshot wounds to Mr. Gamble's body. Officers immediately provided medical aid to Mr. Gamble, and medics continued those efforts when they arrived. Mr. Gamble was pronounced dead on scene. Two firearms—a handgun with a drum magazine and a rifle—were recovered near Mr. Gamble's body. Additional firearms were found in the backpack Mr. Gamble was carrying and the car he was driving.

The IID and BPD have entered a Memorandum of Understanding ("MOU") stating that the parties will each investigate all police officer-involved deaths. The MOU recognizes that BPD entered into a federal consent decree on January 12, 2017, which imposes certain obligations to investigate officer-involved fatalities. In order for BPD to meet its obligations under the consent decree and the IID to meet its obligations under state law, the MOU states that the agencies' investigators will cooperate and communicate during the investigation. If at any

point 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.

This report details the IID's investigative findings based on an examination of the shooting scene as well as a review of body-worn camera and privately owned camera footage; computer-aided dispatch records; police radio transmissions, recordings, and reports; interviews with civilian and law enforcement witnesses, report from the Office of the Chief Medical Examiner, and firearms analysis. All materials reviewed in this investigation are being provided to the Baltimore City State's Attorney's Office with this report and are listed in Appendix A.

This report also includes an analysis of Maryland law that could be relevant in a fatal police-involved shooting of this nature. The IID considered the elements of possible criminal charges, relevant departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Baltimore City 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 officers should or should not be charged.¹

The IID's investigation focused exclusively on potential criminal culpability relating to the officers' conduct. The IID's analysis does not therefore consider issues of civil liability or BPD's administrative review of the officers' conduct. As explained further in Section II(K)(1), certain information—specifically, 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.

II. Factual Findings

A. April 7, 2023, Nonfatal Shooting

According to BPD reports, on April 7, 2023, at around 9:45 p.m., BPD officers responded to a nonfatal shooting that occurred in a residential area of Southeast Baltimore. BPD Detective Brian Coffin, assigned to the Southeastern District Detective Unit, which is responsible for investigating nonfatal shootings, assumed the case. As part of his investigation, Det. Coffin reviewed video surveillance footage from the area of the shooting that depicted two suspects using a black 2014 Ford Taurus with a Virginia registration tag to travel to and from the shooting scene. The registered owner of this vehicle was Darryl Gamble, who Det. Coffin believed to have remained near his vehicle during the shooting. Based on the surveillance footage alone, Det. Coffin was unable to identify the shooter.

A few hours after the shooting, in the early morning hours of April 8th, Det. Coffin began attempting to locate Mr. Gamble's black Ford Taurus. Initially, investigators put out a city-wide police broadcast with a description of the black Ford Taurus. [REDACTED]

¹ Effective October 1, 2023, the IID has sole authority, where appropriate, to prosecute police-involved incidents that result in the death of an individual or injuries that are likely to result in the death of an individual. For incidents occurring before that date, the local State's Attorney retains sole prosecution authority.

[REDACTED]² Later that day, investigators distributed throughout BPD a “BOLO [be on the lookout] flyer,” which contained still images of the black Ford Taurus that had been collected from prior license plate reader alerts.³

The flyer is a vertical document with a yellow and blue color scheme. At the top left is the Baltimore Police Department logo. To its right, a blue banner reads "BALTIMORE POLICE DEPARTMENT" with a yellow box containing the number "02". Below this, a red banner with white diagonal stripes reads "B.O.L.O.". The main body is yellow. On the left, a list of fields for suspect information is shown, most with no data entered: INCIDENT: Non-Fatal Shooting, ALIAS/NICKNAME:, AGE RANGE:, SEX:, RACE:, BODY BUILD:, HEIGHT RANGE:, MARKINGS:, DISTRICT: Southeast, CC# 230402253, CASE # 23V0119. To the right of this list are two side-by-side photographs of a black Ford Taurus. Below the photos, the text reads "2014 Ford Taurus VA tag TSF-9467". A red banner below the photos reads "OCCUPANTS SHOULD BE CONSIDERED ARMED & DANGEROUS!". Below this is a yellow box with text: "In reference to a non-fatal shooting that occurred on 4/7/23 in the 1600 block of Malvern St, Southeast DDU is attempting to locate the above pictured vehicle, a 2014 black Ford Taurus VA tag TSF-9467. The vehicle is wanted for a non-fatal shooting and has been entered into NCIC. Any unit locating this vehicle is asked to hold all occupants and contact Southeast DDU." At the bottom, a blue banner contains information about a reward: "IF YOUR METRO CRIME STOPPERS TIP RESULTS IN ARREST & CHARGES, YOU MAY BE ELIGIBLE FOR A CASH \$\$\$ REWARD". It lists contact methods: 24-Hour Hotline 8-888-258-2587, No Caller ID, No Recorded Calls; "P3 Tips" Mobile App (Free & Anonymous iOS & Android); and Online at www.p3tips.com. It also says "Submit a tip via Metro Speaking a Word Scan the QR Code Full Reward Details Online". Below the blue banner, a yellow box contains: PRIMARY: Det Coffin, UNIT: 2221, EMAIL:, and CONTACT# (410) 396-2422. At the very bottom, it says "Template Version 1.0 Created: 04/08/23" and "Do NOT arrest solely from the information on this flyer."

Image 1. Det. Coffin’s BOLO flyer for the black Ford Taurus related to the nonfatal shooting occurring on April 7, 2023.

During an interview with IID investigators, Det. Coffin said he believed the BOLO flyer was also disseminated at departmental roll calls, including for officers assigned to the Southeastern District Action Team, which Det. Coffin described as an operations squad that, as part of their duties, assists with apprehending wanted suspects.

B. Mr. Gamble’s April 10, 2023, Arrest

On April 10, 2023, three days after the nonfatal shooting, at around 5:00 p.m., BPD Officers Nevin Nolte and Matthew Banocy were on routine patrol in the Southeastern District north of Patterson Park. According to a police report written by Officer Nolte on April 11, 2023, he was logged into the “live” BPD License Plate Reader application and was alerted that Mr. Gamble’s Ford Taurus had been located at the intersection of N. Conkling Street and Pulaski

² National Crime Information Center is a national electronic database of criminal justice information that is available to federal, state, and local law enforcement entities.

³ A license plate reader is a camera system that automatically reads passing license plates. License plate readers are connected to law enforcement databases and can alert police departments when a car with a wanted license plate is identified.

Highway, traveling westbound on Pulaski Highway. The report states, “This tag and vehicle was confirmed as a felony vehicle in reference to a shooting via police dispatch and [REDACTED] . . . in this officer’s patrol vehicle.”

Officer Nolte wrote that he and Officer Banocy were in the 2400 block of Orleans Street, which was less than a mile from the location of the license plate reader hit, and they drove eastbound to canvass the area to locate the Ford Taurus. While canvassing the area, Officer Nolte wrote that they located the vehicle “sitting stationary on the west side of the 400 block of N. Bouldin Street with the driver’s side door open.” After advising dispatch and other patrol units, Officer Banocy parked the marked patrol car behind the Ford Taurus, and Officers Nolte and Banocy stepped out of their car.

Officer Nolte wrote that he observed an individual, later identified as Mr. Gamble, “standup from a nearby porch and start to walk towards” the Ford Taurus. Mr. Gamble “continued to walk towards the Ford Taurus and began to reach inside the opened driver’s side door.” Officer Nolte said he “gave strong verbal commands for Mr. Gamble to show . . . his hands” and that he “grabbed Mr. Gamble’s arm so that Mr. Gamble could not reach in to or enter the vehicle as it appeared that was what he was attempting to do.” Officer Nolte added, “Knowing that the Ford Taurus was involved in a shooting [he] believed that Mr. Gamble may be in possession of a weapon.”

Officer Nolte wrote that he “grabbed Mr. Gamble’s right arm” and “Mr. Gamble slipped out of [his] grip and attempted to flee” but was “brought to the ground” by Officers Nolte and Banocy and held there until other officers arrived. Officer Nolte continued, “During the take down of Mr. Gamble, a clear baggie containing what was found to be 39 vials of suspected cocaine fell from Mr. Gamble’s person.” Officer Nolte wrote that it took six officers to place Mr. Gamble in handcuffs because he was tensing up and resisting verbal commands, and during this time, Officer Banocy “observed a clear baggie containing approximately 25 gel caps of suspected heroin fall from Mr. Gamble’s person.”

Mr. Gamble was placed under arrest and taken to the Southeastern District. During an interview with IID investigators, Det. Coffin said that Officers Nolte and Banocy notified him they had just arrested Mr. Gamble, and Det. Coffin said he and another district detective interviewed Mr. Gamble that night. After this interview, Mr. Gamble was taken to [REDACTED]. He was charged with [REDACTED]. The next day, on April 11th at 6:15 p.m., Mr. Gamble appeared before a District Court Commissioner for his initial bail review and was ordered [REDACTED].

C. April 11, 2023, Arrest Warrant

Following his April 10th arrest by Officer Nolte, Mr. Gamble’s Ford Taurus was held as evidence and towed to the Southeastern District. The next day, on April 11, 2023, Det. Coffin obtained and then executed a valid search and seizure warrant on the car. During the search, Det. Coffin located 69 gel caps of suspected heroin in the car’s center console and a backpack in the passenger’s seat that contained 78 grams of suspected cocaine and three loaded firearms: an AK-

47 style rifle with 30 rounds in the magazine and one in the chamber, a Glock 9 mm handgun with 15 rounds in the magazine and one in the chamber, and a Ruger 57 handgun with 21 rounds in the magazine and one in the chamber. The rifle was modified, with the stock of the firearm removed and pistol grip installed, and the barrel cut off. The Ruger handgun was reported stolen in Virginia in January 2023.

After the search of Mr. Gamble's car, Det. Coffin charged Mr. Gamble with felony [REDACTED] and he obtained an arrest warrant. During his interview with IID investigators, Det. Coffin said that because he knew Mr. Gamble was being [REDACTED] for his arrest by Officer Nolte the prior day, he faxed a copy of [REDACTED] against Mr. Gamble should he be released on Officer Nolte's case. According to records obtained from [REDACTED] Mr. Gamble. A review [REDACTED]

D. Mr. Gamble's Erroneous Release from [REDACTED]

On April 12, 2023, the day after he was ordered [REDACTED] Mr. Gamble appeared before a judge in the [REDACTED] for a bail review. At this hearing, his bail status [REDACTED] On April 13th, at 2:57 a.m., Mr. Gamble [REDACTED] notwithstanding the existence of Det. Coffin's warrant. Less than two hours after his release, a warrant officer at [REDACTED] Authorities at [REDACTED] then obtained a "retake warrant" for Mr. Gamble's arrest.⁴

There is no indication that law enforcement encountered Mr. Gamble in the two and a half months between the time he was [REDACTED] and the fatal shooting.

E. Observation of Mr. Gamble on June 29, 2023

On Thursday, June 29, 2023, in the early evening hours, BPD Sergeant Robert Crane was on duty and working in the Eastern District completing paperwork. Sgt. Crane is the supervisor of BPD's Eastside Initiative, which is a unit of seven officers, including Officers Nolte and Banocy, and focuses on gun and drug offenses in the four police districts covering the east side of Baltimore City. During an interview with IID investigators after the fatal shooting, Sgt. Crane explained that Officers Nolte and Banocy were on patrol in the Eastern District at this time. He added that Officers Johnson and Gutridge, who were assigned to the Eastern District Action

⁴ On April 18, 2023, the [REDACTED]

[REDACTED] This is no indication that any subject or witness officer was aware of this [REDACTED]

Team, were also on patrol, but they were riding with Officers Nolte and Banocy in an unmarked black Ford Fusion patrol car as their District Action Team Sergeant was not working that day.

Sgt. Crane told IID investigators that although he was not with the four officers, he understood from the officers that they went to the Royal Farms at 3333 E. Fayette Street to buy drinks and some food. Sgt. Crane said Officer Banocy “spotted” Mr. Gamble, although it is unclear where and when Officer Banocy first saw Mr. Gamble and whether the officers were inside the unmarked Ford Fusion patrol car at the time. There is no body-worn or dashboard camera footage, radio communications, or video surveillance from the relevant events at the Royal Farms.

After Officer Banocy saw Mr. Gamble, Sgt. Crane quoted him as saying, “there’s Gamble, there’s Gamble, flip it, flip it,” a reference by Officer Banocy to turning their patrol car around in order to follow Mr. Gamble. Sgt. Crane said the officers “flipped the car to go after him.” Sgt. Crane told IID investigators that, at this point, Mr. Gamble was a “felony suspect,” so he “wasn’t calling it off,” indicating that Sgt. Crane was aware the four officers were following Mr. Gamble in their patrol car, and he did not instruct them to stop following Mr. Gamble. Based on the four officers’ body-worn camera footage, the officers were seated inside the unmarked Ford Fusion patrol car, which was parked.⁵ The officers’ seating positions within the patrol car were as follows: Officer Johnson was in the driver’s seat, Officer Banocy was in the front passenger seat; Officer Nolte was in the rear seat directly behind the driver’s seat, and Officer Gutridge was in the rear seat directly behind the front passenger’s seat.

F. Following Mr. Gamble

The factual findings presented below and in the subsections that follow are based on a review of available time-stamped police radio communications and body-worn camera footage. The body-worn camera times provided are accurate within about one to two seconds. This margin of error exists because of “clock drift.” How much drift a single body-worn camera experiences depends on how long it was since it was last docked and synchronized.

At 5:28:33 p.m., Officer Banocy said on the radio, “We have an individual wanted for attempted murder taking off on us, it’s going to be a Toyota Camry [unintelligible] . . . It’s going to be southbound on Dean Street crossing over Fairmount.”⁶ Officer Banocy then asked the dispatcher if BPD’s aviation unit was available to follow the car but was immediately told they were not available. At 5:29:05, Officer Banocy asked on the radio if any officers in the Highlandtown area were available and again stated, “the individual is wanted for attempted murder.” Two different officers indicated they were headed toward the officers and asked for an updated location. At 5:29:19 p.m., Officer Banocy replied, “Westbound Fayette, going to be crossing over Highland.” A few seconds later, at 5:29:27 p.m., a supervisor, later identified by

⁵ The unmarked car did not have a dashboard camera, and the body-worn camera footage of the four officers captured only an obstructed view of the unmarked car’s path.

⁶ As noted above, Det. Coffin had identified Mr. Gamble as the driver in the April 7, 2023, non-fatal shooting, which would likely explain the reference to Mr. Gamble being “wanted for attempted murder.” At the time of this radio communication, Mr. Gamble also had [REDACTED]

BPD as Captain Tashania Brown, said on the radio, “Have those units use precaution, follow the policy, and be mindful it’s rush hour traffic,” a likely reference to BPD’s vehicle pursuit policy.⁷ At 5:29:35 p.m., about one minute after first saying on the radio he saw Mr. Gamble, Officer Banocy said, “we no longer have eyes on him, going to be last seen westbound on Fayette, right by Highland.”

At this same time, BPD Officer Stephen Romey was on duty and driving an unmarked SUV in the Southeastern District. At 5:29:45 p.m., he said on the radio, “I’m at Fayette and Lakewood,” which is about a half-mile from where Officer Banocy said he last saw Mr. Gamble. Officer Romey added, “Give me the description of the car again.” Officer Banocy immediately replied, “Black Toyota Camry operated by a light skin number one [Black] male . . . wanted for attempt murder.” Officer Romey immediately replied, “I got him. He’s going southbound on Kenwood from Fayette. Alright, he’s going west on whatever block is south of Fayette.” He then followed up with “That’s Fairmount, westbound on Fairmount from Lakewood.” During this time, officers were asking about the aviation unit, which was not available. Officer Romey then told officers to “stay off the air, let me call this out.”

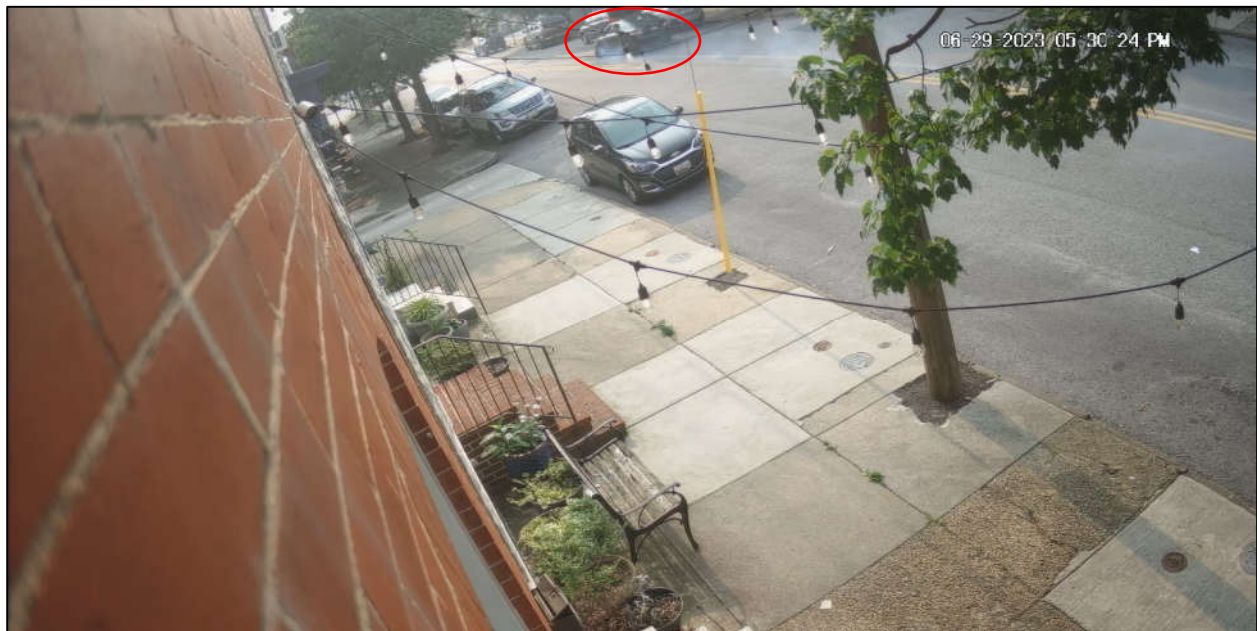


Image 2. Still frame from private video surveillance on E. Fairmount Avenue. The black Toyota Camry is circled in red.

⁷ BPD Policy 1503, “Emergency Vehicle Operation and Pursuit Policy” defines a vehicle pursuit as, “[w]hen a member operating a law enforcement vehicle attempts to keep pace and/or to immediately apprehend one or more occupants of an eluding vehicle.” An eluding vehicle is one in which the driver “increases speed, takes evasive action, and/or refuses to stop despite a member’s signaling to stop by hand, voice, emergency lights, and/or siren even after a reasonable amount of time to yield or stop has passed.” Pursuits are permissible when: “the vehicle contains a felony suspect and failure to immediately apprehend poses an immediate threat of death or serious bodily injury to the member or others” and “before the pursuit is initiated, there exists probable cause to believe the fleeing suspect committed a felony which resulted, or could have resulted, in death or serious bodily injury.”

G. Mr. Gamble Shoots at Officer Romey, Abandons Disabled Car

At 5:30:27 p.m., Officer Romey said on the radio, “Alright, he’s going to be going northbound . . . northbound on Milton.” At 5:30:38 p.m., Officer Romey yelled, “He’s shooting, he’s shooting, he’s shooting.” According to an interview with Officer Romey conducted by BPD and IID investigators after the incident, Mr. Gamble got out of his car and shot at Officer Romey as Officer Romey drove past him, striking Officer Romey’s SUV and damaging the front passenger side window. Officer Romey was not injured and did not return fire. Officer Romey continued driving and, according to footage from his body-worn camera, he stopped his car at 5:30:40 p.m., and got out of it.⁸



Image 3. BPD photograph of Officer Romey’s unmarked SUV, which was moved after the shooting, depicting a bullet hole on the front passenger side window. Inset: BPD photograph showing a close-up depiction of the damage to the window.

At 5:30:50 p.m., Officer Romey said on the radio, “shots fired . . . Milton and Fayette, he’s going north on Milton, somebody grab my car.” At this point, according to Officer Romey’s body-worn camera footage, he is on E. Fayette Street with his gun drawn. There is no available video footage depicting Mr. Gamble at this same time, but, at 5:30:57 p.m., Officer Romey approached the intersection of E. Fairmount Avenue and N. Milton Avenue, where Mr. Gamble’s car was disabled and unoccupied with the engine running. Officer Romey turned left onto N. Milton Avenue, taking cover behind cars parked on the street.

⁸ Officer Romey’s body-worn camera, like all BPD body-worn cameras, has a buffer feature, which preserves 60 seconds of video footage prior to the camera being activated. There is no audio preserved during this buffering period.

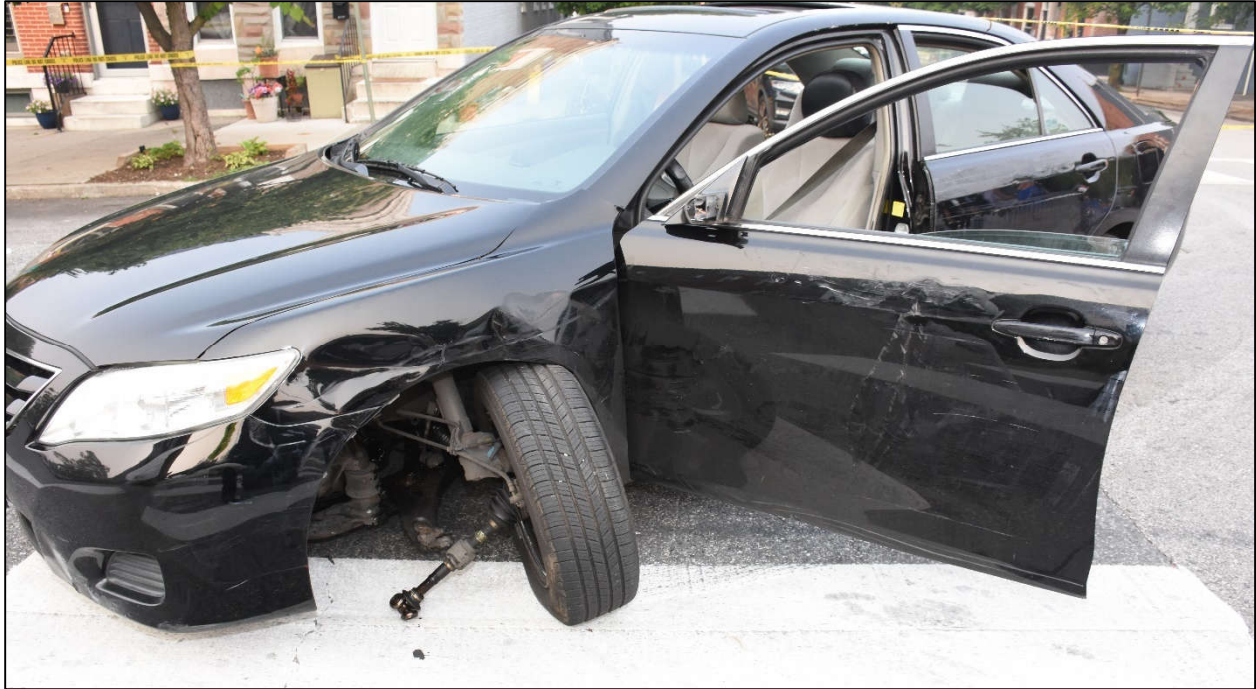


Image 4. BPD photograph showing the condition of the black Toyota Camry, which was abandoned at the intersection of E. Fairmount Avenue and N. Milton Avenue.

H. Exchange of Gunfire

At this time, Mr. Gamble's actions are not clearly visible in any available body-worn camera footage given the positions of the involved officers. However, BPD and IID investigators obtained surveillance footage from several privately-owned cameras positioned along N. Milton Avenue, which shows what Mr. Gamble was doing at this time.⁹ As he passed 131 N. Milton Avenue, Mr. Gamble was running and holding a handgun in his right hand and carrying a backpack over his right shoulder (*image 5, below*). At about 5:31:08 p.m., Officer Romey is seen on this private video surveillance following Mr. Gamble with his gun drawn and continuing to take cover behind parked cars. He said on the radio, "still got him, Milton and Fayette northbound . . . somebody get my truck, it's one block west."

⁹ Some private surveillance footage did not have a time-stamp, while other footage did, but IID investigators could not determine its accuracy.



Image 5. Still frame from private surveillance on N. Milton Avenue showing Mr. Gamble running north on N. Milton Avenue. A handgun is visible in his right hand.

Mr. Gamble is visible in surveillance footage as he continued to run past 139 N. Milton Avenue, at which point he turned his body. He was facing the direction and location of where Officer Romey was standing and raised and pointed his handgun for two seconds but did not fire (*image 6, below*). He then turned his back to Officer Romey and advanced toward E. Fayette Street, where additional BPD officers were located. Then, as he passed 149 N. Milton Street, Mr. Gamble turned toward Officer Romey, still with a handgun in his right hand and now holding the strap of his backpack in his left hand. Mr. Gamble raised the handgun, firing multiple rounds in rapid succession (*image 7, below*).¹⁰

As he was firing these rounds, Mr. Gamble was walking backward and fell on his buttocks. He immediately rolled onto his knees and stood up and faced the officers who had arrived from the north. He was still holding a firearm in his right hand, and the backpack was lying on the sidewalk. Mr. Gamble raised the handgun and fired additional rounds in the direction of the officers (*image 8, below*). At this point numerous gunshots are audible on the video footage from BPD officers who had arrived on scene.¹¹

After he fired these rounds, Mr. Gamble turned toward the backpack he had been carrying and tossed the handgun he was holding on to the ground. He then retrieved a rifle from the backpack. Mr. Gamble, holding the rifle, ducked in between two parked cars and stepped into

¹⁰ It is not possible to determine from video surveillance alone how many rounds Mr. Gamble fired throughout the incident. According to an examination and test fire of the handgun used by Mr. Gamble that was conducted by a BPD firearms analyst, the gun had been modified with an “auto sear switch,” which converts a semi-automatic pistol into a pistol capable of fully automatic fire. The analyst also noted that on this particular gun, the switch did not function properly, and the gun “fired in full automatic mode regardless of which side the switch is set to.” This means the gun continuously chambered and fired rounds when the trigger mechanism was activated rather than requiring a shooter to manually activate the trigger to discharge each round.

¹¹ At 5:31:20 p.m., as he was walking north on N. Milton Avenue, Officer Romey screamed, “on the right, on the right, on the right,” a likely reference to Mr. Gamble’s position on the sidewalk of N. Milton Avenue. Beginning at 5:31:27 p.m., numerous and rapid gunshots are audible.

the road, where he fell to the ground (*image 9, below*).



Image 6. Still frame from private surveillance on N. Milton Avenue showing Mr. Gamble on N. Milton Avenue, facing south, in the direction of Officer Romey, with his gun drawn and pointed.



Image 7. Still frame from private surveillance on N. Milton Avenue showing Mr. Gamble firing a handgun in the direction of Officer Romey.



Image 8. Still frame from private surveillance on N. Milton Avenue showing Mr. Gamble, on the far right side of the image, turning toward the BPD officers who approached from the south and firing his handgun.



Image 9. Still frame from private surveillance on N. Milton Avenue showing Mr. Gamble immediately after he retrieved a rifle from the backpack (in red circle) he had been carrying. The handgun he fired and then dropped is also depicted (in blue circle).

As Officer Romey was approaching Mr. Gamble on N. Milton Avenue, the four officers in the unmarked black Ford Fusion patrol car had stopped at the intersection of E. Fayette Street and N. Milton Avenue. According to their body-worn camera footage, as the officers are getting out of the car, and before any officer fires their gun, gunshots are audible. At 5:31:30 p.m., Officer Banocy was standing at the rear passenger side of the car with his handgun raised and pointed in the direction of Mr. Gamble, who was standing on the sidewalk of N. Milton Avenue. Two seconds later, at 5:31:32 p.m., Officer Banocy moved around the rear of the car and ran across E. Fayette Street toward Mr. Gamble.

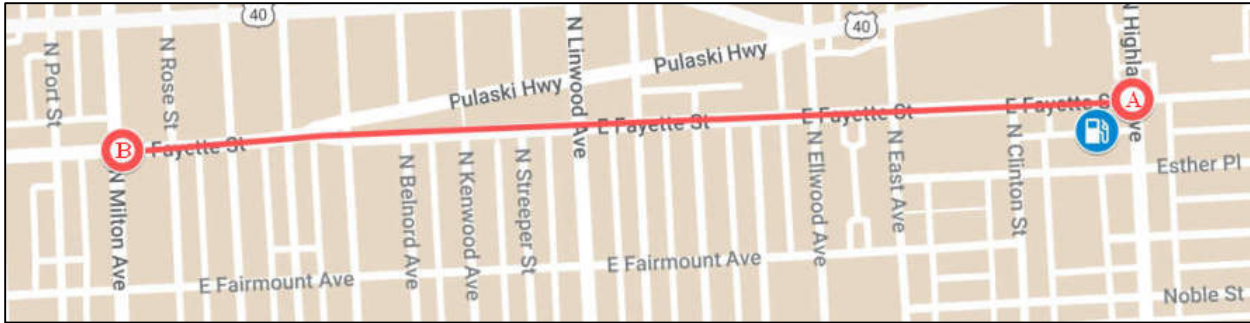


Image 10. Map of E. Fayette Street between N. Highland Avenue and N. Milton Avenue in Southeast Baltimore indicating the path of travel of the unmarked black Ford Fusion cruiser occupied by Officers Banocy, Gutridge, Johnson, and Nolte (based on their body-worn camera footage), including the approximate location of: (A) where the four officers entered the car after seeing Mr. Gamble, and (B) where the car stopped, and the officers exited the car. The blue icon indicates the approximate location of the Royal Farms store at 3333 E. Fayette Street.



Image 11. Still frame from Officer Banocy's body-worn camera footage. Officer Gutridge is in front of Officer Banocy and to his left. Mr. Gamble (in red circle) is facing toward the location of Officer Romey, who is not pictured.

At this same time, a fifth BPD officer, Officer Nicholas DeJesus, was also approaching Mr. Gamble on foot. According to his body-worn camera footage, Officer DeJesus had been driving a marked BPD cruiser on Pulaski Highway before stopping his car on E. Fayette Street just prior to N. Milton Avenue. At this location, Officer DeJesus got out and ran across the eastbound lane of E. Fayette Street to the southeast corner of E. Fayette Street and N. Milton Avenue where two officers—Officers Banocy and Gutridge—were slightly ahead of him and to his right.

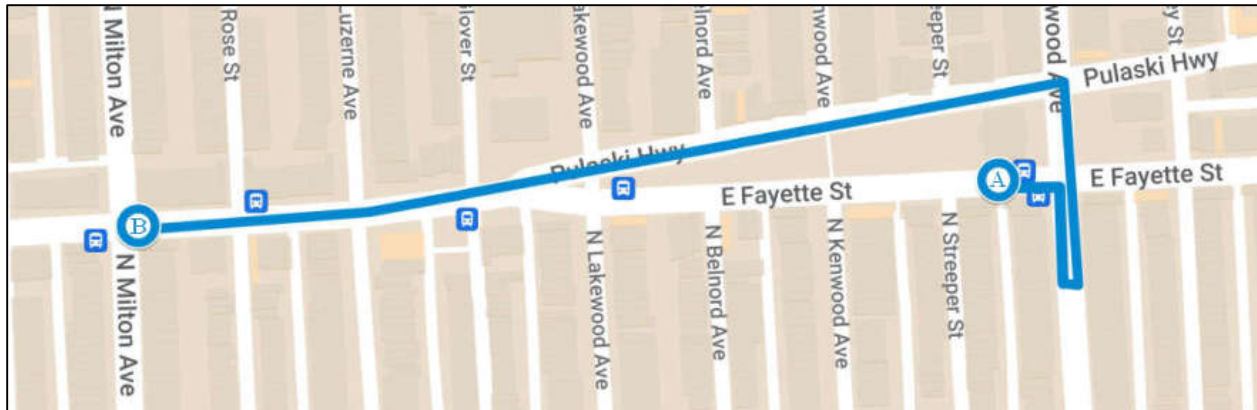


Image 12. Map of E. Fayette Street between N. Ellwood Avenue and N. Milton Avenue in Southeast Baltimore indicating the path of travel of the marked patrol car occupied by Officer DeJesus (based on his body-worn camera footage), including the approximate location of: (A) where his body-worn camera footage began (approximately 10 streets or one-third of a mile west of the Royal Farms store), and (B) where Officer DeJesus's patrol car stopped, and he exited the car.

At 5:31:36 p.m., Officer DeJesus has his handgun drawn and pointed forward. He stood behind the brick wall of the corner house at the southeast corner and fired several shots. At 5:31:42 p.m., he yelled, “drop the gun, drop it, drop it, drop it.” A few seconds after the final shot was fired, Officer DeJesus walked behind three of the discharging officers toward Mr. Gamble with his gun drawn.

At 5:31:37 p.m., according to both body-worn camera and surveillance camera footage, Mr. Gamble moved from the sidewalk in between two parked cars and then fell into the street. Officer Banocy moved behind a car that was parked in the street, and from this position, fired approximately 12 shots. A review of body-worn camera footage indicates a final gunshot round was fired at 5:31:44 p.m.

At 5:31:47 p.m., Officer Romey yelled, “stop the crossfire, now” and walked north on N. Milton Avenue toward Mr. Gamble. As he approached the scene, several officers were standing over Mr. Gamble's body with their guns drawn. At 5:31:57 p.m., Officer Romey radioed, “suspect is down, start a medic.”

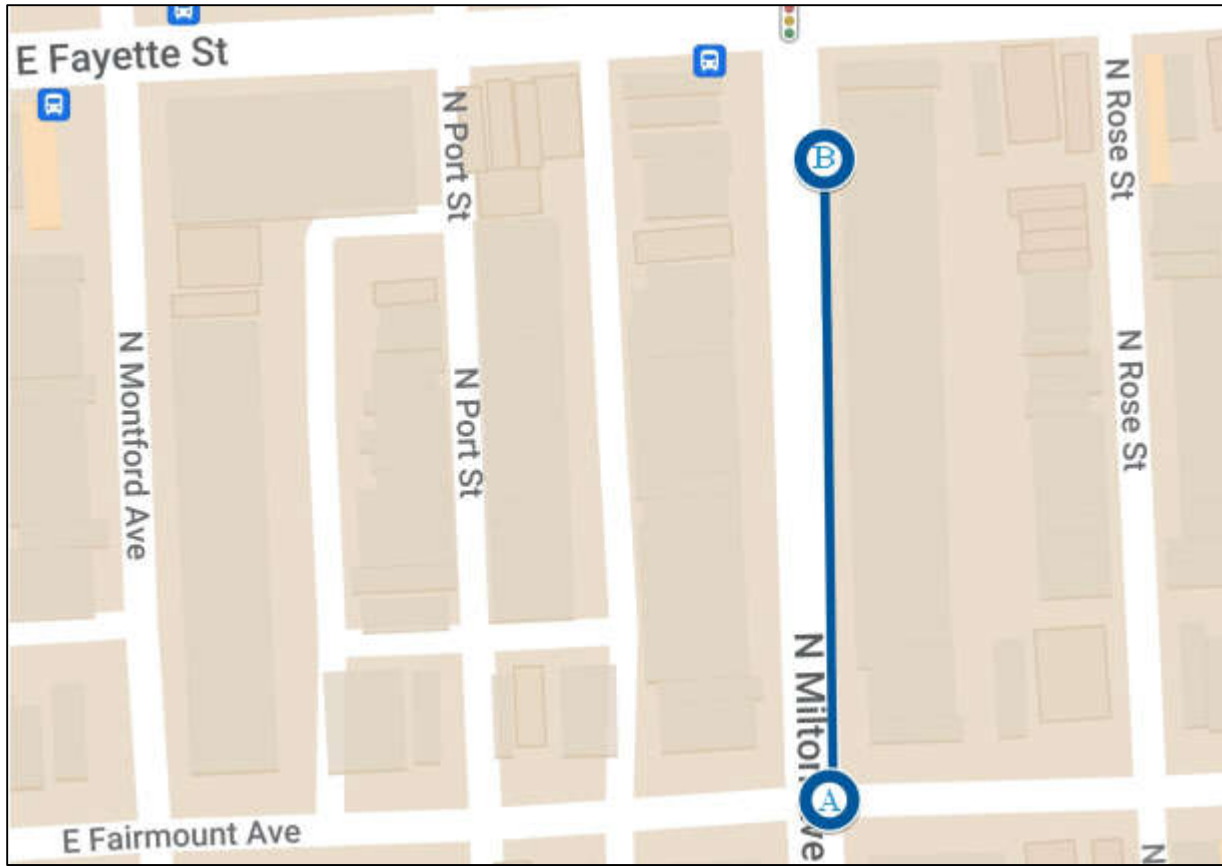


Image 13. Map of the 100 block of N. Milton Avenue indicating Mr. Gamble's path of travel on foot, including the approximate location of: (A) the black Toyota Camry, abandoned at the intersection of N. Milton Avenue and E. Fairmount Avenue, and (B) Mr. Gamble's body following the shooting, which was on the roadway in front of 151 N. Milton Avenue.

Based on an inspection of the handguns used by the five discharging officers and the ammunition that was remaining in each handgun following the shooting, and assuming all officers were carrying the approved amount of ammunition pursuant to BPD policy, the officers fired a total of 51 rounds, with each officer firing the following number of rounds: Officer Banocy, 15; Officer DeJesus, 5; Officer Gutridge, 13; Officer Johnson, 10; and Officer Nolte, 8.

After the last round was fired at 5:31:44 p.m., BPD officers approached Mr. Gamble, who was lying in the street in front of 151 N. Milton Avenue, with their handguns drawn and pointed at Mr. Gamble. At 5:31:46 p.m., officers called out that Mr. Gamble had a rifle as they continued to walk toward him. Officers placed Mr. Gamble in handcuffs, and Officer Johnson picked up the rifle from underneath Mr. Gamble and ejected a round from the chamber. Officers then began providing first aid.

According to dispatch records, BPD requested a medic at 5:32 p.m., and the Baltimore City Fire Department dispatched several units at 5:33 p.m., one minute later. The first unit arrived at 5:36 p.m., and several others arrived right after. In his written report, [REDACTED]

[REDACTED] He wrote that when he arrived police officers were performing CPR [REDACTED]

The medic assessed Mr. Gamble [REDACTED]
[REDACTED] He wrote that Mr. Gamble [REDACTED]
[REDACTED]
[REDACTED] A medic pronounced Mr. Gamble
dead at 5:41 p.m.

I. Search of the Scene

BPD secured the shooting scene, which was the 100 block of N. Milton Avenue, between E. Fayette Street to the north and E. Fairmont Avenue to the south. The scene consisted of various pieces of evidence, which were collected by BPD crime scene technicians, including numerous cartridge cases. In addition, technicians recovered the following evidence.

In the area immediately surrounding Mr. Gamble's person:

- .40 caliber Glock handgun with one live round in the chamber (*picture A, left; below*)
- .40 caliber 50-round drum magazine with 12 live rounds (*picture A, right; below*)
- AK-47 style assault rifle (*picture B, below*)
- 30-round magazine with 29 live rounds

From Mr. Gamble's person:

- \$1,253.56 in cash
- Black balaclava (similar to a ski mask) and four condoms
- Baggie containing seven pills

From a backpack next to Mr. Gamble's body:

- .357 Magnum revolver with 8 live rounds in a black holster (*picture C*)
- 30-round magazine containing 30 live rounds
- 30-round extended magazine containing 30 live rounds
- Box of ammunition containing 39 live rounds
- 2 baggies containing numerous live rounds
- 2 empty .40-caliber Glock magazines

BPD investigators also executed a search and seizure warrant on the black Toyota Camry and located the following evidence:

- 12-gauge pump shotgun (*picture D, below*)
- 5 12-gauge shells and plastic bag with 9 12-gauge shells
- Extended magazine
- 28 .40-caliber rounds

- 2 gun holsters
- “Pro mag” magazine

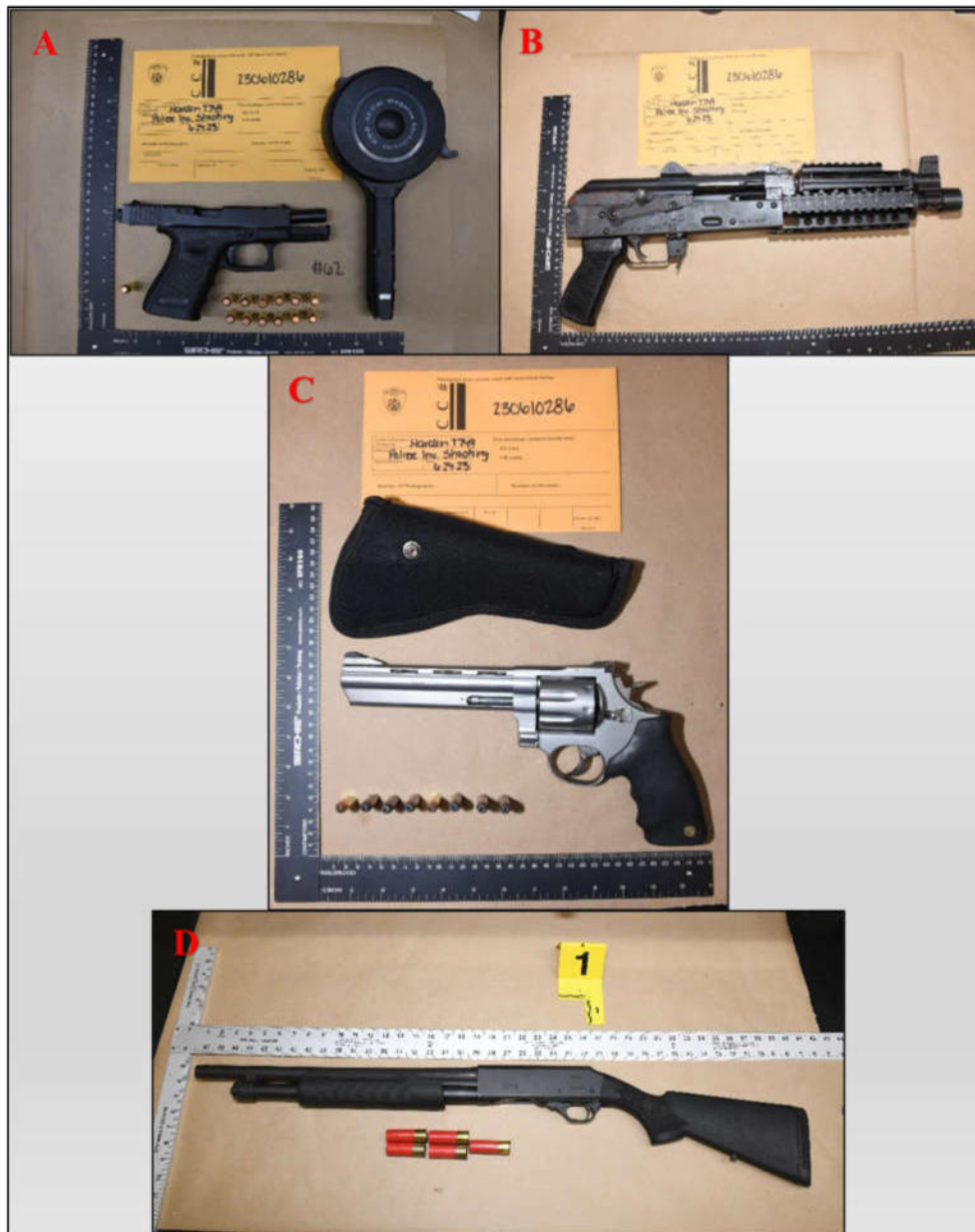


Image 14. BPD photographs of firearms recovered near Mr. Gamble's body after he was shot and from inside Mr. Gamble's backpack and car.

J. Civilian Witness Statements

There were several civilian witnesses who were interviewed in reference to this incident. The witnesses all provided statements detailing what they saw and heard during the incident. These statements, however limited by what the witnesses actually observed, were consistent with the video evidence that is available in this matter.

One civilian witness was a resident of the 100 Block of N. Milton Ave. and was interviewed by BPD officers about an hour and a half after the shooting. His interview was captured on body-worn camera. The witness said his wife heard what sounded like fireworks, so he looked out his front window and saw a black Toyota stopped at the intersection of N. Milton Avenue and E. Fairmount Avenue. He said he saw an individual, later identified by police as Mr. Gamble, “running out the back side of that vehicle” and begin shooting, although the witness could not see at whom he was shooting, given the witness’s vantage point inside his home. The witness said he saw Mr. Gamble in the street shooting “a couple times” and moving “a little bit farther” down the street. The witness said Mr. Gamble then “moved towards the sidewalk . . . shoots a couple more, and I think he starts moving down the sidewalk,” while using his finger to point up N. Milton Avenue. The witness clarified that he could see a gun in Mr. Gamble’s hand, and that he thought it was an automatic weapon because he could hear it firing quickly. The witness did not indicate that he saw any officers firing.

K. Law Enforcement Statements

1. Subject Officers¹²

All subjects of criminal investigations—including police officers—have a right under the Fifth Amendment not to make any statement, whether it is oral or written. Thus, if *any* statement is directly 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] **demand**ed that the appellee answer the questions”) (emphasis in original).

Notwithstanding the above, 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. BPD’s Use of Force Reporting, Review, and Assessment policy (Policy 725) also requires subject officers (and witness officers) to thoroughly document the force used.

Pursuant to the IID’s internal protocols for the handling of statements by subject officers, IID attorneys not assigned to this particular case screened the available evidence to identify all statements made by the subject officers and assess whether any of these statements could be considered compelled for *Garrity* purposes. As part of this review, IID attorneys determined the subject officers provided written statements pursuant to BPD policy and also made limited oral statements immediately following the shooting that were captured on body-worn camera footage.

¹² Pursuant to the IID’s protocols, a “subject officer” is an officer whose acts and/or omissions are being investigated by the IID. The IID’s designation of an individual as a subject officer is not an opinion on the guilt or innocence of any individual, an opinion of whether any individual may be charged with a crime, or a comment on the civil liability or administrative sanctions that any individual may face. The designation merely reflects the IID’s determination, based on an examination of the facts of the incident and relevant law, that an officer’s acts and/or omissions could be reasonably thought to have caused or contributed to the death or injuries likely to result in death of an individual. In officer-involved shootings, this category includes all discharging officers, even if it is known they did not strike the decedent.

Regarding the written statements, the IID's walled-off team determined those statements were potentially compelled. As such, those written statements were not reviewed by the attorney or investigators working directly on this case, and neither the written statements nor any information derived from them were used in the investigation or discussed in this report. The written statements will be marked, sealed, and provided to the Baltimore City State's Attorney's Office in a secure form.

Regarding the oral statements captured on body-worn camera footage, the IID's walled-off team determined that these statements could, from a very conservative viewpoint, be considered compelled. However, the IID's walled-off team determined that the information provided in those statements was also available through independent sources and thus need not be walled off from the IID attorney and investigators working directly on this case. In the footage, all five discharging officers acknowledged that they indeed fired their handguns. Officers Nolte and Johnson also said their unmarked Ford Fusion was hit by gunfire while they were still in the car. Also, Officers Nolte and Banocy were asked if they knew the decedent's name, and they both indicated it was Mr. Gamble. Officer Banocy also said that Mr. Gamble had a warrant for attempted murder.

All five subject officers were asked to provide statements to BPD and IID investigators, and they declined.

2. Witness Officers¹³

BPD and IID investigators interviewed four witness officers at BPD headquarters the night of the shooting. The accounts they provided were consistent with the available video and audio evidence in this matter and are summarized below.

a. Officer Stephen Romey

Officer Romey said he heard over the radio that there was a car driving in the area that was "wanted for an attempted murder." He said he was driving in the area of Lakewood and Fayette when he observed what he believed was the suspect car and that it was traveling at a high speed. Officer Romey said he attempted to follow the car for several blocks, but he eventually lost sight of it.

Officer Romey then said he was driving westbound in the 2500 block of E. Fairmount Avenue when he saw the suspect car stopped at the intersection of Fairmount Avenue and N. Milton Avenue. He said he saw a black man, later identified as Mr. Gamble, on the passenger side of the car and that Mr. Gamble fired a handgun at Officer Romey as he drove toward the car. Officer Romey said he sped past Mr. Gamble to get out of danger and once past him, Officer Romey stopped his car and began to pursue Mr. Gamble on foot. Officer Romey said Mr. Gamble began running northbound in the 100 block of N. Milton Avenue and he continued to shoot at Officer Romey as he followed Mr. Gamble on N. Milton Avenue.

¹³ A "witness officer" is an officer who is present for an incident or has information relevant to an incident but is not otherwise designated as a subject officer.

Officer Romey said that as Mr. Gamble ran to the north end of the block towards the 2500 block of E. Fayette Street, several BPD officers arrived in an unmarked patrol car. Officer Romey said these officers got out of the patrol car and started firing their handguns at Mr. Gamble. Mr. Gamble fell to the ground, and Officer Romey said he approached him with his gun drawn and that he was still in possession of an AK-47 style rifle. Officer Romey said another officer approached Mr. Gamble and moved the rifle away from him and another officer called out for a medic.

b. Officer Zachary Ruhling

Officer Zachary Ruhling was on duty in the Southeastern District and driving a marked BPD patrol car with Officer Christian Agard, who was in the front passenger seat. Officer Ruhling told investigators that he heard a call-out on the radio for a car that was being driven by an individual who was wanted for attempted murder. Officer Ruhling said he turned on his car's lights and siren and drove toward the location that Officer Romey was providing on the radio. Officer Ruhling said they were one block ahead of Mr. Gamble, so he stopped his car, and he and Officer Agard got out and ran one block to Milton Avenue and Fayette Street. Officer Ruhling said when he got out of the car, he heard shooting and as he arrived on the scene, the shooting stopped. Officer Ruhling said that while he was running on Milton Avenue and he was halfway in the block between Orleans Street and E. Fayette Street, he was able to see gunfire, but he could not determine who was firing.

c. Officer Christian Agard

As noted above, Officer Agard was sitting in the front passenger seat of a patrol car that Officer Ruhling was driving. Officer Agard said he heard over the radio that Officers Banocy and Nolte were trying to stop a car and that the car had passed Officer Romey. Officer Agard said he heard updates on the radio, and Officer Ruhling was trying to catch up to the car. Officer Agard said that when he heard Officer Romey say the driver had bailed out of his vehicle at Fairmount Avenue and Milton Avenue, he and Officer Ruhling were at Orleans Street and Milton Avenue. The two officers got out of their car and began running southbound on Milton Avenue, and he heard shots being fired. Officer Agard also said that when he was in the 200 block of Milton Avenue, he heard what he thought was automatic fire. While continuing to run, Officer Agard said he heard Officer Romey on the radio say that Mr. Gamble was shooting and running northbound from Milton and Fayette. Officer Agard said when he got to the scene, he saw Officers Banocy, Nolte and Johnson with their guns drawn, and Mr. Gamble on the ground.

d. Officer Andrew Rago

Officer Andrew Rago explained hearing the same series of events on the radio leading up to Mr. Gamble shooting at Officer Romey as discussed throughout this report. Officer Rago said he drove to Fayette Street and Milton Avenue, and as he pulled his car around Mr. Gamble's disabled car, he saw shots coming from up the street and Officer Romey taking cover behind cars. Officer Rago said he did not know where Mr. Gamble was, so he drove his car past Officer Romey to provide more cover.

Officer Rago said he got out of his car and unholstered his handgun and also took cover. Officer Rago said he tried to look up to see where Mr. Gamble was, but he could not tell from where the shots were coming. At one point he saw officers wearing black tactical vests shooting Mr. Gamble who was in the street and on the ground. Officer Rago said he did not shoot because officers were in the backdrop.

L. Medical Examination

Mr. Gamble's autopsy was performed on June 30, 2023, by Edernst Noncent, MD, an associate pathologist with the Maryland Office of the Chief Medical Examiner, with Pamela Ferreira, MD, as the attending assistant medical examiner. On October 25, 2023, the IID received a copy of the final autopsy report. Dr. Noncent and Dr. Ferreira determined that Mr. Gamble suffered from 15 gunshot wounds. This included gunshot wounds to the right side of the face, head, right flank, right hip, abdomen, right side of the mid-back, mid-lower back, left side of the lower back, three wounds to the right buttock, right thigh, right knee, and right leg. The direction of the wound paths varied as some were front to back and others back to front. There was no evidence of close-range discharge for any of Mr. Gamble's gunshot wounds. Dr. Noncent and Dr. Ferreira concluded that Mr. Gamble's cause of death was multiple gunshot wounds, and his manner of death was homicide.¹⁴

Dr. Noncent recovered bullets and/or bullet fragments from seven of Mr. Gamble's gunshot wounds and small metal fragments from his chin wound and on the surface of his chest. These items were submitted as evidence to BPD for forensic analysis.

Standard post-mortem toxicology testing on Mr. Gamble revealed the presence of oxycodone, a controlled dangerous substance.

M. Firearm Analysis

On November 14, 2023, the IID received from the BPD Firearm Analysis Unit a laboratory report analyzing the firearms evidence collected in this case and comparing the cartridge cases recovered on scene with the handguns used by the five discharging officers and the handgun found near Mr. Gamble's body. The report identified the following number of cartridge cases as having been fired from the handguns attributed to the five discharging officers and Mr. Gamble: Officer Banocy, 12; Officer DeJesus, 5; Officer Gutridge, 11; Officer Johnson, 10; Officer Nolte, 1; and Mr. Gamble, 33.¹⁵

¹⁴ 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. This term is not a legal determination; rather, it is 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.

¹⁵ BPD defines their "conclusion of identification (fired)" as "agreement of all discernable class characteristics and sufficient agreement of all individual characteristics to conclude that the items were fired with the same firearm. The statement that 'sufficient agreement' exists between two toolmarks means that the agreement of individual characteristics is of a quantity and quality that the likelihood another tool could have made the mark is so remote as to be considered a practical impossibility." Notwithstanding the availability of this expert opinion in this case, the State may be limited in the firearms testimony it could

The BPD analyst was unable to conclude which of the discharging officers' handguns, if any, fired several jacketed hollow point bullets that were recovered on scene. One bullet recovered from the scene was identified as having been fired from Mr. Gamble's gun. Additionally, the analyst was unable to conclude if any of the fragments or projectiles recovered at autopsy from Mr. Gamble's gunshot wounds were fired from any of the examined handguns.

The analyst also test-fired the handgun used by Mr. Gamble. The gun was operable, and the analyst found it had been modified with an "auto sear switch," which converts a semi-automatic pistol into a pistol capable of fully automatic fire. The analyst also noted that on this particular gun, the switch did not function properly, and the gun "fired in full automatic mode regardless of which side the switch is set to."

III. Involved Parties' Backgrounds

As part of its standard investigative practice, the IID obtained information regarding the involved parties' criminal histories. To the extent it exists, any criminal history is being provided to the State's Attorney's Office with this report. The IID also obtained training records and internal affairs records for the five subject officers. In this case, this information did not affect the analysis of potential criminal charges.

Mr. Darryl Gamble was a 40-year-old black man who lived in Baltimore, Maryland.

Officer Matthew Banocy is a white man who was 28 years old at the time of the shooting. He was assigned to the Southeastern District/Eastside Initiative and was hired by BPD in July 2018. [REDACTED]

Officer Nicholas DeJesus is a Hispanic man who was 30 years old at the time of the shooting. He was assigned to the Southeastern District and was hired by BPD in April 2021. Prior to this shooting, [REDACTED]

Officer Austin Gutridge is a white man who was 32 years old at the time of the shooting. He was assigned to the Eastern District Action Team and was hired by BPD in November 2020. Prior to this shooting, [REDACTED]

offer at trial. In *Abruquah v. State*, decided in June 2023, the Maryland Supreme Court analyzed the admissibility of a firearm examiner's expert testimony in light of the Court's adoption in 2020 of the *Daubert-Rochkind* standard, which now governs the admissibility of all expert testimony in Maryland trial courts. No. 10, Sept. Term, 2022 (Md. Jun. 20, 2023). The Court found that while firearms identification is generally reliable and can help a factfinder identify whether patterns and markings on "unknown" bullets or cartridges "are consistent or inconsistent with those on bullets or cartridges known to have been fired from a particular firearm," a firearm examiner may not be able to testify to "results linking a particular unknown bullet to a particular known firearm." The ruling in *Abruquah* was based on the record that was established in that particular trial; namely the reports, studies, and testimony admitted into evidence before the circuit court. It remains possible that the expert opinion provided by the BPD firearms examiner in this case would be admissible under *Daubert-Rochkind* if a different record was established in line with the *Abruquah* ruling.

[REDACTED]

Officer Connor Johnson is a white man who was 28 years old at the time of the shooting. He was assigned to the Eastern District Action Team and was hired by BPD in November 2018. Prior to this shooting, [REDACTED]

[REDACTED]

[REDACTED]

Officer Nevin Nolte is a white man who was 27 years old at the time of the shooting. He was assigned to the Southeastern District/Eastside Initiative and was hired by BPD in February 2021. Prior to this shooting, [REDACTED]

[REDACTED]

[REDACTED]

IV. Applicable Policies

BPD has policies on the use of force, including the use of deadly force (Policy 1115) and the use of firearms (Policy 409). The policies are summarized below, and the complete policies are attached to this report as Appendix B.

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:

- 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.”

V. Applicable Law and Analysis

The IID analyzed Maryland statutes that could be relevant in a death of this nature. This section presents the elements of each possible criminal charge, analyzes these elements, and reviews any potential defenses considering the factual 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;¹⁶ (2) that the defendant used force against Mr. Gamble; (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. Gamble. 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 the officer was not necessary and proportional to prevent an imminent threat of physical injury to any officer, 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).

¹⁶ 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).

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. 548, 564 n. 15 (2019).¹⁷ 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)).

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 the officer 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.¹⁸ Letter of Assistant Attorney General Rachel A. Simmons to State’s Attorney Aisha N. Braveboy, Prince George’s County State’s Attorney’s Office (Jan. 18, 2023).

¹⁷ “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).

¹⁸ 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. Gamble. “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).

There is no dispute that the five subject officers were acting in their capacity as police officers when they fired their weapons at Mr. Gamble. Nor is there any dispute that Mr. Gamble sustained 15 gunshot wounds, which caused his death. The remaining questions for the factfinder, then, are whether the officers intentionally used excessive force and whether the use of force was necessary and proportional 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).

To properly examine the five officers’ actions in shooting Mr. Gamble, a factfinder would consider what was known to these officers at the time they approached Mr. Gamble, who was on the sidewalk of N. Milton Avenue. At that moment, because of information communicated on the police radio, the officers knew that Mr. Gamble had, just a minute earlier, fired a gun at Officer Romey. Moreover, from their position on E. Fayette Street approaching Mr. Gamble on the sidewalk, officers may have been able to see Mr. Gamble raising and pointing a handgun at Officer Romey, although what specifically the officers saw is not certain given the obstructed view provided in the discharging officers’ body-worn camera footage. Regardless, the discharging officers certainly would have observed Mr. Gamble fire rounds in Officer Romey’s direction, only to fall to the ground and immediately get back up and fire one or more rounds in their direction, with a handgun that had a large-capacity drum magazine and was firing in full automatic mode. It was at this point the five officers began firing their handguns. As officers fired these initial rounds at Mr. Gamble, he continued to pose an imminent threat of physical injury as he continued to fire his weapon. Specifically, while still standing on the sidewalk of N. Milton Avenue, Mr. Gamble tossed his handgun to the ground and retrieved an AK-47 style assault rifle from his backpack. While he was holding this rifle and moving from the sidewalk to the roadway, officers continued to fire their handguns. Any less lethal response by these officers would likely not have been sufficient to counter the level of immediate deadly force presented by Mr. Gamble.

According to body-worn camera footage, one of the discharging officers, Officer Banocy, continued to fire rounds after Mr. Gamble fell to the ground. The Use of Force Statute does require an officer to cease using force if the person that the force is used against no longer presents an imminent threat of physical injury to another person. Here, the statute would seemingly require Officer Banocy to cease shooting if he, or others, were no longer in imminent danger of being harmed by Mr. Gamble. Imminent harm means that the source of a threat has the means to injure someone and is in close enough proximity to them to use it, so an injury is likely to occur at any moment. See *Howell*, 465 Md. at 564 n. 15; *Madrid*, 474 Md. at 339. At the time he fell to the ground, Mr. Gamble was about two car lengths from Officer Banocy, in the street and on his stomach. The assault rifle Mr. Gamble had been holding is not visible and his hands

appear folded under his body, suggesting that he still had access to the weapon, although it is unclear from the video whether Mr. Gamble, given his condition at the time, could have used the weapon or not. A factfinder could therefore consider that Mr. Gamble still had the means to harm officers, whom he had, during the intervening minute, previously shot Officer Romey's vehicle, pointed his handgun at Officer Romey and then fired numerous rounds in both directions on N. Milton Avenue. On the other hand, because of his position on the ground and having sustained a number of gunshot wounds, a factfinder could determine it was not feasible for him to make any meaningful movements that would put officers at risk. If a factfinder determined that Mr. Gamble was still a threat, Officer Banocy would likely not have violated the Use of Force statute, but if Mr. Gamble was found to pose no threat at that time, the additional shots may have been unreasonable.

B. Homicide Charges

In addition to the new excessive force charge, officers may still be charged with traditional statutory and common law offenses. There are two charges related specifically to officers killing Mr. Gamble that could be relevant given the facts of this incident: intentional second-degree murder and voluntary manslaughter.¹⁹

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. Gamble; (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

¹⁹ First-degree murder is not analyzed because there is no evidence that officers' killing of Mr. Gamble was premeditated. Unintentional (“depraved heart”) second-degree murder and involuntary manslaughter are not analyzed because there is no dispute that officers intended to fire at Mr. Gamble.

4:17.3. The State must also disprove complete self-defense or complete defense of others, as discussed in the section below.

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 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. Simmons 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 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)).

In this case, a factfinder would need to determine whether the five subject officers had a claim of complete self-defense or defense of others. In making this determination, a factfinder would examine the same facts as applied in the Excessive Force analysis above, specifically considering that Mr. Gamble fired multiple times at Officer Romey with a handgun that had a large-capacity drum magazine and then turned around and began firing this same handgun numerous times in their direction, standing less than a half-block away. After dropping that gun, Mr. Gamble then picked up an assault rifle and carried it into the street with him, before falling to the ground.

C. Other Charges

There are additional potential charges that are not discussed further because they would merge with the homicide charges discussed above. Those charges include first-degree assault, *Sifrit v. State*, 383 Md. 116, 137 (2004); and reckless endangerment, *Williams v. State*, 100 Md. App. 468, 490-91 (1994). The analysis of these charges would parallel that of the charges above.

There are also other charges which could not be proven unless the State proved one of the charges above as a requisite predicate offense. Those charges include use of a firearm in the commission of a crime of violence, Criminal Law § 4-204(b); and misconduct in office, a common law offense. Specifically, regarding misconduct in office, there is also no evidence the officers acted with “a sense of depravity, perversion, or taint” necessary to establish the required corrupt intent. *Sewell v. State*, 329 Md. App. 571, 604 (2018) (citation omitted).

This report has presented factual findings and legal analysis relevant to the officer involved death of Darryl Gamble that occurred on June 29, 2023, in Baltimore, Maryland. Please contact the IID if further investigation or analysis is required.

Appendices

Appendix A – Materials Reviewed

911 Calls (1 recording with certification and request)
Body Worn Camera Video (12 videos)
CAD Reports (2 items)
Civilian Witness Statements (4 recordings and 1 written statement)
Decedent Documents (5 items)
Departmental Policies (6 items)
IA History and Training Records (16 items)
Lab Reports (4 items)
Medical Records (1 item)
OAG Reports (24 reports)
OCME (1 autopsy report with certification, 1 diagram, 1 case activity sheet, and 130 photographs)
Officer Witness Statements (4 recordings, 3 written statements, and officer photo/information)
Other Video (8 videos with consent forms)
Photographs (758 photos)
Police Reports (25 items)
Search Warrants (1 item)

All materials reviewed have been shared with the Baltimore City State's Attorney's Office via a secure files sharing service.

Appendix B – Relevant Baltimore Police Department Policies

See attached policies.

Appendix B
Relevant Baltimore Police
Department Policies



Policy 1115

Subject

USE OF FORCE

Date Published

24 November 2019

Page

1 of 11

By Order of the Police Commissioner

POLICY

The purpose of this policy is to establish when a member may use force, and members' duties before, during, and after the Use of Force. The decision to use force requires careful attention and continual assessment of the situation, threats, options, and risks, with the goal of resolving the encounter peacefully.

While members must at all times comply with the minimum legal requirements governing the Use of Force, they must also comply with even stricter standards set forth by Department policy.

CORE PRINCIPLES

1. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
2. **Value and Worth of All Persons.** All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.
3. **Peaceful Resolutions.** Members shall avoid the Use of Force unless it is not possible to do so.
4. **De-Escalation.** Members shall use De-Escalation Techniques and tactics to reduce any threat or gain compliance to lawful commands without the Use of Force or with the lowest level of force possible (See Policy 1107, *De-Escalation*).
5. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
6. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member uses force.
7. **Use of Force: Reasonable, Necessary, and Proportional.** Members 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.
8. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the Use of Force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

9. **Duty to Intervene.** Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
10. **Duty to Provide Medical Assistance.** After any Use of Force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause positional asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.
11. **Accountability.** Members shall be held accountable for uses of force that violate law or policy.
12. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

DEFINITIONS

Active Aggression — Active Aggression is when a person attacks or attempts to attack a member or another person. Strikes, kicks, or attempted strikes or kicks with hands, fists, the head, elbows, knees, or an instrument, constitute Active Aggression.

Aggravated Aggression — Aggravated Aggression is when a person presents an Imminent Threat of death or Serious Physical Injury to the member or another person based on the Totality of the Circumstances. Aggravated Aggression represents the least encountered but most serious threat to a member or other person. Even when confronted with Aggravated Aggression, the member is required to make every reasonable effort to de-escalate and to continuously assess the member's Use of Force.

Chemical Agents — Substances designed to irritate the eyes and mucous membranes (CS gas, PepperBall, Mk-9 Pepper Fogger, smoke, etc.).

Chokehold/Neck Hold — A Chokehold or Neck hold is any hold or contact with the neck that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. Chokeholds/Neck Holds are prohibited unless the use of Deadly Force/Lethal Force is justified.

Conducted Electrical Weapon (CEW) — A weapon designed to discharge electrical impulses in two modes:

Drive Stun — Pulling the trigger on the CEW with the cartridge removed or discharged, and placing the electrodes upon the skin/clothing of the person. Drive Stunning does not cause neuro-muscular incapacitation but causes severe pain.

Probes Deployment — Probes Deployment is the primary way that CEWs are used. With a cartridge attached, pulling the trigger fires two probes with barbs on the end that can penetrate the clothing or skin of a person. The two probes are connected to the CEW by wires and upon contact, if an electrical circuit is established, the CEW delivers pulsed electricity into the person, and overrides the person's voluntary motor function. Probes Deployment also causes significant pain.

Deadly Force/Lethal Force — Any force likely to cause death or Serious Physical Injury, whether the member intended to cause death or Serious Physical Injury or not. Deadly Force/Lethal Force includes, but is not limited to:

- The discharge of a firearm at a person;
- Strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or Improvised Impact Weapon to the head, neck, sternum, spine, groin, or kidneys;
- Intentionally striking a person's head against a hard, fixed object such as a roadway, concrete floor, wall, or iron bars;
- Knee strikes or kicks to a person's head;
- Any strikes to a person's throat;
- "Knee drops" against a prone or supine person's head, neck, or torso;
- Chokeholds/Neck Holds;
- Shooting someone in the head, neck, chest, or back, with a Less-Lethal Launcher at close range.
- The use of any force on a person whose health, age, condition, or circumstances make it likely death or Serious Physical Injury will result.

De-Escalation Techniques — De-Escalation Techniques are actions taken by members that are designed to eliminate the need to use force in order to resolve any event or situation. De-Escalation Techniques include: talking to a person using a tone of voice and language that is not aggressive or confrontational; creating space or placing barriers between the member and the person; waiting the person out when circumstances permit; permitting a person to move about when safe; permitting a person the opportunity to make statements or ask questions; slowing down the pace of an incident; tactical re-positioning and requesting additional resources. The guiding principles for de-escalation are patience, flexibility, and the desire to resolve each situation peacefully (See Policy 1107, *De-Escalation*).

Imminent Threat — A person presents an Imminent Threat when the person has the means and ability to harm the member or another person, and the member reasonably believes the person intends to deliver that harm.

Improvised Impact Weapon (IIW) — An Improvised Impact Weapon (IIW) is a device or object that is not a department approved weapon, but is nonetheless used as an impact weapon (e.g., flashlight, radio, or stick). Such weapons may be unpredictable, ineffective, or exert unexpectedly high levels of damage (e.g., board with protruding nail). Consequently, members shall use Improvised Impact Weapons only in rare, emergency conditions where members lack an authorized Baton or other approved less-lethal alternatives, and use of an Improvised Impact Weapon is reasonable and necessary to defend against a person displaying Active or Aggravated Aggression.

Less-Lethal Force — Force that, when employed as designed, intended, and consistent with policy and training, is not likely to cause death or Serious Physical Injury. Devices of Less-Lethal Force may include, but not be limited to, a DS-3027 bean bag, FN-303, Pepper Ball rounds, batons/impact weapons, O.C. spray, and CEW. The way a Less-Lethal Force device is used and the circumstances in which it is used could constitute Deadly Force/Lethal Force.

Less-Lethal Launchers/Munitions — A delivery tool that, when used as designed and intended, is less likely to cause death or Serious Physical Injury than a conventional lethal weapon such as a firearm. Less-Lethal Launchers/Munitions are only approved for use by certified members.

Physical Force — A member uses Physical Force any time a member coercively touches, directly or indirectly, any person. Physical Force includes holds, grabs, blows, and strikes as well as the use of instruments, such as batons, devices, such as CEWs, tools such as O.C. spray, canines, or firearms, whether

lethal or less-lethal.

Reasonable, Necessary, and Proportional — The review of every Use of Force shall be to determine whether it was reasonable, necessary, and proportional in light of the Totality of the Circumstances that were known, or should have been known, to the member, and in light of the mandates of BPD Policies.

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. When force is Necessary, members shall use force in a manner that avoids unnecessary injury or risk of injury to members and civilians.

Proportional — Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.

NOTE: Members who use force that is not Reasonable, Necessary, and Proportional will be subject to corrective action, possible discipline, possible criminal prosecution, and/or civil liability.

Resistance — Members may face the following types of Resistance to lawful directives:

Active Resistance — Active Resistance is when a person moves to avoid detention or arrest but does not attack or attempt to attack the member or another person. Attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the member's grasp are all examples of Active Resistance. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person's reaction to pain caused by a member or purely defensive reactions to force does not constitute Active Resistance.

Passive Resistance — Passive Resistance is when a non-assaultive person fails to comply with the member's commands without attempting to flee. Passive Resistance may include, but not be limited to, going limp, standing stationary and not moving based upon lawful direction, and/or verbally signaling an intention to avoid or prevent being taken into custody.

Serious Physical Injury — Serious Physical Injury is when there is disfigurement or substantial disruption or harm to one or more body parts, organs, or systems. The term includes, for example, brain injury, with or without unconsciousness, gunshot wounds, cardiac arrhythmia, difficulty breathing, cardiac or respiratory arrest, broken bones, dislocations, torn ligaments or tendons, or significant bleeding. This list is not exhaustive and is intended only to provide representative examples for guidance.

Temporary Pain — Any pain or complaint of pain that is brief, does not result in injury, and is delivered as a means to gain compliance. Temporary Pain may result from the application of, but is not limited to, elbow grips, wrist grips, shoulder grips, pressure point techniques, and/or forcible takedowns.

Totality of Circumstances — The Totality of Circumstances consists of all facts and circumstances surrounding any event. The facts and circumstances may include but are not limited to:

- Whether an offense has occurred;
- The nature of the offense;
- The seriousness of the offense;
- The size and strength of the person;
- The number of persons;

- The availability of weapons;
- Whether the person is exhibiting signs of mental illness or is experiencing a behavioral health crisis;
- Whether a person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier;
- Other force options;
- Availability of non-force options, including tactical repositioning, going to cover, or other De-Escalation Techniques;
- Environmental factors;
- Availability of back up and specialized units.

Use of Force — Any Use of Force or show of force that falls within Level 1, Level 2, or Level 3 force as defined in this policy. Use of Force Levels are:

Level 1 Use of Force — Includes:

- Using techniques that cause Temporary Pain or disorientation as a means of gaining compliance, hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip), and pressure point compliance techniques. Force under this category is not reasonably expected to cause injury,
- Pointing a firearm, Less-Lethal Launcher, or CEW at a person,
- “Displaying the arc” with a CEW as a form of warning, and
- Forcible takedowns that do not result in actual injury or complaint of injury.

NOTE: Escorting, touching, or handcuffing a person with minimal or no resistance does not constitute a Level 1 Use of Force.

EXCEPTION #1: SWAT team members and members assigned to work on a federal task force will not be required to report the pointing of a firearm at a person as a Use of Force during the execution of SWAT team or federal task force duties.

EXCEPTION #2: Pointing of a firearm at a person by any member, if done solely while entering and securing a building in connection with the execution of an arrest or search warrant, will not be a Use of Force. A permanent-rank supervisor must still complete a Form 93, Weapons-Pointing Report detailing the incident (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

Level 2 Use of Force — Includes:

- Force that causes or could reasonably be expected to cause an injury greater than Temporary Pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a CEW in Drive-Stun or Probes Deployment, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of OC spray or other Chemical Agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes, open hand strikes, and kicks,
- Discharge of a Less-Lethal Launcher/Munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area, and
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

Level 3 Use of Force — Includes:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges by a BPD member,
- Applications of more than three (3) CEW cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,
- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,
- Uses of Force resulting in death, Serious Physical Injury, loss of consciousness, or requiring hospitalization, and
- Uses of Deadly Force/Lethal Force.

NOTE: Hospitalization refers to admission to the hospital, and does not include treatment and release in the emergency department, no matter how long the stay.

DIRECTIVES**Use of Force**

1. Sworn members have the authority to use Reasonable force when Necessary to accomplish lawful ends. This authority is limited by the laws of the State of Maryland, federal law, the United States Constitution, and the provisions of this policy. Members must conform their actions to the law, the Constitution, and BPD policies. When members use force, they shall exercise the utmost restraint. When practical, members should announce that force will be utilized prior to the application of such force.
2. Members shall prevent or stop the illegal, inappropriate, or excessive Use of Force by other members. Failure to intervene may subject a member to disciplinary action (See Policy 319, *Duty to Intervene*).
3. Members may only use weapons and/or force techniques that are allowed by policy and on which the member is trained, unless warranted by the Totality of Circumstances.

De-Escalation

Members shall, unless it is not possible to do so, avoid the Use of Force by using De-Escalation Techniques, including verbal persuasion and warnings, slowing down the pace of an incident, waiting out persons, using barriers, creating distance (and thus the reactionary gap) between the member and the threat, and requesting additional resources such as specialized units, CIT trained members, behavioral health care providers, or negotiators, before resorting to force, and to reduce the need for force. De-Escalation Techniques mitigate the threats and gives officers time to utilize extra resources, and increases time available to call more officers or specialty units (See Policy 1107, *De-Escalation*).

1. Members shall talk to the person; attempt to convince the person to comply; reduce any threat presented by withdrawing to a position that is tactically advantageous; or take actions that allow the member greater distance and time, in order to de-escalate a situation or deploy a lesser force option or no force at all.

2. Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a person without proper evaluation of the situation, failing to leave sufficient space between the member and the person, closing the reactionary gap, or escalating a situation.
3. Members shall not use tactics that unnecessarily escalate an encounter or create a need for force.
4. Members shall de-escalate force immediately as resistance decreases.
5. If the member has no alternative to using force, the member shall use only the amount of force that is Reasonable, Necessary and Proportional to respond to the threat or resistance and shall immediately reduce the level of force as the threat or resistance lessens or stops.

Critical Thinking

Prior to using force, members shall use a critical thinking and decision-making framework to analyze and respond to incidents. This framework will allow members to uphold the sanctity of life and protect themselves by decelerating and stabilizing a situation to minimize the likelihood of a Use of Force incident. Using this framework, members will:

1. Assess the situation, threats, and risks;
2. Gather relevant facts about the incident;
3. Consider police powers and BPD policy;
4. Identify options and determine the best course of action; and
5. Act, review, and re-assess the situation.

Restrained Persons

1. Members shall not use force against persons who are handcuffed or otherwise restrained, except in exceptional circumstances where the Totality of Circumstances makes it Reasonable and Necessary to prevent injury or escape. Members are cautioned that force that may be Proportional against an unrestrained person may not be Proportional when used on a restrained person. As with any Use of Force, members shall be required to use De-Escalation Techniques and critical thinking in order to avoid the Use of Force.
2. Members shall not use force against a handcuffed or restrained person if the person's actions only present a risk of property damage.
3. Members shall **not** position a restrained person face-down as it may cause positional asphyxia, placing persons on their back can cause radial nerve damage to the wrist and forearm area. Restrained persons are to be seated or placed on their side.

Use of Deadly Force/Lethal Force

1. The use of Deadly Force/Lethal Force shall always be the last resort.
2. Members shall not use Deadly Force/Lethal Force unless they have exhausted de-escalation

(See Policy 1107, *De-Escalation*) and Less-Lethal Force options have been tried and failed, or are not safe based on the Totality of Circumstances.

3. A member may use Deadly Force/Lethal Force when they reasonably believe such action is immediately necessary to protect a member or another person from an Imminent Threat of death or Serious Physical Injury.
4. Prior to the decision to employ Deadly Force/Lethal Force members shall consider environmental considerations such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks to life.
5. Where safety permits, a member should identify himself/herself as a law enforcement officer and state his/her intention to use Deadly Force/Lethal Force before using a firearm or employing Deadly Force/Lethal Force.
6. A member may use Deadly Force/Lethal Force to prevent the escape of a fleeing person if force is authorized and no Reasonable force alternative exists that is within BPD policy, the member has given a verbal warning to the person (if time, safety, and circumstances permit), and there is probable cause to believe that:
 - 6.1. The person has committed or is in the process of committing a felony involving the infliction or threatened infliction of Serious Physical Injury or death, and
 - 6.2. The escape of the person would pose an Imminent Threat of death or Serious Physical Injury to the member or another unless the person is apprehended without delay, and
 - 6.3. Members have identified themselves as law enforcement officers, have stated their intention to use Deadly Force/Lethal Force, and have given the person a reasonable opportunity to comply voluntarily, if time, safety, and the circumstances permit.

Restrictions on the Use of Deadly Force/Lethal Force

1. Deadly Force/Lethal Force shall not be used to subdue persons whose conduct is a threat only to property.
2. Deadly Force/Lethal Force shall not be used against persons whose conduct is a threat only to themselves.
3. **The following are prohibited** unless the use of Deadly Force/Lethal Force is authorized and no reasonable alternatives exist:
 - 3.1. Discharge of a firearm at a person.
 - 3.2. Strikes with any hard object, such as a baton, flashlight, radio, weapon stock/handle, or IIW to the person's head, neck, sternum, spine, groin, or kidneys.
 - 3.3. Intentional strikes of a person's head against a hard, fixed object including, but not limited to, a roadway, concrete floor, wall, or iron bars.
 - 3.4. Kneeing or kicking a person's head, neck, back, or torso, including "knee drops" onto a prone or supine person.

- 3.5. Intentionally deploying a CEW to the neck, chest, groin or face of a person.
- 3.6. Application of Chokeholds/Neck Holds.
- 3.7. Discharge of a Less-Lethal Launcher to the chest, neck, or head at close range.
- 3.8. The use of any force on a person whose health, age, condition, or circumstances make it likely that death or Serious Physical Injury will result.
4. Firing warning shots is prohibited.
5. Firing into crowds is prohibited.
6. Members shall not fire any weapon from or at a moving vehicle, except:
 - 6.1. To counter an immediate threat of death or Serious Physical Injury to the member or another person, by a person in the vehicle using means other than the vehicle.
 - 6.2. To counter a situation where the member or another person is unavoidably in the path of the vehicle and cannot move to safety. Members shall not position themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.

NOTE: Refer to Policy 409, *Firearms Regulations*, for instructions on the use of firearms.

REQUIRED ACTION

Duty to Intervene

Members shall intervene to stop any member from using excessive force. Intervention may be verbal and/or physical (see Policy 319, *Duty to Intervene*).

NOTE: Failure to intervene may subject a member to disciplinary action. Members must immediately, or as soon as safety allows, notify a permanent-rank supervisor after such an intervention.

Duty to Provide Medical Assistance

1. When there is a visible injury, complaint of injury, signs of medical distress, or when medical attention is requested by any person, members shall immediately render aid consistent with their training and shall request that a medic respond to the scene, or transport the person directly to the nearest hospital emergency room. The member shall then notify their supervisor and the Communications Section.
2. If a person has been subjected to impact by any type of Less-Lethal Force including CEW, impact weapons or impact projectile, he/she will be provided with medical treatment. If the person refuses medical treatment or leaves the location (e.g., persons of an unlawful gathering dispersed by Less-Lethal Force that may voluntarily leave without aid), members must document the actions taken to identify and render aid to the person in the Use of Force Review.

Children and Youth

1. As with any encounter, members are expected to continually assess the situation, employ De-Escalation Techniques, and seek peaceful resolutions during incidents involving children and youth.
2. Members will, when feasible, recognize and employ developmentally-appropriate and trauma-informed tactics including, but not limited to, using a calm and natural demeanor, and avoiding threatening language. Members will also account for any fear-based reactions children and youth may experience during an encounter.
3. When force against a child or young person is necessary, take into account personalized factors of the child or young person including, apparent age, body size, and relative strength of the member relative to the child or young person; and risk posed by the child or young person; and,
4. In the case of injury resulting from a Use of Force, in addition to the requirements to render aid, summon medical care and notify a supervisor, the member will notify the child or young person's parent, guardian, or other responsible adult.

Reporting

1. All members will adhere to the Use of Force guidelines found in Policy 725, *Use of Force Reporting, Review, and Assessment*.
2. Members of the BPD must notify a permanent-rank supervisor immediately, or as soon as practicable, following a Use of Force. The supervisor will notify the Shift Commander by the end of the shift during which the force occurred. The notification will contain basic information concerning the incident. Any member with knowledge that another member used force must also immediately report that Use of Force to a permanent-rank supervisor. In all instances, the permanent-rank supervisor will conduct a thorough review of the Use of Force, and document this review by completing a BlueTeam entry before the conclusion of the supervisor's tour of duty.
3. The failure of any commander, supervisor or member to fulfill any of the requirements of this policy will not prevent, inhibit or otherwise affect the ability of the Department to conduct an investigation of any misconduct arising from a Use of Force incident or to otherwise discipline a member for any violation of this policy.

ASSOCIATED POLICIES

Policy 302, *Rules and Regulations*
Policy 319, *Duty to Intervene*
Policy 409, *Firearms Regulations*
Policy 414, *Less-Lethal Munitions and Chemical Agents*
Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)*
Policy 719, *Conducted Electrical Weapon*
Policy 724, *Performance Review Board*
Policy 725, *Use of Force Reporting, Review, and Assessment*
Policy 824, *Body-Worn Camera*
Policy 1107, *De-Escalation*
Policy 1111, *Batons / Impact Weapons*
Policy 1114, *Persons in Police Custody*
Policy 1118, *Oleoresin Capsicum Spray*
Policy 1602, *Canine Procedure*

RECISSION

Remove and destroy/recycle Policy 1115, *Use of Force*, dated 2 March 2018.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.



Policy 409

Subject

FIREARMS REGULATIONS

Date Published

24 November 2019

Page

1 of 14

By Order of the Police Commissioner

POLICY

The purpose of this policy is to establish guidelines to ensure proper use of department-issued firearms.

While members must at all times comply with the minimum legal requirements governing the use of firearms, they must also comply with even stricter standards set forth by Department policy (See Policy 1115, *Use of Force*).

CORE PRINCIPLES

1. **Use of Force: Firearms.** The discharge of a firearm is always Deadly Force/Lethal Force. As with all other weapons, the use of a firearm is strictly limited. Members shall discharge their firearms only as a last resort, when all reasonable measures to avoid the use of Deadly Force/Lethal Force have failed or when the member has no reasonable or safe choice but to discharge the firearm.

Unnecessarily drawing or exhibiting a firearm may limit a member's alternatives in controlling a situation, create unnecessary anxiety on the part of citizens, and/or result in an unwarranted or accidental discharge of the firearm.

During a potential Deadly Force/Lethal Force encounter, the member has many factors to consider including, but not limited to: identification, location and number of suspects, lighting, terrain, cover, concealment, presence and movement of bystanders, and back drop. With so many factors outside of the member's control, the situation that initially suggests the need to shoot might change between the time the pistol is grasped in the holster to the moment of pressing the trigger. The member must always be evaluating and must have the skills to de-escalate from the firearm being pointed, to lowered, and holstered as the member chooses other force options.

2. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
3. **Value and Worth of All Persons.** All human beings have equal value and worth, and members shall respect and uphold the value and dignity of all persons at all times.
4. **Peaceful Resolutions.** Members shall avoid the use of force unless it is not possible to do so.
5. **De-Escalation.** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible (See Policy 1107, *De-Escalation* and Policy 1115, *Use of Force*).

6. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
7. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member discharges a firearm.
8. **Use of Force: Reasonable, Necessary, and Proportional.** Members 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.
9. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will report the use of force accurately and completely by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).
10. **Duty to Intervene.** Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
11. **Duty to Provide Medical Assistance.** After any use of force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause positional asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.
12. **Accountability.** Members shall be held accountable for uses of force that violate law or policy.
13. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

DEFINITIONS

Approved Handgun — A personally-owned handgun that has been inspected by the Armory Unit and formally approved by the Director, Education and Training Section (E&T), for individual use by the member who owns it (See Appendix A).

Approved Shotgun — A personally-owned shotgun that has been inspected by the Armory Unit and formally approved by Director, E&T, for individual use by the member who owns it.

Approved Rifle — A personally-owned rifle that has been inspected by the Armory Unit and formally approved by Director, E&T, for individual use by the member who owns it.

Deadly Force/Lethal Force — Any force likely to cause death or Serious Physical Injury, whether the member intended to cause death or Serious Physical Injury or not. Deadly Force/Lethal Force includes, but is not limited to:

- The discharge of a firearm at a person;
- Strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or Improvised Impact Weapon to the head, neck, sternum, spine, groin, or kidneys;
- Intentionally striking a person's head against a hard, fixed object such as a roadway, concrete floor, wall, or iron bars;
- Knee strikes or kicks to a person's head;
- Any strikes to a person's throat;
- "Knee drops" against a prone or supine person's head, neck, or torso;
- Chokeholds/Neck Holds;
- Shooting someone in the head, neck, chest, or back, with a Less-Lethal Launcher at close range.
- The use of any force on a person whose health, age, condition, or circumstances make it likely death or Serious Physical Injury will result.

Issued Ammunition — Any munitions issued by the BPD to its members (e.g., lethal and less-lethal ammunition for a firearm, etc.).

Issued Handgun — BPD-owned Glock 22, 23, or 27 - .40 caliber pistol issued to a member for utilization.

Issued Rifle — BPD-owned Colt 5.56/.223 caliber AR-15/M-4 style rifle (Patrol Rifle and SWAT carbine), Remington 700 (SWAT), etc.

Issued Shotgun — BPD-owned Remington 870 - 12-gauge shotgun. The shotgun may be issued to a member, the Armory Unit, or a BPD command, and utilized by a qualified member when needed.

Issued Firearm — Any make, model, or caliber of firearm owned by BPD that has been issued to a member or that is for general utilization by a designated group of properly certified and qualified members.

Reasonable, Necessary, and Proportional — The review of every use of force shall be to determine whether it was objectively Reasonable, Necessary, and Proportional in light of the totality of the circumstances that were known, or should have been known, to the member, and in light of the mandates of BPD Policies.

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 is available. When force is necessary, members shall use force in a manner that avoids unnecessary injury or risk of injury to members and civilians.

Proportional — Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.

NOTE: Members who use force that is not Reasonable, Necessary, and Proportional will be subject to corrective action, possible discipline, possible criminal prosecution, and/or civil liability.

GENERAL**Requirement/Authorization to be Armed**

1. When on-duty, members shall be armed at all times with an Issued Firearm or Approved Handgun and shall utilize Issued Ammunition, except when participating in authorized training or a practice session.
2. When off-duty, members are authorized to carry an Issued or Approved Handgun while located within the State of Maryland. Off-duty members may also carry their Approved Handgun with Issued Ammunition within and outside the State of Maryland. Members are not required to be armed when off-duty.
3. Members operating a marked BPD Take-Home Vehicle shall be armed with an Issued Firearm or Approved Handgun, and BPD radio, when the BPD marked Take-Home Vehicle is in use.

DIRECTIVES**Permitted Uses of a Firearm**

Any use of force, but particularly the exhibiting, pointing, or discharging of a firearm, must be preceded by an analysis, to the greatest extent possible, applying the principles of the sanctity of life, critical thinking and decision-making, and de-escalation. These principles must be an ever-present priority as a member is making the serious decision of whether to use any type of force, and particularly Deadly Force/Lethal Force.

Any use of a firearm qualifies as a Use of Force, and may only be used when Reasonable, Necessary, and Proportional.

Un-holstering, Exhibiting, or Pointing a Firearm

1. Pointing a firearm at a person is considered a Level 1 use of force, with few exceptions (see Policy 1115, *Use of Force*).
2. Except for administrative reasons, members shall not un-holster their firearms unless they anticipate or encounter a dangerous situation in which there is a potential risk of death or serious physical injury to the member or another.
3. Members shall not point a firearm at a person unless they reasonably believe that the person poses a present or imminent threat of death or serious physical injury to the member or another person.
4. Firearms shall be secured or re-holstered as soon as reasonably practicable when Deadly Force/Lethal Force is no longer necessary. Firearms must always be holstered by any member attempting to frisk or handcuff a suspect.

Discharging a Firearm

1. The discharging of a firearm constitutes Level 3 use of force (also known as use of Deadly Force/Lethal Force).
2. As per Policy 1115, *Use of Force*, a member may use Deadly Force/Lethal Force:
 - 2.1. When de-escalation and less-lethal force options have been exhausted, and/or are not reasonable based on the totality of the circumstances, and
 - 2.2. When the member reasonably believes the action is immediately necessary to protect a member or another person from imminent threat of death or serious physical injury, and
 - 2.3. When members have considered environmental factors such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks of life.
3. Members shall identify themselves as law enforcement officers and state their intention to use Deadly Force/Lethal Force before using a firearm if time, safety, and circumstances permit.

EXAMPLE: "Police! Drop your weapon or I'll shoot!"

- 3.1. Members shall give the person a reasonable opportunity to voluntarily comply.
4. A member who discharges a firearm must continuously assess the circumstances that initially justified the use of Deadly Force/Lethal Force, and modulate the use of force according to the circumstances. Each round fired must be justifiable.
5. After the intentional or unintentional discharge of any firearm, members shall immediately notify a supervisor over radio when on-duty and complete the required actions and reporting as mandated in Policy 725, *Use of Force Reporting, Review, and Assessment*, and Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)*.

EXCEPTION: Members participating in firearms training, on-duty or off-duty, need not make the above notifications unless the discharge was accidental or resulted in an injury to the member or another party.

Fleeing Persons

1. Members may discharge a firearm to prevent the escape of a fleeing person if no reasonable force alternative exists and there is probable cause to believe that:
 - 1.1. The person has committed or is in the process of committing a felony involving the infliction or threatened infliction of serious physical injury or death, and
 - 1.2. The escape of the person would pose an imminent threat of death or serious physical injury to the member or another unless the person is apprehended without delay, and
 - 1.3. Members have identified themselves as law enforcement officers, have stated their intention to use Deadly Force/Lethal Force before discharging the firearm, and have given

the person a reasonable opportunity to comply voluntarily, if time, safety, and the circumstances permit.

Prohibited Uses of a Firearm

1. Members shall not fire warning shots.
2. Members shall not fire into crowds.
3. Members shall not fire any weapon from or at a moving vehicle, except:
 - 3.1 To counter an imminent threat of death or serious physical injury to the member or another person, by a person in the vehicle using means other than the vehicle.
 - 3.2 To counter a situation where the officer or another person is unavoidably in the path of the vehicle and cannot move to safety. Officers shall avoid positioning themselves in the path of a moving vehicle where they have no option but to use Deadly Force/Lethal Force.
4. Members shall not use their firearm as an impact weapon, except in situations where Deadly Force/Lethal Force is authorized.
5. Members shall not fire at a threat that is not verified and visible.
6. Members shall not carry a firearm when they are under the influence of an impairing substance or alcohol.
7. As per Policy 1115, *Use of Force*, a member may not use Deadly Force/Lethal Force:
 - 7.1. Solely to protect property interests;
 - 7.2. Against a person who is only a threat to themselves.

NOTE: See Policies 1115, *Use of Force*; 725, *Use of Force Reporting, Review and Assessment*; and 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)* for further guidance on use of firearms and other use of force guidance.

Dangerous Animals

1. Members are permitted to use firearms to stop a dangerous animal in circumstances where the animal reasonably appears to pose an imminent threat to human or animal safety and alternative options are not available or would likely be ineffective.
2. Members shall conduct pre-raid surveillance prior to executing a Search and Seizure Warrant, in an effort to determine if a dangerous animal may be present at the location to be searched. Members should contact Animal Control Supervision at (410) 396-4689 within 24 hours of executing a Search and Seizure Warrant to have Animal Control present.
3. Members shall develop a reasonable contingency plan to control/avoid a dangerous animal prior to confronting the animal when given advance notice that a dangerous animal may be encountered (e.g., dog pole, fire extinguisher, etc.). Any time SWAT or warrant teams are

operating, they should be prepared to deal with animals using other means besides Deadly Force/Lethal Force.

Responsibilities Following Firearm Discharges

1. After an officer-involved shooting, members shall refrain from speaking about the incident until a supervisor or SIRT arrives on the scene, except to the extent necessary to address safety concerns. Except for necessary tactical information during an active event, involved or witnessing members are prohibited from discussing with each other their observations before, during, or after any officer-involved shooting. Members shall reference Policy 710, *Level 3 Use of Force Investigations – SIRT* for officer-involved shooting interview requirements.
2. Members shall immediately request emergency medical assistance on police radio, as soon as it is safe to do so, following an officer-involved shooting, or when a person is hit by a firearm discharge.
3. Members must render medical aid, consistent with their training, to any person injured by a member's or other person's firearm, until medical personnel arrive on the scene. Members have a duty to maximize the likelihood of victim survival by utilizing their Individual First Aid Kit (IFAK) (See Policy 811, *Individual First Aid Kit (IFAK)*).

REQUIRED ACTION

Safety

1. Treat every firearm as a loaded weapon.
2. Do not place your finger inside of the trigger guard unless prepared to justifiably discharge the weapon.
3. Do not point or aim a weapon in dry firing practice in a location where an accidental discharge could cause injury.
4. Do not allow unauthorized persons to handle Issued Firearms.
5. Unload firearms in a manner prescribed by E&T before passing the firearm to another or before being stored or positioned where someone else may gain access to it.
6. Always holster slowly, with your thumb on the back of the slide and trigger finger extended outside of the trigger guard.
7. Never pull back the hammer or “cock” a revolver.

Care and Maintenance

1. Properly maintain Issued/Approved Firearms and ammunition. Safeguard them to ensure they are not misplaced, misused, or stolen.

- 1.1. Issued/Approved Firearms must be cleaned/oiled regularly (minimally once a month) in the manner prescribed by E&T.
 - 1.2. Issued Ammunition shall be inspected for signs of wear/serviceability. The round in the chamber must be rotated regularly with other rounds in the magazine (minimally once a month) to avoid excessive wear.
2. Ensure all Issued/Approved Firearms and Issued Ammunition are stored in such a manner as to be inaccessible to any person or member not qualified and/or authorized to access the firearm or ammunition. Storing firearms anywhere in a motor vehicle is presumptively insecure and prohibited unless locked in a BPD-issued or installed secured gun vault, lockbox, or rack.
3. When assigned to a vehicle equipped with a shotgun, less-lethal shotgun, or rifle, be responsible for the proper care and security of those firearms during your tour of duty.
4. Do not attempt to repair or modify any Issued/Approved Firearm. In the event an Issued/Approved Firearm needs repair or modification, take the firearm to the Armory Unit or Firearms Training Unit Armorer for examination/modification/repair.
5. At no time should any repair be done by an outside source, unless authorized in writing by the Armory Unit.

Training

1. Members are encouraged to train with Issued Firearms and Approved Handguns to maintain firearms proficiency.
2. When practicing with an Issued Firearm or Approved Handgun while off-duty, utilize only high quality, professionally manufactured ammunition. At the end of each practice session, unload any ammunition that is not Issued Ammunition and restore the Issued Ammunition when leaving the practice facility.

Inspections

1. Issued/Approved Firearms and all Issued Ammunition assigned to members shall be inspected by the member's first-line supervisor bi-weekly, utilizing the Firearms and Ammunition Inspection Sheet, Form 242 (see Appendix B). Completed Firearms and Ammunition Inspection Sheets, Form 242, shall be retained at the member's parent command.
2. Any firearm that does not pass inspection shall be taken to the Armory Unit or Firearms Training Unit Armorer for repair.

General Carry Provisions

1. Members assigned to units whose primary duties involve interactions with citizens and/or enforcement related activities (e.g., Patrol, SWAT, K-9, RATT, DAT, etc.) shall carry a fully loaded Issued/Approved Handgun, and a minimum of two loaded spare magazines. All such members must carry on their person at least one less-lethal weapon, which they are trained and certified to use, at all times while on duty (See Policy 1115, *Use of Force*).

- 1.1. The wearing of a Glock 27 is prohibited when wearing a full duty belt (i.e., issued duty belt with issued holster, radio, OC spray, double magazine pouch, etc.). Only a Glock 22 or Glock 23 may be worn with the full duty belt.
2. Members assigned to units whose primary duties are administrative (e.g., Communications, ECU, Quartermaster, RMS, etc.) or investigative (e.g., DDU, Homicide, Pawn Shop, Sex Offense, Child Abuse, etc.) need only carry a fully loaded Issued/Approved Handgun. When engaged in proactive enforcement activity likely to involve detention or arrests, members must carry at least one less-lethal weapon they are trained and certified to use (See Policy 1005, *Non-Uniformed Policing Standards*).
3. Unless exigent circumstances exist, ensure any firearm carried when working in a plain-clothes capacity or while off-duty is concealed from public view in a secure holster or secure container designed for that specific weapon.
4. After qualifying with and being issued an Issued Handgun, a member may apply to qualify with and carry off-duty or on-duty, one or two personally owned Approved Handguns that meet departmental standards and specifications.

NOTE: Police Officer Trainees are not approved to carry an Approved Handgun.

5. Only one Issued Handgun or Approved Handgun may be carried while on-duty or off-duty. Utilization of a second handgun as a “back-up” handgun is not permitted.

EXCEPTION: SWAT/ESU members often deploy multiple weapons platforms simultaneously during the execution of their tactical duties. Members of SWAT/ESU are EXEMPT from the restriction cited above and may carry/utilize all weapons platforms that the member is authorized and certified to deploy when operating in a tactically deployed posture.

6. Only those members departmentally trained with a .38 caliber revolver, who have successfully qualified with that revolver, may apply to carry while off-duty one personally owned .38 caliber revolver.

Restrictions

1. Do not transport Issued Firearms out of the State of Maryland unless on official business and with prior approval of your Commanding Officer. A member may transport an Approved Handgun with Issued Ammunition out-of-state without prior approval.

EXCEPTION: Members who reside outside Maryland may transport Issued Firearms with Issued Ammunition to and from their residence.

2. When responding to the Office of Professional Responsibility (OPR):
 - 2.1. Secure all weapons in the lockbox when directed by OPR staff.
 - 2.2. Follow administrative unloading procedures.
 - 2.3. Maintain possession of the lockbox key until exiting the OPR facility or until OPR staff takes possession of the lockbox key and directs the member to leave without their weapon.

3. When appearing in any court as a defendant, plaintiff, or juror, members shall:
 - 3.1. Not carry any firearms into the courtroom or jury room.
 - 3.2. Immediately secure weapons with court liaison personnel or appropriate court personnel before entering the courtroom or jury room.
4. Members approved to carry personally-owned 9mm, .380, or .38 caliber handguns off-duty are not permitted to carry these handguns while on-duty.
5. Do not store less-lethal equipment boxes and lethal shotgun boxes in the same vehicle.

EXCEPTION: Designated vehicles assigned to the Special Operations Division may be used to store less-lethal equipment boxes and lethal shotgun boxes together.

Approval for Personally-Owned Firearms (Approved Firearms)

1. Members wishing to register a personally owned firearm as an Approved Firearm must:
 - 1.1. Complete Section 1 of the Application for Authorization to Carry an Approved Firearm, Form 133 (See Appendix C).
 - 1.2. Submit the Application for Authorization to Carry an Approved Firearm to the Armory Unit.
 - 1.3. Submit the firearm to the Armory Unit for inspection.
 - 1.4. Qualify with the desired firearm once every calendar year, or as directed by E&T.
2. When relinquishing ownership of an Approved Firearm, submit an Administrative Report (Form 95) to your Commanding Officer.

Firearms Accessories

1. Members may use an issued or Armory Unit approved personally owned weapon mounted light on any Issued/Approved Firearm provided:
 - 1.1. The member was issued or utilized a weapon mounted light during entrance level training, or
 - 1.2. The member has successfully completed Weapon Mounted Light Training provided by E&T.
2. Members may purchase at their own expense and use "Night Sights" or "Standard Sights." Any sights must be approved, inspected, and installed by the Armory Unit or Firearms Training Unit Armorer.
3. Members may purchase at their own expense and use a sling/sling mounts for utilization with Issued/Approved Rifles and Shotguns. All sling mounts must be approved, inspected, and installed by the Armory Unit or Firearms Training Unit Armorer.

4. Members may purchase at their own expense a replacement stock/forearm for use with Issued/Approved Rifles and Shotguns. The stock/forearm must be approved, inspected, and installed by the Armory Unit or Firearms Training Unit Armorer.

APPENDICES

- A. Approved Firearms
- B. Firearms and Ammunition Inspection Sheet, Form 242
- C. Application for Authorization to Carry an Approved Firearm, Form 133

ASSOCIATED POLICIES

Policy 319, *Duty to Intervene*
Policy 412, *Patrol Rifle*
Policy 710, *Level 3 Use of Force Investigations / Special Investigation Response Team (SIRT)*
Policy 725, *Use of Force Reporting, Review, and Assessment*
Policy 811, *Individual First Aid Kit (IFAK)*
Policy 1005, *Non-Uniformed Policing Standards*
Policy 1115, *Use of Force*

RESCISSION

Remove and destroy/recycle Policy 409, *Firearms Regulations*, dated 1 July 2016.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A**Approved Firearms****Approved Handguns**

Category "A" Approved Handguns

Glock Model 22, .40 caliber semi-automatic handgun.
Glock Model 23, .40 caliber semi-automatic handgun.
Glock Model 27, .40 caliber semi-automatic handgun.

Category "B" Approved Handguns

Glock Model 19, 9mm semi-automatic handgun.
Glock Model 26, 9mm semi-automatic handgun.
Glock Model 43, 9mm semi-automatic handgun.
Glock Model 43x, 9mm semi-automatic handgun.
Glock Model 42, .380 caliber handgun.

*Category "B" Approved Handguns are for off-duty use only, and may not be utilized on-duty. As such, certain modifications such as colored finishes (cerakote, DuraCote, etc.), grip texturing, sights, stippling, etc. may be authorized if the modifications enhance or do not interfere with the performance of the firearm. Factory triggers may not be modified in any way, and must have a minimum weight of 5.5 lbs. The Armory Unit has final authority to authorize/approve modifications and determine if the firearm is approved for utilization. No modified Category "B" Handguns may be utilized while on-duty.

Category "C" Approved Handguns

.38 caliber revolver with a barrel length of not less than 2" or more than 4" that meets departmental standards and specifications, made by:

Colt.
Ruger.
Smith & Wesson.

Approved Shotgun

Remington 870 — .12 gauge pump action shotgun with a barrel length not less than 18" and not more than 20." The barrel shall be smooth bore and contain rifled sights. All accessories and modifications must be approved by the Armory Unit.

Approved Rifle

Colt AR-15 — 5.56 /.223 caliber rifle with a barrel length not less than 16" and not more than 20." All accessories and modifications must be approved by the Armory Unit.

APPENDIX B

Firearms and Ammunition Inspection Sheet, Form 242

Firearms and Ammunition Inspection Sheet
Form 242/19Police Department
Baltimore, Maryland

Member's Name:

Seq. Number

Assignment

Weapon Make:	Weapon Model:	Caliber:	Serial #:
Ammunition Type:	Number of Rounds:	Weapon Mounted Flashlight: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Weapon Make:	Weapon Model:	Caliber:	Serial #:
Ammunition Type:	Number of Rounds:	Weapon Mounted Flashlight: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Weapon Make:	Weapon Model:	Caliber:	Serial #:
Ammunition Type:	Number of Rounds:	Weapon Mounted Flashlight: <input type="checkbox"/> YES <input type="checkbox"/> NO	

CONDITION	Check One
Good Condition	<input type="checkbox"/>
Needs Repair (Respond to Armory Unit)	<input type="checkbox"/>

If "Needs Repair" please specify the type of repair, if unknown, please explain problems with weapon:

To be completed by the Supervisor conducting the inspection:

Printed Name_____
Signature_____
Seq #_____
Inspection Date

APPENDIX C

Application for Authorization to Carry an Approved Firearm, Form 133

Application for Authorization to Carry an Approved Firearm
Form 133/20

**POLICE DEPARTMENT
BALTIMORE, MARYLAND**

DATE _____

TO: RANGE MASTER, POLICE TRAINING ACADEMY

I, _____
(PRINT NAME, RANK, ASSIGNMENT AND SEQUENCE NUMBER)

RESPECTFULLY REQUEST THAT FOLLOWING DESCRIBED FIREARM BE APPROVED FOR USE AS AN APPROVED FIREARM. I UNDERSTAND THAT SHOULD SAME BE APPROVED, ALL APPLICABLE POLICIES AND RULES OF SAFETY WHICH REFER TO MY ISSUED FIREARM ALSO APPLY TO THIS APPROVED FIREARM. I ACKNOWLEDGE THIS FACT BY MY SIGNATURE BELOW.

MAKE		MODEL	
SERIAL NUMBER		ORIGIN	
TYPE			

Respectfully,

(Signature)

(TAKE THIS FORM AND FIREARM TO THE ARMORY UNIT FOR INSPECTION)

ARMORY UNIT

SERIAL NO. VERIFIED ☐ NCIC CHECK ☐ INSPECTED ☐

(Name, Rank)_____
(Date)

APPROVED ☐ DISAPPROVED ☐

If Disapproved, Reason:

Signature, Armory Unit

TO: DIRECTOR, EDUCATION AND TRAINING
RE: QUALIFICATION – APPROVED FIREARM

MAKE _____ MODEL _____ SERIAL NO _____

QUALIFICATION SCORE _____ DATE _____

CERTIFIED BY _____ ASSIGNMENT _____