

# Police Involved Shooting

Date: 5-27-2017

Location of Shooting: 2700 block of West Baltimore Street

Investigated by: Baltimore Police Department

## Factual Scenario:

On May 24, 2017, the Bureau of Alcohol Tobacco and Firearms (hereafter ATF) was given information to contact an individual (hereinafter referred to as Individual #1) in reference to purchasing heroin. ATF Agents were able to set up a meeting with the individual to purchase heroin.

On May 26, 2017, ATF Agent #1 and ATF Agent #2 along with an unidentified individual drove an undercover vehicle to the Citgo gas station located on Frederick Avenue. There, they met with Individual #1. Individual #1 spoke to the agents at the gas station and took an order for approximately \$2,500 worth of heroin. Individual #1 then walked off to call his contacts. The agents stayed in the area until summoned back to the gas station approximately 30 minutes later by Individual #1. When they returned, Individual #1 got into the rear passenger side of the undercover vehicle and directed them to West Baltimore Street. Upon their arrival, Individual #1 exited the vehicle, made eye contact with two males Donte Smith and Menard Hazelwood (hereinafter referred to as “Smith” and Hazelwood”), and advised the agents that his contacts would take care of them. Individual #1 then walked away. As Individual #1 was leaving, Smith and Hazelwood approached the passenger side front door. Smith asked ATF Agent #2, who was in the front passenger seat, for a light for his cigarette. ATF Agent #2 rolled his window down all the way and gave Smith the lighter. At this time Hazelwood produced a silver handgun, put it to ATF Agent #2’s chest and demanded money. Smith then produced a handgun and pointed it at the agents. As Hazelwood continued to demand money, Smith went to the driver’s door with his .44 caliber

Taurus revolver and pointed it at ATF Agent #1. The undercover vehicle was video and audio recording all events. The ATF backup units were listening to the transaction from a safe distance. As they monitored the situation, they could hear both agents saying, “Are you robbing us?” and “Take the car. It’s yours.”

The ATF backup team consisting of ATF Agent #3, ATF Agent #4, and ATF Agent #5, were listening to the audio of the transaction and realized there was an emergency issue. Backup agents quickly sped to the location of ATF Agents #1 and 2. As the backup agents passed the undercover vehicle, they observed Smith standing next to the driver side door with a handgun. The agents quickly did a U-turn and pulled behind the undercover vehicle. As they did this their actions drew the attention of Hazelwood and Smith. While both men turned to look at the arrival of the backup units, ATF Agent #1 and ATF Agent #2 open their doors and pushed both men to the ground. The backup agents jumped out of their vehicle. Commands for the suspects to stop and show their hands were made along with verbally identifying themselves as law enforcement agents. Smith fled. As he was running, he turned toward ATF Agent #1, ATF Agent #3, and ATF Agent #4. As a result, the agents discharged their duty weapons hitting Smith. Smith ran a short distance and fell to the ground. Agents rendered aid and requested an ambulance.

Hazelwood fled east on West Baltimore Street then north on Catherine Street where he was arrested by agents. Hazelwood’s weapon, observed in the video of the attempted robbery, was not recovered. However, Smith’s .44 caliber revolver was recovered and secured by agents.

BPD Law Enforcement Officer #1 (hereinafter referred to as LEO#1) arrived on scene and made all proper notifications. Medic 21 responded and transported Smith to The University of Maryland Shock Trauma where he was taken into surgery. Hazelwood was transported to the Homicide Office to be interviewed and charged accordingly. Hazelwood invoked his right to retain council before answering any questions. Hazelwood was transported to the Central Booking and Intake Facility.

Agents from the ATF provided video from body worn cameras worn by ATF Agent #1 and ATF Agent #2 along with video recording footage from cameras secreted inside of the vehicle. The videos show the robbery and the firearms used in the commission of this attempted robbery. Video was also recovered from the West Carryout located at 2700 West Baltimore Street at Franklinton Road. This video showed Hazelwood attempting to flee the scene with his right arm swinging free and his left hand holding his front waistband area which is a characteristic of an armed person running.

## ATF Witness Statement Summary:

### **ATF Agent #1:**

ATF Agent #1 was interviewed by BPD Homicide Detectives, and subsequently by a homicide Assistant State's Attorney. ATF Agent #1 indicated that he was assigned to work undercover with the Baltimore field office on an initiative to combat violence in the City. He reiterated much of what ATF Agent #2 stated regarding the details of what led up to the shooting. As they drove away from the Citgo Station he began to repeat the directions he was given by Individual #1 since the original plan had been to do the drug transaction in the area of the Westside Shopping Center and the backup agents were not expecting to have to leave that area.

Once in the 2700 block of West Baltimore Street he was told to make a U-turn and park along the side of the road. After parking, Individual #1 exited the backseat passenger side of the vehicle. He noticed two guys (Smith and Hazelwood) standing beside some fences. Smith requested a light and ATF Agent #2 rolled down his window. Hazelwood walked behind Smith then put a gun to ATF Agent #2's chest. Smith then pulled a large revolver. With the two handguns pointed at him, ATF Agent #2 stated he was in fear

for his life. When Hazelwood demanded money, ATF Agent #1 indicated the money was in a hidden compartment. He went to push the button – located under his seat – and Hazelwood leaned into the vehicle and pointed his handgun directly at him. ATF Agent #1 immediately put his hands up. Smith then showed up at the driver's side door with a large caliber silver revolver. ATF Agent #1 opened the door and told Smith he could take the vehicle but Smith told him he wanted them to stay in the vehicle.

As ATF Agent #1 was speaking with Smith he noticed the backup agents' vehicle pass them, then do a quick U-turn. This drew the attention of Smith who was standing close to ATF Agent #1 with the handgun. When Smith turned to look back, ATF Agent #1 pushed him backwards and attempted to tackle Smith. Smith then fled up West Baltimore Street. ATF Agent #1 got up from the ground and pursued Smith. He indicated he could not tell if Smith still had his weapon because as he ran away, he did not have his arms out. Smith continued to run and appeared to be turning to shoot. At that time ATF Agent #1, fearing for his safety, discharged five rounds from his .38 caliber revolver. Other agents also fired but he could not tell who had fired. Smith went down to the ground and he was placed in handcuffs. Smith's weapon was located and recovered by AFT Agent #5 due to a large crowd gathering. The victim was rendered aid and an ambulance was requested.

ATF Agent #1 was wearing a body camera but it was covered by his hands at the time of the shooting and provided no useful footage.

### **ATF Agent #2:**

ATF Agent #2 was interviewed by BPD Homicide Detectives and by an Assistant State's Attorney. ATF Agent #2 said that he was working on an initiative to combat the spike in violence. For this particular case, the goal had been to purchase narcotics in the Tri-District area. As a result of several contacts being made, the agents devised a plan to purchase Heroin.

On May 26, 2017, they made contact with Individual #1. He did not have the drugs but indicated he was working on getting them. The agents left the area and went to a Wendy's restaurant to wait. After waiting 20-30 minutes, Individual #1 made telephone contact and all parties agreed to meet again at the Citgo gas station located on Frederick Avenue. Individual #1 was seated behind ATF Agent #2. When they arrived in the area of West Baltimore Street, Individual #1 told ATF Agent #1 to make a U-turn at the bus stop. ATF Agent #2 indicated that's when he saw two men (Smith and Hazelwood) standing beside a fence. The agent saw all three men make eye contact as Individual #1 exited the vehicle. Individual #1 then walked away and Smith came up to his window. Smith requested a light for his cigarette which required the agent to roll the window all the way down.

Hazelwood then came up from behind Smith and pulled a silver semi-automatic handgun. Hazelwood's gun was placed to ATF Agent #2's chest. Hazelwood ordered ATF Agent #1 to turn the car off. ATF Agent #1 then stated, "Are you robbing us?" At this time, Smith lifted up his shirt and pulled out a .44 caliber revolver. Hazelwood began asking where the money was located. ATF Agent #1 reached between his legs to press the button to open the secret compartment where the money was kept. Hazelwood then took the gun off ATF Agent #2's chest and leaned into the vehicle, putting the gun on ATF Agent #1. ATF Agent #1 immediately stated "It's in the compartment." While this exchange took place, Smith moved from the passenger side door to the driver's side door. Hazelwood then put his silver gun back on ATF Agent #1 at one time putting it next to his head. At this time, the backup agents arrived – first passing the pickup then quickly pulling behind them. This provided enough of a distraction for ATF Agent #2 to push open his door into Hazelwood, sending Hazelwood off balance. Hazelwood took off and the agent pursued. ATF Agent #2 did not announce himself as law enforcement or police but clearly heard other backup officers identifying themselves. Backup agents met up with ATF Agent #2 and they eventually stopped Hazelwood but by the time they caught up with him he had discarded his gun.<sup>1</sup>

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<sup>1</sup> There were multiple efforts made to locate the gun including canvassing the area and using a fire truck to look on roof tops; however no gun was located.

## **ATF Agent #3**

ATF Agent #3 was interviewed by BPD Homicide Detectives and then by an Assistant State's Attorney. ATF Agent #3 indicated that he was the driver of the REACT vehicle on May 26, 2017. The purpose of the REACT team was to act as backup agents in case the undercover agents needed assistance. At first the team was stationed at the Westside Shopping Center but target Individual #1 arrived without the drugs that were supposed to be purchased. Individual #1 left the area for around 20 minutes but came back and got into the undercover vehicle. He followed the undercover vehicle as it went to West Baltimore Street and made a U-turn near Kinsey Avenue. The vehicle stopped and Individual #1 exited the vehicle. He was forced to drive past the undercover vehicle and then park near the corner store located at West Baltimore and Franklinton. A short time later he heard ATF Agent #4 yell "Rescue! Rescue!" He was forced to make a three-point turn, nearly striking a tree, and speed down to assist the agents. This is captured on video from the corner store. As he drove towards the undercover vehicle he had to pass them then do a quick U-turn. As he drove pass he observed Smith standing very close to ATF Agent #1 with a gun. Smith turned his body toward ATF Agent #3 (who had exited the REACT SUV) and he again saw Smith with a silver gun. ATF Agent #3 then pulled out his ATF issued Glock 22. As he approached he observed ATF Agent #1 fighting with

Smith and was not sure if ATF Agent #1 was alright or not. At this point ATF Agent #3 indicated he was in fear for his life and the life of ATF Agent #1. He yelled for Smith to stop and identified himself as “police” but Smith took off running. ATF Agent #3 could not see Smith’s hands so he yelled for Smith to “show his hands.” Again, Smith failed to comply. Smith appeared to be turning and ATF Agent #3 believed he was going to be shot so he discharged his handgun six times. He observed Smith go down and he was handcuffed by Agent ATF Agent #5. Medical attention was also sought for Smith.

## ATF Agent #4

ATF Agent #4 was interviewed by BPD Homicide Detectives and by an Assistant State's Attorney. ATF Agent #4 indicated he was part of the backup units commonly referred to by the ATF as the REACT Team. He was seated in the rear passenger seat of their vehicle. He was monitoring the audio (no video was available inside the vehicle) of the undercover agents. The operation was to take place at or near the Westside Shopping Center but after the target did not show up with the drugs they had to follow the undercover vehicle from a distance. While parked down the street he heard the agents say, "You robbing us?" after which he yelled out "Rescue! Rescue!" The driver, AFT Agent #3, then took off. They approached from the front of the vehicle so they drove past it and did a quick U-turn. As they drove past the vehicle he observed Smith at the driver side door with a gun. He observed ATF Agent #1 try to tackle Smith but Smith was able to get free.

ATF Agent #4 could not see Smith's hands as he fled and indicated when Smith turned his body he believed he was about to be fired upon so he fired one shot from his ATF issued Glock 22. Smith stopped a short distance away from the truck. Medical assistance was requested for Smith.

## ATF Agent #5

ATF Agent #5 was interviewed by BPD Homicide Detectives and an Assistant State's Attorney. ATF Agent #5 indicated that he was working an initiative to combat the spike in crime. ATF Agent #5's role was to back up the undercover agents who were making a drug purchase.

On May 26, 2016, Individual #1 arranged for a drug purchase to be made by ATF Agents #1 and 2. Upon Individual #1's arrival, he told them they needed to go to West Baltimore Street to get the drugs. The backup units had not planned on leaving the area so they were forced to follow behind the undercover vehicle at a safe distance. As they got to Baltimore and Kinsey Streets they heard Individual #1 tell ATF Agent #1 to do a U-turn. At that point, the backup units had to drive pass the undercover agents. As they passed the undercover vehicle ATF Agent #5 observed Individual #1 exit and two men – one wearing a black shirt (Smith) and one wearing a white shirt (Hazelwood) standing by a chain fence. They drove a few blocks up then did a U-turn themselves.

A short time later, ATF Agent #5 could hear what he described as a "commotion" and he signaled to other agents to get to the undercover vehicle. ATF Agent #5 then indicates that their vehicle did a three point turn on Catherine Street which is clearly shown on corner store video. Upon exiting the backup vehicle, ATF Agent #5 was behind ATF Agent #3 and AFT Agent #4. ATF Agent

#5 did not discharge his weapon. He observed Smith being shot and go down to the ground. He immediately rushed over and handcuffed Smith. He also called for backup units to respond. Moments after Smith was shot a crowd of people gathered. ATF Agent #5 indicated he was afraid that the .44 caliber revolver which belongs to Smith might be taken so he recovered the gun, secured it, and placed it in the backup unit vehicle. The weapon was found on the street close to where Smith was located.

## Pictures

(The pictures have been edited to shield the identity of the agents)

Hazelwood pointing his gun at an Agent



Hazelwood pointing his gun at an Agent's head (both pictures)



Hazelwood pointing his gun at an Agent's chest



Smith pointing his gun at agents

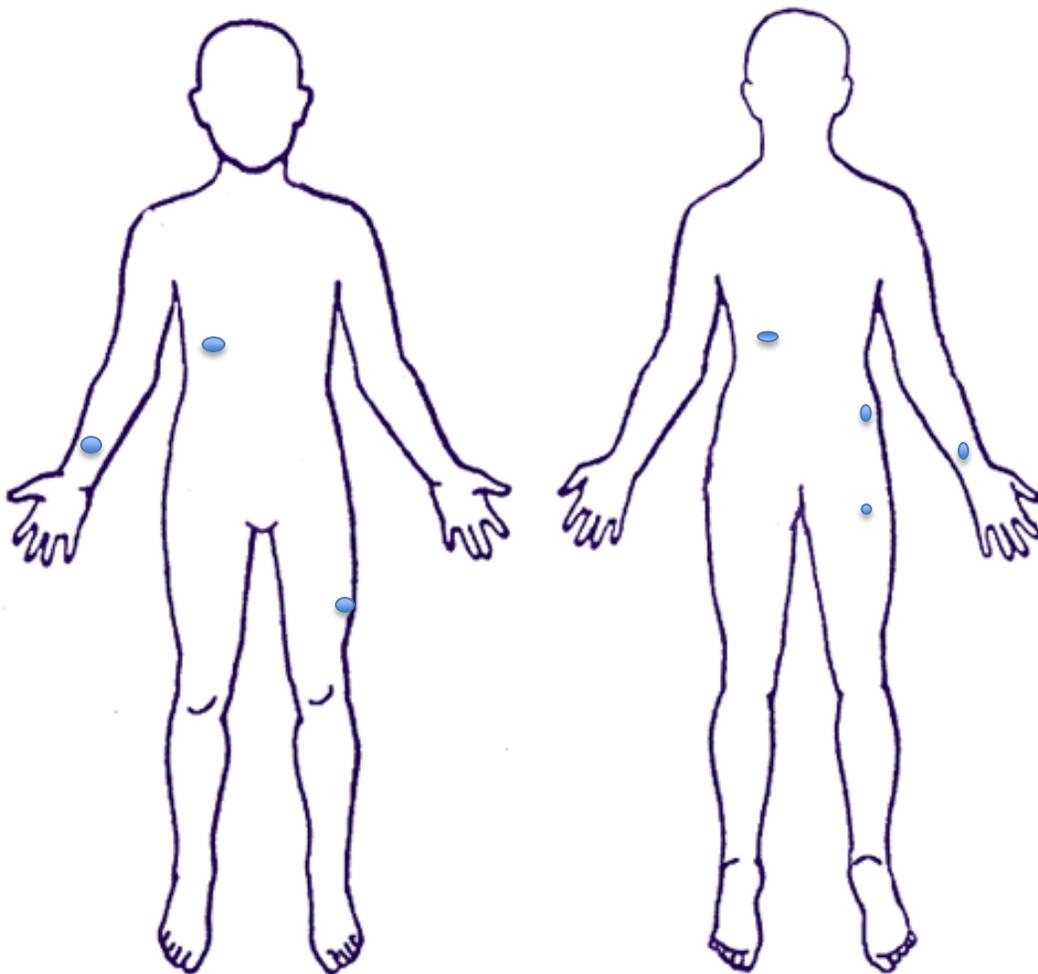


## BODY WORN CAMERA (BWC) VIDEO:

Many of the BPD officers who showed up after the incident were wearing BWC. ATF Agents #1 and #2 also had on BWC. Upon download it was found that ATF Agent #2's camera malfunctioned. ATF Agent #1's BWC was working and recorded the events inside the truck but when he exited his arms blocked any view of the shooting. None of the REACT Team had BWCs. The BCSAO reviewed all (31) videos downloaded by officers who responded to the scene. Most of the officers remained at the intersection of West Baltimore Street and Franklinton Road for crowd control. LEO #1's BWC footage shows a large crowd gathering a short distance from where Smith is being rendered aid. Several of the people can be heard using foul language and yelling at the ATF agents and BPD officers who had responded after the incident took place. Of the few officers who remained near the shooting scene very little relevant footage is observed. The video shows Smith being rendered aid by ATF agents prior to the arrival of the ambulance and LEO #1 putting down orange cones where casings are located.

## Male's Injuries (approximate)

According to the hospital records, he suffered a gunshot wound to his right arm, chest, right flank, back and left upper leg.<sup>2</sup>



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<sup>2</sup> The wounds described in the medical records are not inconsistent with the statements of the agents concerning the discharge of their firearms.

## Ballistics Report:

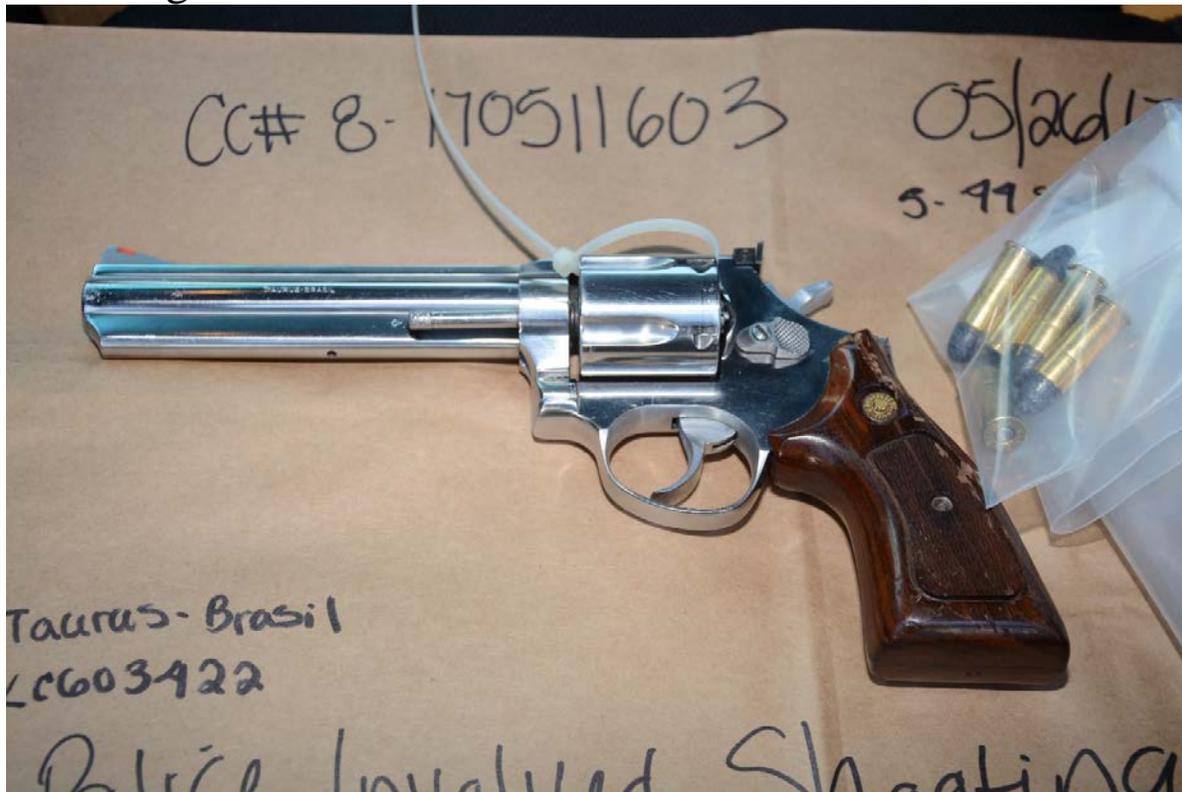
ATF Agent #3 was in possession of a Glock 22 which was labeled in the firearms report as K1. He fired (5) shots which were labelled in the report as Q1, Q3-Q6. Upon inspection, he had (9) cartridges/bullets remaining inside his gun. The bullet fragment found at the scene could not definitively be assigned to his gun due to damage.

ATF Agent #4 was in possession of a Glock 22 which was labeled in the firearms report as K2. He fired (1) shot which was labeled in the report as Q2. He had (14) cartridges/bullets remaining inside his gun. The bullet fragment found at the scene could not definitively be assigned to his gun due to damage.

ATF Agent #5 was in possession of a Smith and Wesson .357 magnum revolver. The gun was labeled in the report as K3. He fired (5) shots which were listed in the report as Q7-Q11. Inside his gun were five spent shells casings. The maximum capacity of his weapon was (5) rounds. The bullet fragment found at the scene was not fired by his weapon.

Smith's weapon was a Taurus .44 special revolver with a capacity for (5) rounds. This weapon was labeled as K4. The gun was fully loaded with five rounds inside. The bullet fragment found at the scene was not fired by his weapon.

## Smith's gun



## VIDEOS:

### **Surveillance Video Inside Undercover Vehicle:**

The video recovered inside the undercovers' vehicle shows the first encounter with Individual #1 to the arrival of the backup agents. The video shows Hazelwood announce a robbery. From Smith's request for a light to when the backup agents arrive is approximately 30 seconds. The video also shows both Hazelwood and Smith with weapons which were pointed at both agents. The video shows a white vehicle pass the undercover vehicle then the noise of tires squealing. Both Smith and Hazelwood turn their bodies to look and that is when the undercover agents attempt to take both men into custody. The video shows ATF Agent #1 attempt to tackle Smith but

Smith gets away and runs. Moments later shots ring out. The actual shooting is not shown on the video since the camera faces inside the undercover vehicle.

**Corner Store Surveillance Video:**

The corner store video shows the backup team attempt a three-point turn as they try to get to the agents' location. It also shows a short time later Hazelwood run by with one hand swinging freely and the other holding his front waistband.

# Legal Analysis

*In Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court set the standard for when a police officer's use of force is justified. If the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting the officer, without regard to their underlying intent or motivation, the force is justified. See *Graham v. Connor*.

Maryland law also recognizes self-defense as a complete defense to a crime. An officer acts in self-defense if all of the following factors are present:

1. The officer was not the aggressor;
2. The officer believed that he was in immediate and imminent danger of bodily harm;
3. The officer's belief was reasonable; and
4. The officer used no more force that reasonably necessary to defend himself.

AFT Agents #1, 3 and 4 likely meets the four legal factors listed above to justify the shooting of Smith as well as the standard set forth by the Supreme Court. The undercover vehicle video shows Hazelwood announce a robbery. In the video, both Smith and Hazelwood were armed and directly pointing their weapons at the agents. At various times in the video, Hazelwood and Smith have their weapons pointed at ATF Agent #1 and 2 either at their chest, their head or torso. Both agents were clearly in immediate and imminent danger of being shot. When the rescue team was able to distract Smith and Hazelwood, ATF

Agents #1 and 2 were able to push open their vehicle's doors in an attempt to protect themselves and apprehend Smith and Hazelwood. ATF Agent #1 attempted to tackle Smith. Smith was able to avoid being tackled and ran from the Agents. Knowing that Smith had a weapon, he was ordered to show his hands and stop which he refused to do. When Smith began to turn in the agent's direction, the agents discharged their weapons in order to protect themselves.

## Conclusion

Given that the undercover vehicle's video shows: (1) both Smith and Hazelwood with guns, (2) Hazelwood announcing a robbery, and (3) at various times during the video, both Smith and Hazelwood pointing their guns at the head, chest and torso of the agents, it would be objectively reasonable for the agents to conclude that their safety was at risk leading them to protect themselves by utilizing force. Having observed Smith with a gun just seconds before he fled, the agents had an objectively reasonable belief that Smith was armed when he turned toward them. Furthermore, the decision to use force was likely justified under the Maryland law of self-defense and the standard put forth by the Supreme Court in *Graham v. Connor*.

The agent's actions in this case did not rise to a level of criminal culpability. Therefore, the State declines to prosecute the agents.