



INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Fatal Incident in
Somerset County, Maryland, on April 25, 2022

August 3, 2022

**Report of the Independent Investigations Division of the Maryland Office
of the Attorney General Concerning the Officer-Involved Death of
William Robert Brink on April 25, 2022**

Pursuant to Md. Code, State Gov't § 6-106.2, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this report to Somerset County State's Attorney Wessmann Garner regarding the officer-involved death of William Robert Brink.

The IID is charged with "investigat[ing] all alleged or potential police-involved deaths of civilians" and "[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-106.2(c), (d). The IID completed its investigation on August 2, 2022. This report is being provided to State's Attorney Garner on August 3, 2022.

I. Introduction

William Robert Brink died after being shot by officers on April 25, 2022. The two officers who shot at Mr. Brink were Somerset County Sheriff's Office ("SCSO") Deputy First Class ("DFC") Anthony Jackson and Maryland State Police ("MSP") Corporal Jason Dykes.¹ Officers first encountered Mr. Brink after responding to a 911 call from a Dash In convenience store in Westover, Maryland, where a customer said he had just been robbed at gunpoint. SCSO Sergeant Kevin Goepfert responded to the store just after 11:30 a.m., then left in search of the alleged robber. Two miles away, he saw a man walking on US Route 13 who matched the description of the robber. This man was later identified as William Brink. Shortly after Sgt. Goepfert encountered Mr. Brink on the road, the two men fired their handguns; neither was struck by any shots. Mr. Brink then fled on foot toward a nearby field.

Four officers—from SCSO, MSP, and the Princess Anne Police Department ("PAPD")—responded to the field where Mr. Brink had fled and confronted him. When they did, Mr. Brink ran approximately 300 feet away from them, into the field. He then stopped and shot himself once in the chin. Mr. Brink fell to the ground but, after a few seconds, stood up again. About one second after Mr. Brink stood, DFC Jackson and Cpl. Dykes began firing at him, striking him in the back and foot. Mr. Brink fell to the ground and officers ran towards him to provide medical aid until paramedics arrived. Mr. Brink was flown by helicopter to a nearby hospital, where he was pronounced dead at 12:35 p.m.

This report details the IID's investigative findings based on review of physical evidence, forensic analysis of the shooting scene, ballistic and DNA analysis, the report of the Office of the Chief Medical Examiner, video and audio recordings, and officers' written reports. The IID and MSP also interviewed civilian witnesses, paramedics, and responding officers. All materials

¹ It is not possible to conclusively determine which officer or officers shot Mr. Brink. Mr. Brink was shot twice. The bullet fragment recovered from his back was consistent with having been fired from DFC Jackson's rifle. The second shot that struck Mr. Brink passed through his heel; it was not possible to associate a specific round with that wound.

reviewed in this investigation are being provided to the Somerset County State's Attorney's Office with this report and are listed in Appendix A.

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

Because one of the discharging officers in this incident was an MSP trooper, the IID employed its protocol for MSP-involved incidents. That protocol provides that, as soon as possible after MSP's initial response, MSP will make every reasonable effort to staff the investigation with MSP personnel who are assigned to a different region of the state. It further provides that MSP will conduct a comprehensive inquiry to ensure no MSP personnel involved in the investigation have a conflict of interest. MSP and the IID followed this protocol in this case.

II. Factual Findings

The following findings are based on a forensic examination of the shooting scene as well as review of body-worn camera video, audio recordings, analysis from the Office of the Chief Medical Examiner, ballistic and DNA analyses, and interviews with civilian and law enforcement witnesses.

A. Events Preceding the Shootings

The events that led to the shooting of Mr. Brink began at approximately 11:00 a.m., when Mr. Brink came to the home of a 63-year-old man named ██████████ and asked for a ride. Mr. ██████████ told investigators that his son had recently hired Mr. Brink, so Mr. ██████████ was familiar with him and agreed to drive him to the Dash In convenience store in Westover, Maryland. Mr. ██████████ said that two or three miles into the drive, Mr. Brink pointed a gun at Mr. ██████████'s side and said he needed money. Mr. ██████████ responded that he did not have any cash but could get some from the ATM at the Dash In.

Surveillance video confirms that Mr. ██████████ pulled his black Ford Ranger pickup truck to the front of the Dash In and entered the store, followed by Mr. Brink. Mr. ██████████ went straight to the ATM in the corner of the store and left two-and-a-half minutes later, getting back in the pickup truck. When interviewed later, Mr. ██████████ said he gave \$60 to Mr. Brink in the truck. ATM records confirm that Mr. ██████████ withdrew \$60, and Mr. Brink was later found with \$60 in his pocket. Back in the truck, Mr. ██████████ began feeling tightness in his chest and breathing heavily, so he told Mr. Brink he needed an ambulance and went back inside the Dash In. Inside the store, he said that Mr. Brink offered to drive him to the hospital, but Mr. ██████████ refused, staying seated on a stepstool behind the counter.



Image 1: Security footage from the Dash In convenience store. Mr. Brink is in front of the counter. Mr. [REDACTED] is seated behind the counter. Civilians' faces have been blurred for privacy. The timestamp on the video is approximately 13 minutes behind the actual time of 11:29 a.m.

At 11:29 a.m., a Dash In employee called 911 due to Mr. [REDACTED]'s chest pain and difficulty breathing. Surveillance video from the Dash In shows that Mr. Brink left the store after the employee picked up the phone. Mr. Brink walked outside, pulled a blue bicycle from the back of Mr. [REDACTED]'s pickup truck, and biked away, traveling northbound on Route 413.



Image 2: Security footage from the Dash In convenience store as Mr. Brink takes his bike from the back of Mr. [REDACTED]'s truck. As noted above, the timestamp on the video is approximately 13 minutes behind the actual time of 11:30 a.m.

In an interview after the incident, Mr. ██████ reported that after Mr. Brink left, he told the Dash In employee that he needed the sheriff in addition to an ambulance. Police dispatch records show that SCSO Sergeant Kevin Goepfert responded, and that Mr. ██████ told Sgt. Goepfert that Mr. Brink had pointed a gun at him.² Mr. ██████ described Mr. Brink as a white male with a red beard and said he had fled northbound from the Dash In. Sgt. Goepfert left the Dash In after being given this description.

B. The Shootings

Dispatch records show that a few minutes after Sgt. Goepfert left the Dash In, he encountered Mr. Brink near the intersection of Route 13 and Revells Neck Road in Princess Anne, two miles north of the store. He soon radioed that Mr. Brink was “[n]ot listening to commands” and had “fired a couple shots toward” Sgt. Goepfert. Sgt. Goepfert’s patrol car was hit by one round. A subsequent round count indicated that Sgt. Goepfert fired 6 shots during this encounter. SCSO deputies are not equipped with body-worn or dashboard cameras, and no other officers or civilian witnesses were present during this interaction between he and Mr. Brink.



Image 3: Map showing the approximate locations of: (A) the Dash In convenience store; (B) the shots fired between Mr. Brink and Sgt. Goepfert; and (C) the shooting involving Mr. Brink, Cpl. Dykes, and DFC Jackson. The distance between the Dash In and the final shooting scene is approximately 2.5 miles.

Sgt. Goepfert radioed that Mr. Brink had fled northbound along train tracks that run parallel to Route 13, separating the highway and an empty field. Multiple officers responded, driving alongside Mr. Brink on Route 13, but none approached him on foot. At the same time, four officers—two from SCSO, one from MSP, and one from PAPD—parked on Perry Road and approached the field from the east, the side opposite Route 13. As Mr. Brink continued walking, he followed a bend in the tracks that sent him towards this latter group of officers. The officers on Route 13 radioed that Mr. Brink was heading in that direction.

² Dispatch audio recordings from this incident are not available. The Assistant Director of Somerset County Emergency Services reported that: “In researching this incident, we discovered than an issue had occurred with our logging recorder and we have no audio for any radio traffic on that day.”



Image 4: Aerial view of the shooting scene involving Mr. Brink, Cpl. Dykes, and DFC Jackson, with letters showing the approximate locations where: (A) officers first contacted Mr. Brink; (B) Mr. Brink stood when the shooting occurred; and (C) DFC Jackson and Cpl. Dykes stood when the shooting occurred.

Only one of the four officers approaching the field from the east, PAPD Lieutenant Scott Carew, was equipped with a body-worn camera. SCSO deputies and MSP troopers were not equipped with body-worn cameras at the time of this incident. Lt. Carew's body-worn camera video shows that the four officers approached from Perry Road and first contacted Mr. Brink near the end of train cars stopped along the bend in the tracks. The officers yelled at Mr. Brink to "let me see your hands," but Mr. Brink ran into the field. Officers scrambled under the stopped train cars and positioned themselves near a large pile of dirt and grass. Multiple officers yelled commands to Mr. Brink, including telling him to "lay down on the ground." Mr. Brink ran approximately 300 feet into the field before stopping.



Image 5: View from Lt. Carew’s body-worn camera immediately before the first shot in the field. Mr. Brink is circled.

At 11:49:07 a.m., approximately 40 seconds after first encountering this group of officers, Mr. Brink fired a single shot into his own chin. Mr. Brink immediately fell to the ground. Lt. Carew radioed, “He just shot himself.” Another officer radioed to get “EMS [emergency medical services] started. Subject just shot himself.” Lt. Carew was too far from Mr. Brink for his body-worn camera to capture this shot clearly, but a single shot can be heard, and Mr. Brink’s injuries included a gunshot wound directly beneath his chin. The Office of the Chief Medical Examiner (“OCME”) also found soot around this chin wound, leading OCME to conclude that the wound was from a “contact range discharge” that is “consistent with a self-inflicted injury.”

Less than ten seconds after this shot, Mr. Brink began standing up again, which can be seen on Lt. Carew’s body-worn camera video. However, due to Lt. Carew being approximately 200 feet away, the video does not clearly show what Mr. Brink did when he stood up. DFC Jackson later told another officer on scene that Mr. Brink “pointed a gun at us.”



Image 6: Enlarged view from Lt. Carew’s body-worn camera after Mr. Brink stood up after shooting himself, and immediately before DFC Jackson and Cpl. Dykes fired. Mr. Brink is circled.

Starting approximately one second after Mr. Brink stood, DFC Jackson and Cpl. Dykes fired a series of shots over the course of eight seconds. These two officers were positioned on the opposite side of the debris pile from Lt. Carew, approximately 150 feet from Mr. Brink. Subsequent examination of DFC Jackson and Cpl. Dykes’s service weapons showed that DFC Jackson fired 13 shots from his department-issued rifle and Cpl. Dykes fired 8 shots from his department-issued handgun. Over the eight seconds, the body-worn camera video appears to show that Mr. Brink first fell to his knees, then fell fully to the ground. Lt. Carew immediately radioed: “Subject’s down. Subject’s down. Shots fired.”

After the shooting, the four officers ran across the field toward Mr. Brink. Cpl. Dykes told other officers, “Call an ambulance.” Lt. Carew responded, “They’re on their way.” Cpl. Dykes then began talking to Mr. Brink, asking for his name and asking, “why’d you do this?” The officers identified gunshot wounds to Mr. Brink’s chin, back, and foot. The officers also identified a Jennings .22 caliber handgun next to Mr. Brink, as well as eight loose rounds of .22 caliber ammunition and a magazine containing three rounds of .22 caliber ammunition. Officers kept Mr. Brink on his side and provided medical aid, primarily applying pressure to the gunshot wound on Mr. Brink’s back, until paramedics arrived. Mr. Brink was conscious and talking faintly with officers throughout this time, though paramedics reported that his pulse began to weaken as the medevac helicopter arrived. Mr. Brink was flown to a nearby hospital, where he was pronounced dead at 12:35 p.m.

C. Additional Investigation

This section provides information gathered during the investigation that is not discussed above.

1. Medical Examination

Mr. Brink's autopsy was conducted by Associate Pathologist Andrew Layman, M.D., on April 26, 2022. Dr. Layman identified Mr. Brink's cause of death as: "Multiple Gunshot Wounds." He deemed the manner of death to be: "Homicide."³

Dr. Layman observed that Mr. Brink had three gunshot wounds. The first was to his chin and was "consistent with a self-inflicted injury." Dr. Layman observed a "muzzle-imprint abrasion" on Mr. Brink's chin and soot around and within the gunshot wound, indicating "contact range discharge." He found that the bullet had entered beneath Mr. Brink's chin and exited just below and next to the side of his nose. The bullet traveled slightly back to front, slightly right to left, and upward. It damaged Mr. Brink's mouth, teeth, and lip, and caused some bleeding. The second gunshot wound was to the center of Mr. Brink's back, 21 inches below the top of his head. Dr. Layman found no soot or gunpowder stippling around the wound, and thus no indication that the gunshot occurred from close range. This bullet traveled back to front, right to left, and upward. It damaged Mr. Brink's spine, ribs, and lung, and resulted in significant blood loss. This bullet did not exit; fragments were recovered for ballistic testing. The third gunshot wound was to the bottom of Mr. Brink's left heel. This wound also had no soot or gunpowder stippling, indicating that the gunshot did not occur from close range. The bullet exited one inch above the bottom of the heel. It traveled slightly front to back, right to left, and upward. It injured skin and tissue, and caused some bleeding.

Dr. Layman identified "potential soot" on Mr. Brink's right hand. He also found abrasions to Mr. Brink's legs and arms and a contusion on his left knee.

Dr. Layman concluded that the shot to Mr. Brink's back resulted in "extensive bleeding into the left chest cavity in addition to external blood loss." The other two shots "did not injure vital structures, however, contributed to overall blood loss." It is reasonable to conclude that Mr. Brink died primarily due to the shot to his back.

2. Firearms Analysis

Ballistic analysis conducted by the Maryland State Police Forensic Sciences Division ("FSD") could not conclusively determine which officers' shots struck Mr. Brink. The bullet fragment recovered from Mr. Brink's back was "consistent with" having been fired from DFC Jackson's rifle, but a microscopic comparison of that fragment with a test-fired round was inconclusive. The shot to Mr. Brink's foot passed through his heel and no round was recovered that could be specifically linked to that wound. FSD identified one bullet recovered near Mr. Brink as having been fired from Cpl. Dykes's handgun. FSD identified ten recovered casings as having been fired from DFC Jackson's rifle and seven recovered casings as having been fired from Cpl. Dykes's handgun. These casings do not represent all of the shots fired; some casings

³ Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. "Homicide" is one of six categories used by the Office of the Chief Medical Examiner of Maryland and refers to a death resulting from a volitional act committed by another person to cause fear, harm, or death. The term is not used to connote criminal liability.

were not located among the long grass, dirt mounds, and drainage ditches at the shooting scene in the field. For the same reason, no casings were recovered at the shooting scene involving Sgt. Goepfert and no casings from .22 caliber rounds, as would be consistent with the gun found next to Mr. Brink, were found at either shooting scene.

Records show that the .22 caliber handgun found next to Mr. Brink belonged to Robert Lee Ward Jr., the father of Mr. Brink's stepfather, Robert Lee Ward III, with whom Mr. Brink lived. Mr. Ward III confirmed that he inherited the gun when his father died in 1998. He said that he discovered it missing from his gun cabinet two days after the shooting. He also believed that someone had accessed a jar of .22 caliber ammunition near the gun. Mr. Brink was found with three rounds of .22 caliber ammunition in the gun's magazine and eight rounds of .22 caliber ammunition in his pocket. The magazine had a capacity of six rounds.

3. DNA Analysis

DNA from Mr. Brink was found on the Jennings .22 caliber handgun found next to him at the shooting scene, and on that gun's magazine.

4. Civilian Witness Statements

An MSP investigator spoke to Mr. [REDACTED] while he was at the hospital after this incident. Mr. [REDACTED]'s account is detailed in Section II(A) above.

An MSP investigator also spoke to the ex-husband of Mr. Brink's mother several hours after the shooting. He reported that Mr. Brink had called him at 11:43 a.m., saying he had done "something dumb" and asking for a ride from Princess Anne. He drove to the area but was not able to reach Mr. Brink again.

IID and MSP investigators spoke to Mr. Brink's stepfather, Robert Lee Ward III, three days after the shooting. As noted in Section II(C)(2) above, Mr. Ward reported that he discovered his Jennings .22 caliber handgun missing two days after the shooting. He did not know when it had gone missing.

5. Paramedic and EMT Statements

Six paramedics and EMTs provided interviews following the shooting. The paramedic and EMT who first attended to Mr. Brink said he was conscious and breathing when they arrived, and that a trooper was applying pressure to the wound on Mr. Brink's back while another talked to him to keep him alert. The paramedic and EMT who flew with Mr. Brink in the medevac helicopter said he was "alert for the most part" but lost a pulse as they approached the hospital. They said paramedics performed CPR in the helicopter and then handed off care to hospital personnel. These paramedics all said that Mr. Brink did not say anything about what had happened.

Investigators also interviewed the paramedic and EMT who had responded to the Dash In call regarding Mr. [REDACTED]. They said they arrived to find Mr. [REDACTED] with chest pain and

shortness of breath. They said that when they brought Mr. ██████ into the ambulance, Mr. ██████ relayed an account of what had happened. That account is consistent with the account detailed in Section II(A) above.

6. Law Enforcement Officers' Statements

Cpl. Dykes, Sgt. Goepfert, and DFC Jackson, like the subjects of any investigation, have rights under the Fifth Amendment not to make any statement. All three declined to be interviewed following this shooting. As noted above, Lt. Carew's body-worn camera captured the officers saying after the shooting that Mr. Brink had shot himself under the chin. DFC Jackson also said on camera that Mr. Brink had then pointed his gun towards officers.

Additionally, MSP Trooper First Class ("TFC") Ryan Haller said that he spoke to Sgt. Goepfert briefly after the shooting. He reported that Sgt. Goepfert said: "I was trying to stop him. He wouldn't stop. I was going to tase him." And that Sgt. Goepfert then said: "Next thing you know, he's pulling out a gun and shooting at me."

Several other officers provided interviews to the IID and MSP. Their statements are summarized here.

Lt. Carew provided an account of the incident that was consistent with his body-worn camera video. He described confronting Mr. Brink near the stopped train cars, Mr. Brink fleeing, and officers going under the train cars to pursue him. Lt. Carew said Cpl. Dykes and DFC Jackson were more "straight on" with Mr. Brink based on their positioning relative to the large debris pile. After Mr. Brink stopped in the field, Lt. Carew saw him put something under his chin, heard a "pop," and saw him collapse. He then saw Mr. Brink stand back up but could not tell if Mr. Brink had a gun in his hand or if he was pointing it at anyone. He said officers continued to yell orders, but Mr. Brink did not comply. Lt. Carew said he then heard "several shots being fired" from one or two officers. Lt. Carew stated that after Mr. Brink fell, the officers went to him and provided medical aid until paramedics and the medevac helicopter arrived.

DFC Wigglesworth said he first became involved in this incident when he heard Sgt. Goepfert report "shots fired" in the area of Revells Neck Road. He said he drove to Perry Road, where he met DFC Jackson, Cpl. Dykes, and Lt. Carew. DFC Wigglesworth reported that when the four officers saw Mr. Brink, they yelled for him to "get down on the ground." They continued this command when Mr. Brink ran into the field. DFC Wigglesworth said that Mr. Brink did not comply but then stopped in the field, looked "in the general area of where [Cpl.] Dykes and [DFC] Jackson were," and then shot himself in the chin. DFC Wigglesworth said he then attempted to move towards Cpl. Dykes and DFC Jackson and was behind the large debris pile when the subsequent shots were fired. He estimated that he heard two shots, then another eight to ten. DFC Wigglesworth said he did not see whether Mr. Brink pointed the gun toward officers because he was behind the debris pile at the time that would have happened. He said that after the series of shots, officers crossed the field to provide aid and radioed to ensure EMS was coming.

Master Trooper Alex Edwards reported that he was “a long distance off,” “right along the highway,” when the shooting in the field occurred. This location is significantly farther from the shooting location than the positions of Lt. Carew and DFC Wigglesworth. Nonetheless, Master Trooper Edwards said he saw Mr. Brink run across the field, then turn, “level[] the handgun, or put[] his arm straight out, and when he did that, you could hear one round go off.” Master Trooper Edwards said Mr. Brink then ran south across the field, until he “saw him fall.” This account is not consistent with Lt. Carew’s body-worn camera video and other officers’ accounts. No other officer reported that Mr. Brink’s arm was extended straight before the single shot he fired, which was to his own chin. Likewise, the video shows that Mr. Brink did not run after the first shot and before the subsequent series of shots.

MSP Corporal Randolph Marshall said he first responded to a radio call that “deputies were shot at.” He described being the passenger as MSP TFC Ryan Haller drove, slowly trailing Mr. Brink as he walked along the railroad tracks. He said their goal was to not “overstimulate” Mr. Brink. When the tracks turned in toward the field, the troopers drove around to the opposite side of the field. Cpl. Marshall then heard radio calls of “shots fired” and of a “self-inflicted” shot. He said he ran to the shooting scene and saw Cpl. Dykes and DFC Edwards providing medical aid, applying pressure to the wound on Mr. Brink’s back.

MSP TFC Ryan Haller responded to both shooting scenes, but was not present for either shooting. He said that he first drove alongside Mr. Brink as he walked on the train tracks. He said Sgt. Goepfert also drove alongside Mr. Brink and was the closest of officers’ cars, traveling on the right shoulder of Route 13. TFC Haller said that Mr. Brink followed the bend in the tracks, then began running into the field. TFC Haller then drove to the opposite side of the field in an attempt to intercept Mr. Brink. As TFC Haller turned onto the road abutting the far side of the field, he heard radio reports of shots fired and a suspect down. He ultimately parked his car on the far side of the field and ran back to the shooting scene, where he saw Cpl. Dykes and Master Trooper Edwards tending to Mr. Brink. TFC Haller then reported to the scene of the first shooting, where he said he spoke to Sgt. Goepfert, as described above. TFC Haller also said that another deputy reported that Sgt. Goepfert had fired while 50 feet away from Mr. Brink, but TFC Haller thought Sgt. Goepfert must have been closer because he had said he was going to use his taser.

III. Involved Parties’ Backgrounds

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

In this case, this information did not affect the analysis of potential criminal charges.

William Robert Brink: Mr. Brink was a 24-year-old white man with a last known address in Salisbury, Maryland.

SCSO Sergeant Kevin Goepfert: Sgt. Goepfert is a white man who was 57 years old at the time of this incident. He has been with SCSO since January 20, 2009. He most recently completed firearms training on October 20, 2021. Sgt. Goepfert does not have any internal affairs complaints or investigations that have been found to be substantiated. He has not been involved in any prior shootings.

SCSO Deputy First Class Anthony Jackson: DFC Jackson is a Black man who was 26 years old at the time of this incident. He has been with SCSO since May 24, 2018. He most recently completed firearms training on November 5, 2021. DFC Jackson had three documented incidents that resulted in discipline, but none of the three involved the use of force or other conduct relevant to the analysis of this incident. He has not been involved in any prior shootings.

MSP Corporal Jason Dykes: Cpl. Dykes is a white man who was 46 years old at the time of this incident. He has been with MSP since March 7, 2005. He most recently completed firearms training on March 21, 2022. Cpl. Dykes has two documented incidents that resulted in discipline, but neither involved the use of force or other conduct relevant to the analysis of this incident. He has not been involved in any prior shootings.

IV. Applicable Policies

SCSO and MSP have the following policies concerning officers' use of force.

SCSO Use of Force (General Order 01-14-08)

This policy states that officers may “only use that force which a reasonably prudent officer would use under the same or similar circumstances.” Officers may only use deadly force to protect themselves or others “from what is reasonably believed to be an immediate threat of death or serious bodily harm,” or to prevent the escape of an individual whom officers have “probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others.” If an individual is injured when an officer uses force, that officer must obtain medical assistance for them.

MSP Operations Directive: Use of Force (OPS 10.03)

This policy provides that MSP troopers may use deadly force “when the trooper reasonably believes the action is in defense of any human life in imminent danger of death or serious bodily injury.” When a trooper uses force and there is an indication the subject is injured, the trooper must “provide appropriate medical care consistent with his training.”

V. Applicable Law & Analysis

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

A. Intentional Second-Degree Murder⁴

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. Brink]; (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.* “If 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).⁵

Self-defense is one possible justification or mitigating circumstance. Complete self-defense exists where: “(1) the defendant was not the aggressor”; “(2) the defendant actually believed that [they were] 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 [themselves] 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 they 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.*

Law-enforcement justification is another possible defense. 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 they “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). To use deadly force, an officer must have “probable cause to believe that the suspect poses a threat of serious physical harm.” *Estate of Blair by Blair v. Austin*, 469 Md. 1, 23-24 (2020) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)).

⁴ This report will not separately analyze the charge of first-degree assault because that offense merges with intentional second-degree murder; the elements vary only in that the latter requires proof of the death of the victim. *Sifrit v. State*, 383 Md. 116, 137 (2004).

⁵ Because there is no dispute that the officers intended to fire their weapons at Mr. Brink, this report will not analyze unintentional (“depraved heart”) second-degree murder.

For either defense—self-defense 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)). 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).

In this case, the available evidence is limited. With respect to Sgt. Goepfert’s shooting at Mr. Brink, there is no body-worn camera video, no civilian or officer witnesses, and little physical evidence. With respect to DFC Jackson and Cpl. Dykes’s shooting, the only body-worn camera video is from approximately 200 feet away, officer witnesses were similarly distant, there were no civilian witnesses, and there was similarly little physical evidence. This limited evidence makes it difficult to form definitive conclusions about critical questions—such as what prompted each of the three officers to fire—and would be a significant barrier to any prosecution.

Based on the evidence that is available, it is unlikely the State could prove beyond a reasonable doubt that any officer did not act in self-defense or pursuant to law-enforcement justification.

Regarding Sgt. Goepfert, the available evidence is not inconsistent with Sgt. Goepfert having responded to a deadly threat posed by Mr. Brink. Sgt. Goepfert’s patrol car was struck by a round, and contemporaneous police dispatch records show reports of “shots fired at [Sgt. Goepfert]” and “towards [Sgt. Goepfert].” This evidence does not exclude the possibility that Sgt. Goepfert fired either before Mr. Brink posed an imminent threat or after such a threat had passed, but there is no evidence to support either of those situations. The limited available evidence would not allow the State to prove a charge beyond a reasonable doubt, as is its burden.

Regarding DFC Jackson and Cpl. Dykes, the evidence is similarly not inconsistent with the officers having shot in response to an imminent or immediate deadly threat posed by Mr. Brink. When they fired, the officers had learned by radio that Mr. Brink had recently shot at Sgt. Goepfert. They also knew he was still armed because he had shot himself in the chin seconds earlier. After the shooting, DFC Jackson said, “he pointed a gun at us.” There is not credible testimony from any witness officers or civilians that would either confirm or contradict DFC Jackson’s account. DFC Jackson and Cpl. Dykes were the closest officers to Mr. Brink, approximately 150 feet away, and their in-person view would be superior to that of video taken from a distance. As a result, they could offer testimony regarding, for example, Mr. Brink’s movements or aiming of a gun that the State could not effectively refute. It would therefore be difficult, based on the available evidence, for the State to prove that Mr. Brink did not pose an immediate threat at the time DFC Jackson and Cpl. Dykes shot.

The State would face this challenge despite the fact that Mr. Brink was shot in the back and bottom of the heel. Even when Mr. Brink went to his knees or fully to the ground, seconds after officers began shooting, it is possible that he had not yet been incapacitated and still had access to his handgun. There is no available evidence indicating whether Mr. Brink was or was not moving or holding his handgun after he was no longer standing. When officers arrived at Mr. Brink's side after the shooting, he was conscious, speaking some, and his handgun was laying by his side. This suggests he had access to the gun at all times while officers fired, and may indicate that he had the ability to use the gun at all such times. Based on the available evidence, it would be difficult for the State to prove beyond a reasonable doubt that Mr. Brink did not present an imminent or immediate threat at any point while the officers fired at him.

B. Voluntary Manslaughter

As discussed above, the State may pursue voluntary manslaughter charges where the defendant acted in partial, but not complete, self-defense. MPJI-Cr 4:17.2. To prove voluntary manslaughter, the State must establish that the defendant had a specific intent to kill. *Selby v. State*, 361 Md. 319, 335 (2000). Such intent may be inferred by circumstances such as “the use of a deadly weapon directed at a vital part of the human anatomy.” *Chisum v. State*, 227 Md. App. 118, 136 (2016) (distinguishing *Selby* based on the *Selby* court's “express finding ... that the defendant did not have an intent to kill his victim”).

In this case, the State would need to prove that officers' beliefs that they were in imminent danger were unreasonable or that they used an unreasonable level of force. For the reasons discussed above, it would be difficult to prove either assertion given the available evidence.

C. Other Charges⁶

There are several other charges for which full analysis was not warranted given the facts of this incident. Those charges are addressed briefly here.

The crime of first-degree murder requires the State to prove that the killing was “willful, deliberate, and premeditated.” MPJI-Cr 4:17.2. Said another way, the State must prove “the actual intent, the fully formed purpose to kill, with so much time for deliberation and premeditation as to convince [the jury] that this purpose is not the immediate offspring of rashness and impetuous temper and that the mind has become fully conscious of its own design.” *Ferrell v. State*, 304 Md. 679, 687 n. 2 (1985) (citations omitted). There is no evidence here that any officer came to a considered decision to kill Mr. Brink; the evidence suggests they were reacting to Mr. Brink's actions during a quickly-evolving situation.

The crime of involuntary manslaughter requires the State to prove: “(1) that the defendant acted in a grossly negligent manner; and (2) that this grossly negligent conduct caused the death

⁶ A reckless endangerment charge with respect to officers' endangerment of Mr. Brink by shooting at him would merge with more serious charges discussed in this report. *Williams v. State*, 100 Md. App. 468, 490-91 (1994). And there is no evidence indicating that any officer endangered any person other than Mr. Brink. Reckless endangerment is therefore not discussed as a separate charge.

of [Mr. Brink].” MPJI-Cr 4:17.9 Homicide—Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.9 (2d ed. 2021). A defendant acts with gross negligence when they demonstrate “a disregard of the consequences which might ensue and indifference to the rights of others.” *State v. Thomas*, 464 Md. 133, 153 (2019) (citations omitted). There is no evidence here that any officer fired unintentionally or with gross negligence.

Criminal Law § 4-204(b) states: “A person may not use a firearm in the commission of a crime of violence, as defined in § 5-101 of the Public Safety Article, or any felony” Second-degree murder and voluntary manslaughter are both crimes of violence and felonies. Pub. Safety § 5-101(c); Crim. Law §§ 2-204, 2-207. The State could not pursue a charge for use of a firearm in the commission of a crime of violence unless it could prove one of the predicate offenses. For the reasons stated above, proving such a charge would be difficult based on the available evidence.

The crime of misconduct in office requires that the State prove: (1) that the defendant was a public officer; (2) that the defendant acted in their official capacity or took advantage of their public office; and (3) that the defendant corruptly did an unlawful act (malfeasance), corruptly failed to do an act required by the duties of their office (nonfeasance), or corruptly did a lawful act (misfeasance). MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and Nonfeasance), MPJI-Cr 4:23 (2d ed. 2021). “[T]he conduct must be a willful abuse of authority and not merely an error in judgment.” Comment to *id.* (citing Hyman Ginsberg and Isidore Ginsberg, *Criminal Law & Procedure in Maryland* 152 (1940)). It is unlikely the State could pursue a charge for misconduct in office under a theory of misfeasance or malfeasance unless it could establish that any officer acted unreasonably or used an unreasonable amount of force. *See Riley v. State*, 227 Md. App. 249, 264 (2016). For the reasons stated above, such unreasonableness would be difficult to prove based on the available evidence here.

VI. Conclusion

This report has presented factual findings and legal analysis relevant to the fatal shooting that occurred on April 25, 2022, in Somerset County, Maryland. Please feel free to contact the IID if you would like us to supplement this report through any further investigation or analysis.

Appendix

Appendix A – Materials Reviewed

911 Call (1 recording)
ATM Records (1 document)
Body-Worn Camera Video (1 video)
Computer-Aided Dispatch Reports (4 documents)
Civilian & Business Videos (17 videos)
Civilian Witness Statements (2 videos; 2 recordings)
Dashboard Camera Video (1 video)
Decedent Medical Records (1 document)
Departmental Reports (2 documents)
DNA Analysis (1 document)
EMS Reports & Statements (1 document; 6 recordings)
Firearm Records & Ballistics (9 documents)
IID Investigative Reports (2 documents)
Involved Parties' Criminal Histories (4 documents)
Medical Examiner's Report (1 document)
Motor Vehicle Information (1 document)
MSP Evidence Records (25 documents)
MSP Reports (37 documents)
Officer Training & Internal Affairs History (8 documents)
Officer Witness Statements (16 videos; 3 recordings)
Photographs (327 photographs)
Radio Transmissions (1 recording)