



# INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved  
Death in Prince George's County on  
January 30, 2024

October 17, 2024

## **Declination Report Concerning the Police-Involved Death of Artell Cunningham on January 30, 2024**

The Independent Investigations Division of the Maryland Office of the Attorney General (the “IID”) is charged with investigating “police-involved incidents that result in the death of individuals or injuries likely to result in death.”<sup>1</sup> For incidents that occur after October 1, 2023, if the Attorney General determines that the investigation provides sufficient grounds for prosecution, then the IID “shall have exclusive authority to prosecute the offense.”<sup>2</sup>

### **I. Introduction**

On January 30, 2024, at approximately 4:35 a.m., officers with the New Carrollton Police Department (“NCPD”) were on patrol in the 7500 block of Annapolis Road in New Carrollton, Maryland and observed a disabled and unoccupied Nissan Rogue in the roadway. The officers confirmed that the vehicle was reported as stolen during a carjacking several hours earlier in Hyattsville, Maryland.

Officer Angelo Consoli stayed with the Nissan Rogue and subject officers Corporal Carlos Batenga and Sergeant Byron Purnell, stationed themselves in the parking lot of an adjacent laundromat, and stood next to a marked patrol car. The officers were waiting for an evidence collection team to retrieve the Nissan Rogue.

Approximately 20 minutes later, an individual later identified as Artell Cunningham walked on Annapolis Road and into the parking lot where the two subject officers were standing. Mr. Cunningham approached the subject officers, displaying what appeared to be a handgun. In response, the subject officers drew and discharged their handguns a total of nine times, striking Mr. Cunningham, who fell to the ground. The officers provided medical aid to Mr. Cunningham. He was then transported to a local hospital where he was pronounced dead.

After completing its investigation and evaluating all available evidence, the Office of the Attorney General has determined that neither of the subject officers committed a crime under Maryland law. Accordingly, the Attorney General has declined to prosecute either of the subject officers in this case.

The IID’s investigation focused exclusively on potential criminal culpability relating to the subject officers’ conduct. By statute, the IID only has jurisdiction to investigate the actions of police officers, not that of any other individual involved in the incident. Moreover, the IID’s analysis does not consider issues of civil liability or the department’s administrative review of the subject officer’s conduct. Certain information—specifically, compelled statements by a subject officer—may be considered in civil or administrative processes but may not be considered in criminal investigations or prosecutions due to a subject officer’s Fifth Amendment rights. If any compelled statements exist in this case, the IID has not considered them in this investigation. The subject officers in this case chose not to make statements to the IID, which had no impact on the prosecutorial decision.

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<sup>1</sup> Md. Code, State Gov’t § 6-602 (c)(1).

<sup>2</sup> State Gov’t § 6-604 (a)(1).

This report is composed of a factual narrative, followed by a legal analysis. Every fact in the narrative is supported by the evidence obtained in this investigation, including an autopsy report from the Office of the Chief Medical Examiner (“OCME”), firearms analysis, police radio transmissions, dispatch records, police reports, departmental policies, police body-worn camera footage, video surveillance footage, photographs, and interviews with civilian and law enforcement witnesses. The legal analysis explains why the IID will not bring charges under the relevant Maryland statutes.

This investigation involved one decedent and two subject officers.<sup>3</sup>

- A. The decedent, Artell Cunningham, was 28 years old at the time of the incident. He was a Black male who lived in Suitland, Maryland.
- B. Corporal Carlos Batenga has been employed by NCPD since October 2020. He was previously employed as an Officer with the Cottage City Police Department from July 2018 through October 2020. He is a White male and at the time of the incident was 34 years old.
- C. Sergeant Byron Purnell has been employed by NCPD since June 2017. He is a Black male and at the time of the incident was 31 years old.

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

## **II. Factual Summary**

On January 30, 2024, in the early morning hours while on routine patrol, NCPD Corporal Carlos Batenga and Sergeant Byron Purnell received an agency-wide broadcast from dispatch about a vehicle stolen during a carjacking, “connected” to violent crimes, and described as “blue Nissan Rogue [with] gray undertone, Maryland registration” with a specific license plate number. At approximately 4:35 a.m., Corporal Batenga and Officer Angelo Consoli observed a disabled blue Nissan Rogue matching the description of the vehicle according to the broadcast. They were driving together in a marked patrol car, and observed the vehicle stopped in the eastbound travel lane of the 7500 block of Annapolis Road. The engine was not running, it was unoccupied, and it had a flat tire. As the plate number matched the number from the broadcast, Corporal Batenga used his police radio to inform dispatch that he located the car, and Officer Consoli pulled his patrol car behind the Nissan Rogue. Corporal Batenga instructed Officer Consoli not to disturb the Nissan because it would be processed for forensic evidence. At 4:56 a.m., Sergeant Purnell responded to the scene.

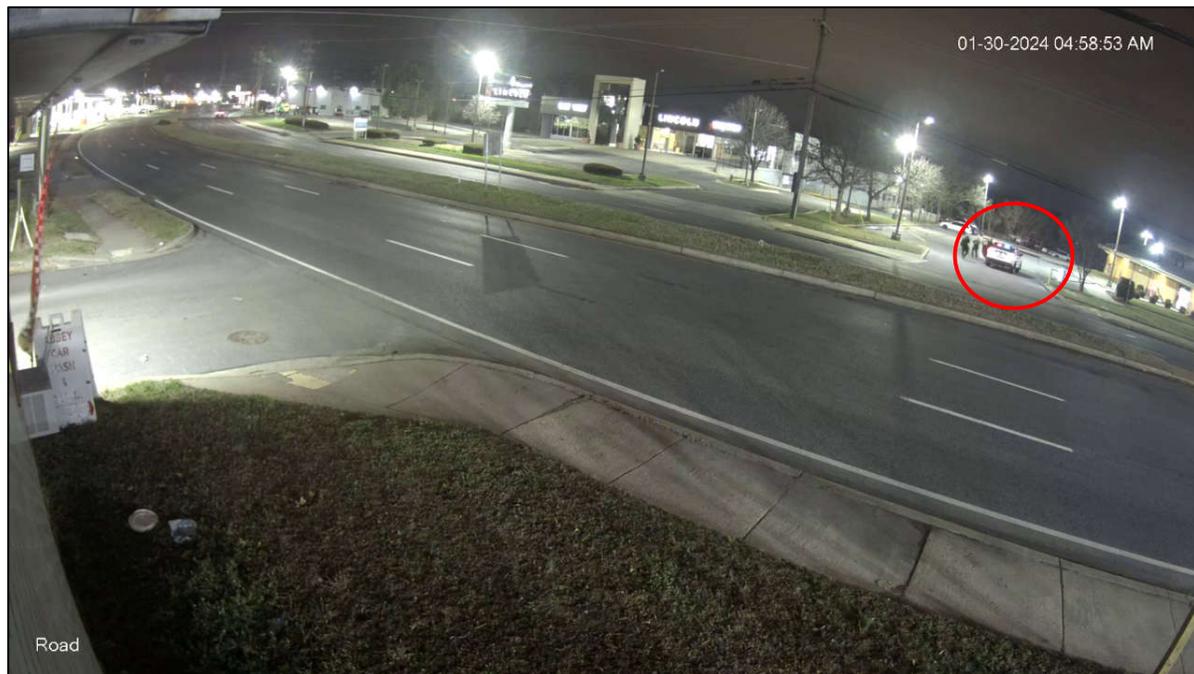
With the patrol car’s emergency lights activated, Officer Consoli remained with the Nissan Rogue, while Corporal Batenga and Sergeant Purnell stationed themselves in the parking lot of a nearby laundromat on Annapolis Road. The two subject officers, who were dressed in standard

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<sup>3</sup> NCPD Officer Angelo Consoli was nearby during the incident and while he is named within this report, Officer Consoli is not a subject of this investigation.

NCPD uniforms, stood next to Sergeant Purnell's marked patrol car, which had the driver's side door open, and its emergency lights activated.

At approximately 4:58 a.m., Mr. Cunningham is observed on video surveillance walking on Annapolis Road toward Corporal Batenga and Sergeant Purnell. He is dressed in all black and carrying a backpack.<sup>4</sup> The footage did not contain audio.

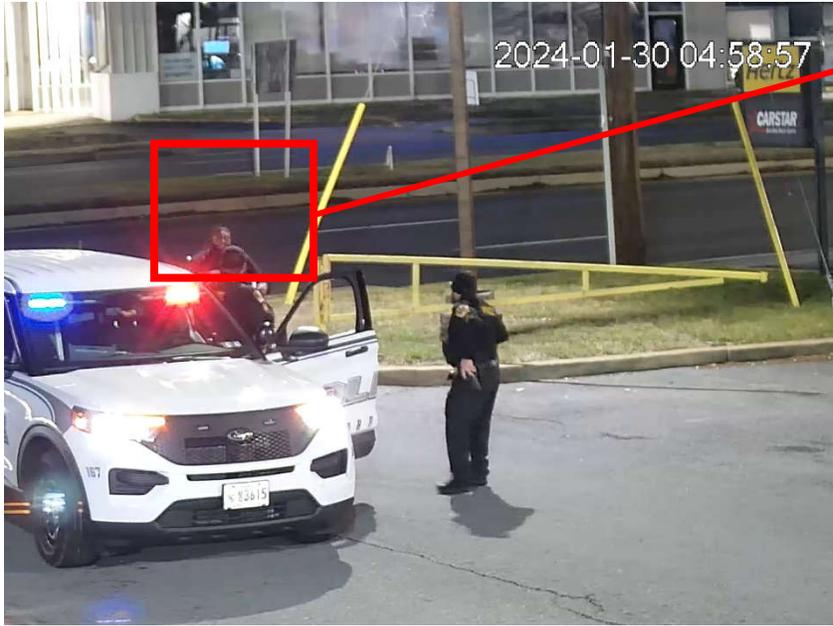


**Image 1:** Still frame from privately maintained video surveillance, depicting Mr. Cunningham approaching officers (circled in red).

Mr. Cunningham entered the parking lot and began walking towards officers with both hands in his pockets. As Mr. Cunningham walked directly up to the officers, he removed hands from his pockets. Corporal Batenga and Sergeant Purnell are seen in the video footage drawing their handguns, which were holstered on their belts. In the video footage, Mr. Cunningham is seen displaying what appears to be a metal or silver object on his left side.

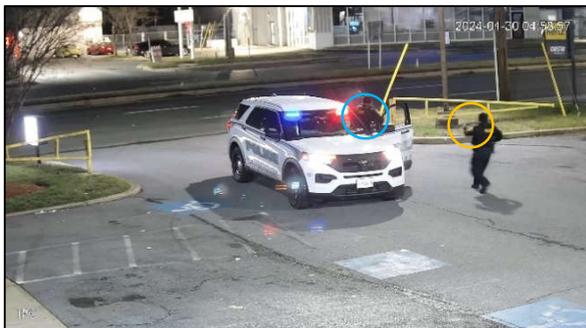
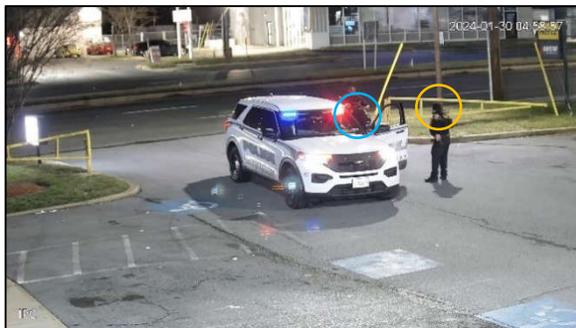
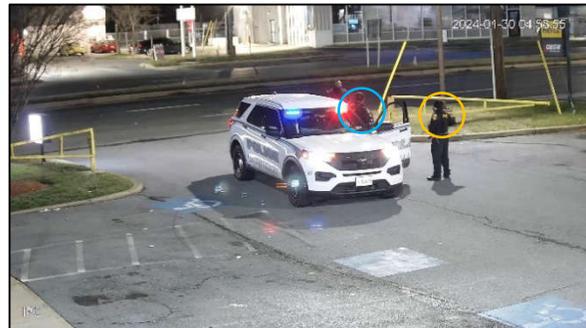
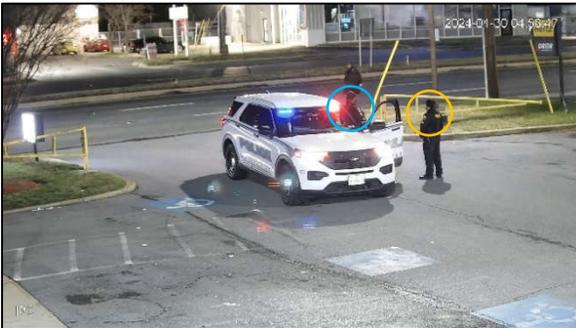
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<sup>4</sup> Corporal Batenga and Sergeant Purnell were wearing body-worn cameras during this incident, but the subject officers did not activate their cameras until after the shooting. Therefore, the body-worn camera footage does not capture the shooting.



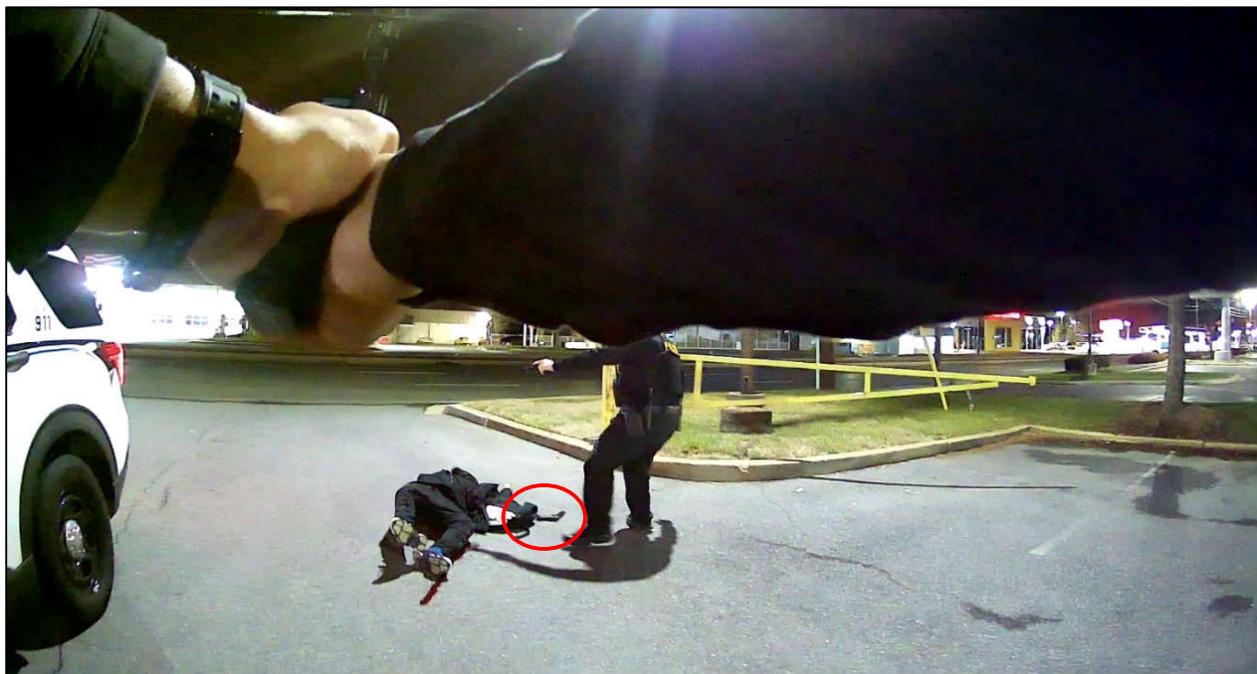
**Image 2:** Still frame (with detail) from privately maintained video surveillance, depicting Mr. Cunningham displaying what appears to be a metal or silver object (circled in gray) when approaching Corporal Batenga and Sergeant Purnell.

Immediately after Mr. Cunningham’s approach, Corporal Batenga and Sergeant Purnell each fired their handguns multiple times, striking Mr. Cunningham three times before he fell to the ground. The subject officers discharged their handguns a total of nine times.



**Images 3-6 (Left to Right):** Still frames from privately maintained video surveillance, depicting Mr. Cunningham approaching Sergeant Purnell (positioned closest to the police cruiser, circled in blue) and Corporal Batenga (circled in yellow), and Corporal Batenga discharging his firearm.

Immediately after the shooting, Corporal Batenga and Sergeant Purnell turned their body-worn cameras on, which showed them pointing their handguns at Mr. Cunningham, who had two guns next to him on the ground. At 4:59 a.m., Corporal Batenga radioed “shots fired, shots fired; individual has two guns.” Purnell requested additional officers to respond to the scene and requested an ambulance. Mr. Cunningham remained on the ground but continued moving. Corporal Batenga instructed him “don’t touch the guns,” which were close to him on the ground. Corporal Batenga stepped toward Mr. Cunningham, kicked the two handguns away from him, and stepped away from Mr. Cunningham.



*Image 6: Still frame from Sergeant Purnell’s body-worn camera footage, depicting Corporal Batenga approaching Mr. Cunningham to kick the first of two handguns away. A handgun (circled in red) is visible. Corporal Batenga kicked the second handgun away immediately thereafter.*

Within two minutes, multiple other officers arrived on scene. The officers placed Mr. Cunningham in custody and rendered medical aid. Approximately eight minutes after the shooting, emergency medics from the Prince George’s County Fire Department arrived on the scene and continued providing aid. Mr. Cunningham was subsequently transported to a local hospital where he was pronounced dead at 5:46 a.m.

### **III. Supplemental Information**

#### **A. Firearms Recovery and Ballistics Information**

Maryland State Police (“MSP”) crime scene technicians recovered the two guns from the scene: one .45 caliber handgun and one BB gun (also known as a pellet gun), both of which had empty magazines. MSP also isolated and preserved the subject officers’ handguns for analysis. The handguns recovered from the subject officers were .40 caliber Glock brand service weapons issued by NCPD and were loaded with the same type of ammunition.

The MSP Forensic Sciences Division conducted a firearm analysis, which included an examination of the subject officers' service weapons, cartridges and bullets recovered from the scene, and bullets recovered from Mr. Cunningham's body. MSP determined that both subject officers' service weapons were operable and that projectiles were fired out of each service weapon.

#### B. Autopsy

On January 31, 2024, the OCME performed an autopsy examination on Mr. Cunningham's body. On May 3, 2024, the IID received a copy of the written autopsy report, which concluded Mr. Cunningham died of "multiple gunshot wounds" to his neck, chest, and leg. The direction of each wound is from the front of Mr. Cunningham's body to the back. The autopsy certified the manner of death as "homicide."<sup>5</sup>

#### C. Department Policies

NCPD policy permits officers to use "deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury."<sup>6</sup> The NCPD policy provides that an imminent threat does not mean immediate threat, but "may exist if an officer reasonably believes that the individual has a weapon... and intends to use it against the officer."<sup>7</sup>

### IV. Legal Analysis

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

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

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<sup>5</sup> Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The Office of the Chief Medical Examiner of Maryland uses five categories of manner of death: natural, accident, suicide, homicide, and undetermined. "Homicide" applies when death results from a volitional act committed by another person to cause fear, harm, or death. This term is not considered 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.

<sup>6</sup> NCPD Policy Manual 300.4(a).

<sup>7</sup> NCPD Policy Manual 300.4.

<sup>8</sup> See Md Statutes, Public Safety §3-524(d)(1).

The evidence in this case shows that the subject officers did not violate any of the aforementioned statutes. Accordingly, the IID will not pursue criminal charges against any of the subject officers. This report explains in further detail why, based on the evidence, a prosecutor could not prove beyond a reasonable doubt that either officer committed a crime.

#### A. Maryland Use of Force Statute

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

- (1) used force that was not necessary and proportional to prevent an imminent threat of physical injury to themselves or another person, or to accomplish a legitimate law enforcement objective;
- (2) intended to use force that was excessive, *i.e.* not necessary and proportional under the circumstances; and
- (3) the use of excessive force resulted in serious bodily injury or death;<sup>9</sup>

First, prosecutors would need to establish that one or more of the officers used force that was not necessary and proportional under the circumstances. Second, prosecutors would need to establish that the officers intended to use the force that was excessive. Finally, prosecutors would need to establish that the excessive force used by the subject officers resulted in Mr. Cunningham's death. As it is undisputed that the subject officers fired their weapons and shot Mr. Cunningham, which resulted in his death, we are left with the two remaining elements pursuant to the Use of Force statute. More specifically, we must assess 1) whether the shooting of Mr. Cunningham was necessary and proportional under the circumstances to prevent imminent threat to those on scene, or to accomplish a legitimate law enforcement objective, and 2) whether the subject officers intended to use the force that killed Mr. Cunningham.

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

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<sup>9</sup> MPJI-Cr 4:36.

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

<sup>11</sup> *Id.*

Based on the totality of the circumstances, there is no evidence that the subject officers intended to use force that exceeded that which was necessary and proportional to prevent Mr. Cunningham from being a danger to themselves. With respect to whether the use of force was necessary, Mr. Cunningham's behavior posed an imminent threat to the officers. The subject officers had no interaction with Mr. Cunningham until he approached them in the parking lot; they did not know his name or whether he was connected to the stolen Nissan. The evidence shows that Mr. Cunningham walked toward the officers, and that once he was a few feet from the officers, he displayed at least one handgun. Given the time and distances involved, as well as Mr. Cunningham's active deadly force threat presentation, the subject officers did not have the opportunity to attempt to deescalate the incident, nor was there any reasonable alternative to using deadly force, making the use of force necessary. In short, Mr. Cunningham's behavior required that the subject officers fire their guns at him for their own safety.

With respect to whether the kind and degree of force used by the subject officers was proportional to the imminent threat of harm presented by Mr. Cunningham, video evidence both before and after the shooting shows that the use of force by the subject officers was proportional. The subject officers did not engage Mr. Cunningham until he was in close range and removed his hands from his pocket, displaying a gun. After the officers shot Mr. Cunningham, he continued to move while lying on the ground and the subject officers shouted commands at him not to touch the guns. The subject officers did not use any further force once Mr. Cunningham no longer posed an active threat to their safety.

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

## B. Homicide Offenses

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

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

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<sup>12</sup> MPJI-Cr. 4:17.

<sup>13</sup> MPJI-Cr. 4:17.

<sup>14</sup> MPJI-Cr 4:17.2.

<sup>15</sup> MPJI-Cr. 4:17.8.

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

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

Complete self-defense, also known as perfect self-defense, exists when the accused: (1) was not the initial aggressor (or did not raise the level of force to deadly force); (2) believed that they were in immediate or imminent danger of serious harm or death; (3) had a reasonable belief; and (4) used force that was not more than what was reasonably necessary in light of the threat or actual force.<sup>17</sup> Complete self-defense is an affirmative defense, which means that a prosecutor must prove beyond a reasonable doubt that one of the elements of self-defense is not applicable.

When an officer has sufficient probable cause to believe that a person poses a "threat of serious physical harm," then the officer may use deadly force,<sup>18</sup> and the reasonableness of that decision must be viewed from "the perspective of a reasonable police officer similarly situated."<sup>19</sup> In practice, this means that a factfinder must consider that police officers often work under rapidly changing circumstances and that what constitutes a reasonable use of force may change from moment to moment.<sup>20</sup>

In this case, the evidence shows that Mr. Cunningham, not Corporal Batenga nor Sergeant Purnell, was the aggressor.<sup>21</sup> Without any warning or provocation, Mr. Cunningham, with a gun in hand,<sup>22</sup> approached the two uniformed officers standing outside of a marked patrol car with its emergency light activated. Those facts provide a basis for the subject officers to believe that their lives were in danger and that such a belief was reasonable. Since the subject officers faced a threat of deadly force from Mr. Cunningham, then their use of deadly force against him was reasonably necessary.

Based on the investigation, the actions of the subject officers do not constitute the crime of Second-Degree Murder. Prosecutors are unable to overcome any of the elements of complete self-defense. Moreover, because complete self-defense also applies to Voluntary Manslaughter<sup>23</sup>, a prosecutor would be unable to prove any homicide offense in this matter. Accordingly, the Office of the Attorney General will not charge the subject officers with a homicide offense.

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<sup>16</sup> *Id.*; MPJI-Cr 4:17.3.

<sup>17</sup> *Porter v. State*, 455 Md. 220, 234-36 (2017); MPJI-Cr 4:17.2.

<sup>18</sup> *Estate of Blair*, 469 Md. at 23-24 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)).

<sup>19</sup> *State v. Albrecht*, 336 Md. 475, 501 (1994); *State v. Pagotto*, 361 Md. 528, 555 (2000) (quoting *Graham*, 490 U.S. at 397).

<sup>20</sup> *Id.*

<sup>21</sup> See *Kuzma v. State*, 2019 WL 1874120 at \*4 (Md. App. Apr. 26, 2019) (holding individual was the aggressor where he drew a knife and approached a police officer even though he was not under threat of harm).

<sup>22</sup> While the video of the events leading up to the shooting only indicates that Mr. Cunningham was carrying a metal or silver object, the footage immediately following the shooting makes evident that he was, in fact, carrying a gun.

<sup>23</sup> *State v. Faulkner*, 301 Md. 482, 485 (1984).

## **VI. Conclusion**

This report has presented factual findings, legal analysis and conclusions relevant to the January 30, 2024, police-involved death of Artell Cunningham in New Carrollton, Maryland. The Office of the Attorney General has declined to pursue charges in this case because, based on the evidence obtained in its investigation, none of the subject officers committed a crime.