

REPORT BY THE OFFICE OF THE BALTIMORE CITY STATE'S ATTORNEY ON THE  
NON-FATAL POLICE-INVOLVED SHOOTING IN THE 5800 BLOCK OF FALKIRK RD



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## INTRODUCTION

The Baltimore City States Attorney's Office ("BCSAO") completed its review of the civilian shooting on the 5800 block of Falkirk Road. The BCSAO review was conducted by the office's Public Trust and Police Integrity Division ("PTPIU") and focused exclusively on determining whether criminal charges relating to the officer's conduct were warranted. PTPIU's review did not examine issues such as the officer's compliance with internal policies and procedures, training or tactics, or any issues related to civil liability; however, internal policies and procedures and training are factors that were considered in evaluating the officer's conduct. The posting of the instant report is entirely within the sole discretion of the BCSAO and is not posted pursuant to any statutorily mandated obligation. The intended purpose of posting this report is to provide insight into the investigation and conclusion reached by the BCSAO regarding the police involved incident as described herein. The investigation and conclusion reached should not be interpreted as expressing any opinions on non-criminal matters. Rarely, there may be supplemental information or corrections needed requiring an update to the report.

In brief, on July 1, 2020, Involved Officers #1, #2, and #3 (herein, "IO1," "IO2," and "IO3") responded to a call for service regarding a behavioral crisis in 5800 Block of Falkirk Road. Upon arrival, IO1 was informed by Witness #1 that her son-in-law, later identified as the Involved Citizen ("IC"), was in the basement of the home and acting strange. The Witness indicated that her daughter, Witness #2, was married to the Involved Citizen and that she was in the basement trying to calm him down.

Officers responded down the stairs and encountered the Involved Citizen. They began attempts to deescalate and calm the Involved Citizen over the course of approximately nine minutes.

At some point, the Involved Citizen reached for his right hip with his right hand and pulled out a handgun. The officers instantly drew their service weapons and the Involved Citizen momentarily lowered his gun to his right side, then turned and faced IO1. IO1 stood with his gun pointed at the Involved Citizen who then raised his gun again and pointed it at IO1. Once the Involved Citizen pointed his gun at the officer, IO1 and IO2 fired.

The Involved Citizen dropped to the floor. Notwithstanding having been struck and fallen, the Involved Citizen continued to attempt to avoid being handcuffed. As officers were able to secure the handcuffs in front of the Involved Citizen, IO2 discovered another handgun in the Involved Citizen's left pants pocket. The Involved Citizen was transported to Johns Hopkins Hospital where he was listed in critical but stable condition. He was discharged from Johns Hopkins Hospital in September 2020.

## OVERVIEW OF THE INCIDENT

On July 1, 2020, Involved Officers #1, #2, and #3 (herein, “IO1,” “IO2,” and “IO3”) responded to a call for service regarding a behavioral crisis in the 5800 block of Falkirk Road. Upon arrival, IO1 was met by Witness #1, who told him that her son-in-law, later identified as the Involved Citizen, was in the basement of the home and acting strange. The Witness indicated that her daughter, Witness #2, was married to the Involved Citizen and that she was in the basement trying to calm him down.

The three officers entered the house through the front door, walked through the living room, dining room and kitchen to the stairs leading to the basement. As they entered the kitchen, they could hear the Involved Citizen in the basement speaking loudly. They could hear Witness #2 say, “I’m trying to save your life.”<sup>1</sup>

After walking down the basement stairs, the officers located the Involved Citizen, who was speaking incoherently, sometimes addressing a non-existent person he called “Antoine”. Witness #2 informed the officers that the Involved Citizen had a gun.

When the Involved Citizen saw IO1, he said, “You’re going to get arrested. You’re in my house.” IO3 walked past IO1 and stood outside the doorway to the rear of the basement, addressing the Involved Citizen in a calm manner. The Involved Citizen called IO3 “Dayvon,” uttering “I’m not trying to kill none of you”; “they trying to take my life, yo,”; and “it’s legal, it’s legal. State police please come and lock these fake ass police up.” He continued to address someone named “Antoine.”

IO3 asked the Involved Citizen to remove what IO3 believed to be a knife from his pocket. This object turned out to be a semi-automatic handgun. The Involved Citizen refused to give up his weapon. Standing in the doorway, IO3 continued to engage him verbally in a calm manner. The Involved Citizen continued talking to “Antoine.” He then stated, “if I kill you in my house, it’s legal,” before repeating, “Antoine, save my life. They’re trying to kill me.”

Almost the entire time, the Involved Citizen stood with his hands held together above his head. After continuing a disjointed discourse for several minutes, he became more agitated and began screaming. The officers continued to speak to him in a calm manner until he stopped. After about nine minutes of back and forth interaction, IO1 asked if the Involved Citizen would come outside to speak with the medics.

When the Involved Citizen again stated, “They’re trying to kill me,” IO1 calmly replied, “We’re trying to help you.” (IO1’s BWC at 17:00). He then moved several feet to the left to allow

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<sup>1</sup> During a recent psychiatric hospitalization, the Involved Citizen expressed paranoid delusions that his wife was trying to kill him.

room for the two other officers to position themselves in the confined space of the rear basement room. Once they were flanking the Involved Citizen, he again pleaded, “Antoine, please save my life. They gonna try to the end, yo.” IO3 then stepped toward the Involved Citizen as IO1 stood to his left. The Involved Citizen took a step back and stated, “Antoine, please save my life, yo.” (Officer #1 BWC at 17:45).

He placed his left hand in his pants pocket. IO1 calmly asked him to remove his hand. He complied and said, “I’m distorted, I’m distorted,” then placed his palms together above his head, (IO1’s BWC at 18:00), “I’m distorted because these people are trying to kill me.”

At that point IO3 can be seen removing his handcuffs from his utility belt as he stands approximately four feet in front of the Involved Citizen. IO2 asked the Involved Citizen to speak to the medics; he replied, “can I give Crystal a hug, yo?” It should be noted there was no one named Crystal on scene. IO2 again asked Involved Citizen to come upstairs and speak to the medics and he responded, “No, yo. I didn’t invite these people here.” IO1 then asked if he took his medication. Involved Citizen replied in an agitated manner, “No. Fuck no. That stuff is fake.” (IO1’s BWC at 18:35). The Involved Citizen repeated this statement as he extended his arms to each side and leaned forward, looking at IO3 in the face. (Officer #1 BWC at 18:45)

He then reached toward his right hip with his right hand and pulled out a handgun. (IO1’s BWC at 18:47). The officers drew their service weapons and the Involved Citizen momentarily lowered his gun to his right side, then turned and faced IO1. (Officer #1 BWC at 18:48), then raised his gun again and pointed it at Officer #1. (IO1’s BWC at 18:49).

At that instant IO1 and IO2 fired. Five shots can be heard on the BWC footage. The Involved Citizen fell to the floor. (Officer #1 BWC at 18:50). IO3 did not discharge his gun. Once on the ground, IO1 handcuffed the Involved Citizen as he moved slightly and continued to talk to “Crystal.” (Officer #1 BWC at 19:10). He resisted being placed in handcuffs and continued to ask “Antoine” to save his life as he squirmed on the floor.

The officers were able to secure the handcuffs in front of him. IO2 discovered another handgun in the citizen’s left pants pocket. (IO1 BWC at 20:50). Continuing to talk incoherently, the citizen remained on the floor until the paramedics entered the basement and rendered aid. (Officer #1 BWC at 23:45). He was then transported to Johns Hopkins Hospital where he was listed in critical but stable condition. The Involved Citizen was discharged from Johns Hopkins Hospital in September 2020.

## SUMMARY OF THE EVIDENCE

### **BPD INCIDENT REPORT, CC# 4-2007-00034**

Police Officer #4 of the BPD Northeast District authored the initial Incident Report for this matter. The following is a verbatim excerpt from that report; names and addresses of the involved persons have been redacted;

*“On 7/1/2020 at 0323 hrs [Involved Officers ##1,2, and 3], and BCFD personnel responded to [the 5900 block of] Falkirk Ave for a Behavioral Crisis incident. Upon arrival Officers met in the living room area with Witness #1 and Witness #2, who stated that Witness #2’s spouse, later identified as the Involved Citizen was having a strange behavior and talking to himself. Officers walked downstairs to conduct a further investigation about the Involved Citizen concerning behavior. The Officers made contact with him and proceeded to conduct an interview to determine the course of action. During the interview Involved Citizen retrieved a black semi-automatic firearm out of his waistband area and pointed it at the Officers who discharged their departmental weapons at the Involved Citizen.*

*The Involved Citizen sustained several gunshot wounds to his body. While Officers attempted to detain him and render medical assistance another firearm was recovered from the Involved Citizen’s pants pockets.*

*[He] was detained and transported to Johns Hopkins Hospital for treatment. The following units responded to the location to assist: Sgt. #1, Officer #5, and Officer #4 to secure the scene. At the location responded Detective #1, SIRT Unit and assumed control of the investigation. Forensic Tech [ ], responded and processed the scene.”*

### **BALLISTIC FINDINGS**

The BCPD Homicide Section conducted weapons inspections of the involved officers’ service weapons.

#### **Involved Officer #1:**

IO1’s department issued Glock 22, serial# [redacted], was found to have one round in the chamber and eight rounds in the magazine. Based on this finding, it was determined that the officer fired five times.

#### **Involved Officer #2:**

IO2’s department issued Glock 22, serial# [redacted], was found to have one round in the chamber and ten rounds in the magazine. Based on this finding it was determined that IO2 fired three times.

#### **Involved Officer #3:**

IO3's department issued Glock 22, serial# KXB207, was found to have all of its rounds, indicating that the officer did not discharge his service weapon.

**Involved Citizen:**

A Search and Seizure warrant was obtained. BPD detectives recovered a total of eight (8) firearms from the basement where the Involved Citizen resided.

The gun that the Involved Citizen had pointed at IO1 was identified as a Taurus GZC 9mm semi-automatic that contained one round in the chamber and twelve rounds in the magazine.

The gun recovered from the Involved Citizen's pants pocket was identified as Smith & Wesson CTGE .38 caliber revolver containing five (5) rounds in the cylinder. Also recovered from the basement of the residence were a loaded MicroDraco 7.62x39mm semi-automatic firearm, a loaded Masterpiece Arms Defender 9mm machine pistol, a loaded Smith & Wesson CTC 22 caliber revolver, an RIA Imports VR60 12-gauge semi-automatic shotgun, a Keltech Sub2000 9mm rifle, a loaded Del-Ton Inc. DT1-15 .223 caliber semi-automatic rifle, a five-gallon bucket containing boxes of ammunition of various calibers, eight (8) .40 caliber shell casings, and one projectile.

**CAD/KGA**

A review of the CAD report indicates that the BPD Communications Section received a call at 3:23 a.m. on July 1, 2020. It was designated as a dual call so both police and fire department personnel were dispatched. The assigned police units arrived to the location at 3:38:05 a.m. and a report of shots fired was dispatched at 3:57:24 a.m. No other relevant information was included in the CAD report.

**BODY WORN CAMERA ("BWC") VIDEO, INVOLVED OFFICERS**

**Involved Officer #1's**, recording length 1:06 hours:

01:45	IO1 speaks to Witness #1, in front of the Falkirk Road residence as she is on the phone with her daughter, who was in the basement of the home with the Involved Citizen. The Involved Citizen can be heard through the phone screaming.
03:11	Witness #1 tells IO1 that the Involved Citizen stopped taking his medication.
06:53	IO1 enters the basement and speaks to Witness #2. She states that the Involved Citizen is likely armed.
08:45	IO3 walks past IO1 and stands in the doorway to the rear of the basement as he speaks to the Involved Citizen.
18:44	Involved Citizen holds his arms out to his sides.
18:47	He pulls a handgun from his right side. All three officers draw their weapons and point at the Involved Citizen.
18:48	Involved Citizen points his gun at IO1.
18:49	The officers fire their weapons. The Involved Citizen drops to the floor.

19:39	Involved Citizen is placed in handcuffs as he lays on the floor and continues to speak in a disjointed manner.
20:56	Another handgun is located in the Involved Citizen's pants pocket.
23:36	Medics render treatment.
25:33	IO1 explains the incident to a BPD Sergeant.

**Involved Officer #2' BWC**, recording length 1:10 hours:

06:20	IO3 is seen attempting to calm the Involved Citizen and reassures him that no one is going to kill him.
07:34	The Involved Citizen confirms he has not taken his medication.
07:40	The Involved Citizen pulls a gun from his right pants pocket.
07:44	The Involved Citizen turns to his left and points his gun directly at IO1. The officers fire. A total of five shots can be heard.
09:55	IO2 locates another firearm in the Involved Citizen's left pants pocket.
25:40	IO2 speaks to Witnesses #1 and #2, confirms that police shot the Involved Citizen in the chest, but that he was still alive.
44:03	Witness #2 explains why she called the police.

**Involved Officer #3's BWC**, recording length 1:06 hours:

18:14	Involved Citizen pulls a gun from his right pants pocket and points it at IO1.
18:15	IO1 fires. Five shots can be heard.
18:45	The Involved Citizen is placed in handcuffs as he lies on the floor.
20:21	Another gun is located in his left pants pocket.
23:15	Involved Citizen continues to talk in a disjointed manner.
45:50	IO3 speaks to a BPD Sergeant.

**Witness Statements:**

**Statement of Witness #1 (Mother-in-law of the Involved Citizen)**

Witness #1 was interviewed by SIRT detectives and stated that her daughter, Witness #2, called her on the phone and asked her to come downstairs to the basement to help with the Involved Citizen. Unable to calm him down, Witness #1 called the Involved Citizen's parents to see if they could come get him. They were unable to do so. After several more attempts, she called 911 for help. Witness #1 met with the police officers and paramedics outside the house, but never entered the basement after that. She could hear the officers talking to her son-in-law. She heard four gunshots, but did not witness the incident.

Witness #1 also described a previous incident when the Involved Citizen left the home nude and armed with a gun, which resulted in his admission to the hospital for four days.

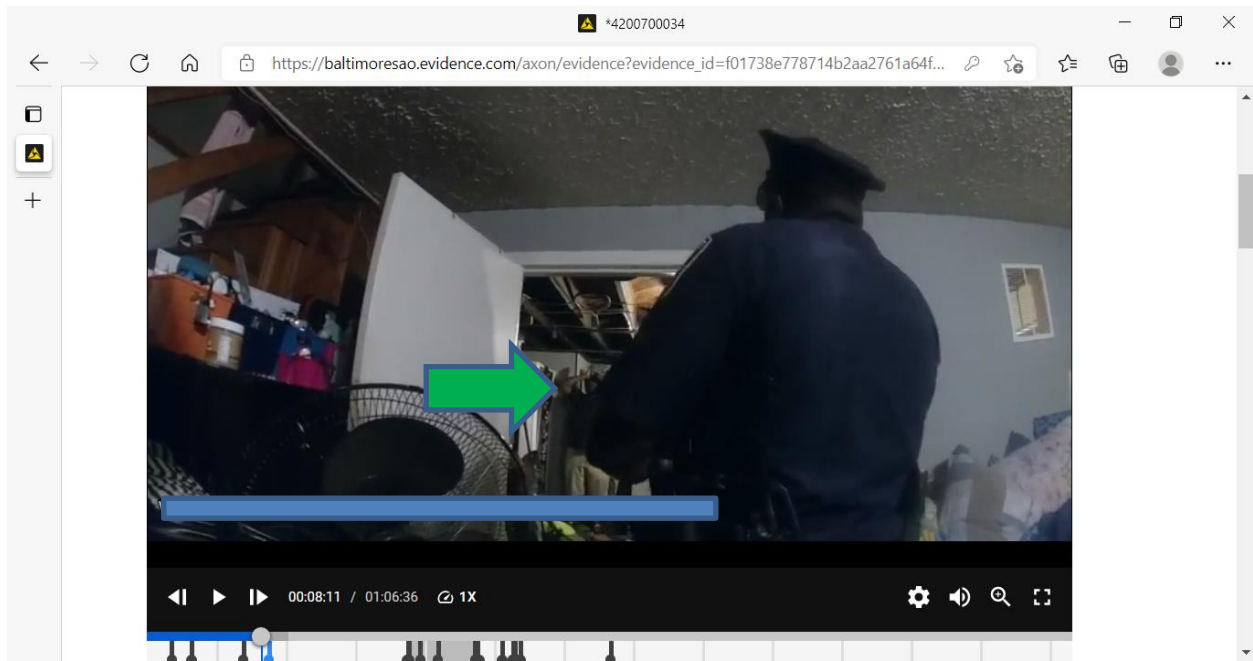
### **Statement of Witness #2 (Wife of the Involved Citizen)**

Witness #2 was interviewed by SIRT detectives and said that she woke up in her basement bedroom to find the Involved Citizen in the rear room talking to someone named “Antoine,” although no one else was in the room. The Involved Citizen then said there was a sheriff there and that his wife was trying to hurt him. At that point she called for her mother, Witness #1, to come downstairs and help calming her husband down. Unable to do so, they called the police.

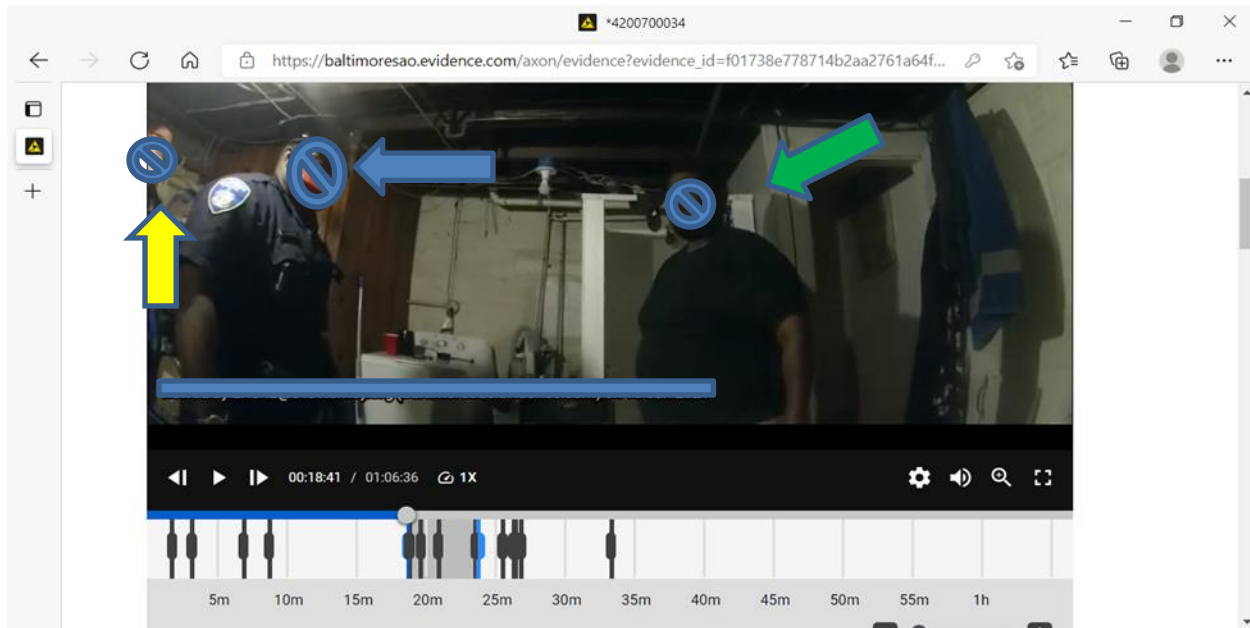
She stated that that, once the police entered the basement and spoke to her, she went upstairs and did not witness the encounter between the police and her husband. She heard what she believed to be four gunshots in the basement.

Witness #1 then described an incident that occurred on June 20, 2020, where the Involved Citizen left the house without any clothes on and walked down the alley shooting his gun. Police responded to that incident and transported the Involved Citizen to Sinai Hospital.

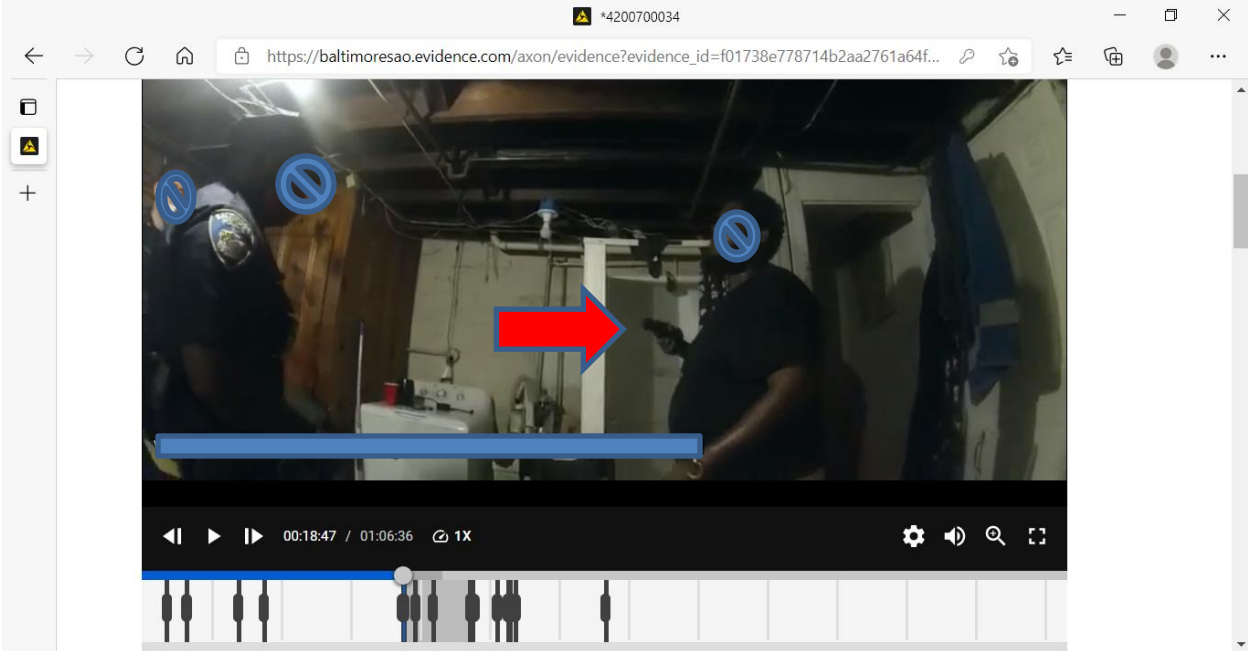
## OVERVIEW OF THE VIDEO/PHOTO EVIDENCE



IO3 stands in front of IO1 and IO2 as he speaks to the Involved Citizen through the doorway. The Involved Citizen is standing with his palms together above his head.



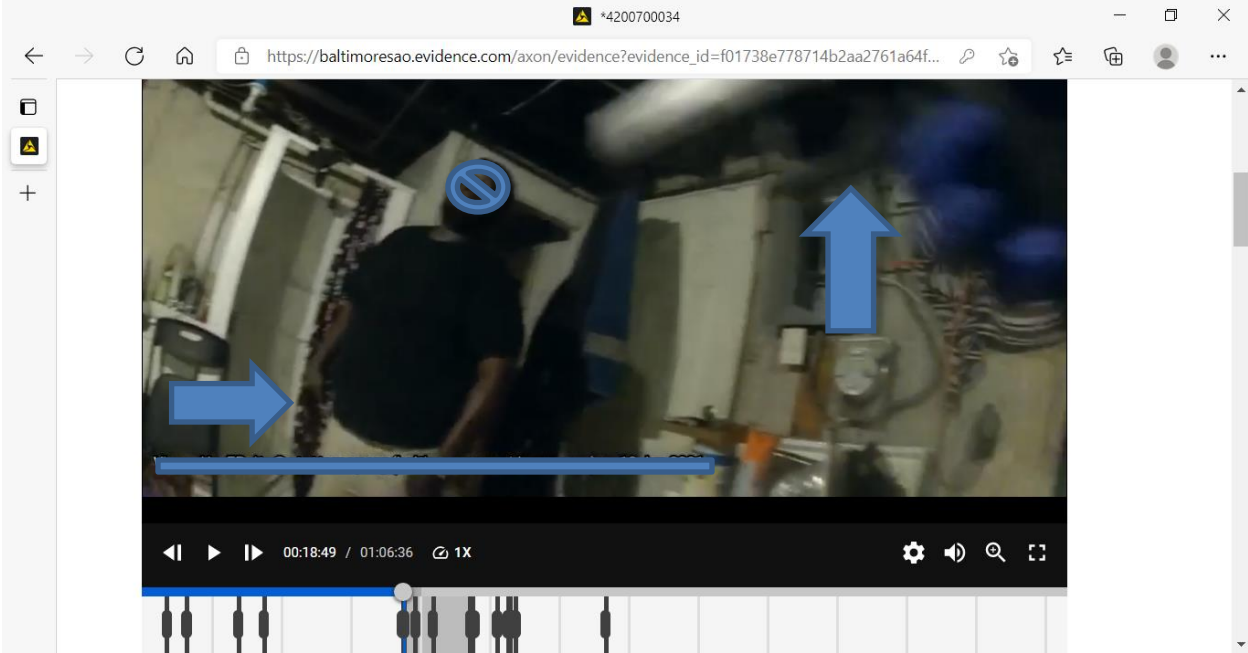
This is IO1's view as he stands to the left of the Involved Citizen (green arrow). IO2 (yellow arrow) and IO3 (blue arrow) stand in front of Involved Citizen as they attempt to deescalate.



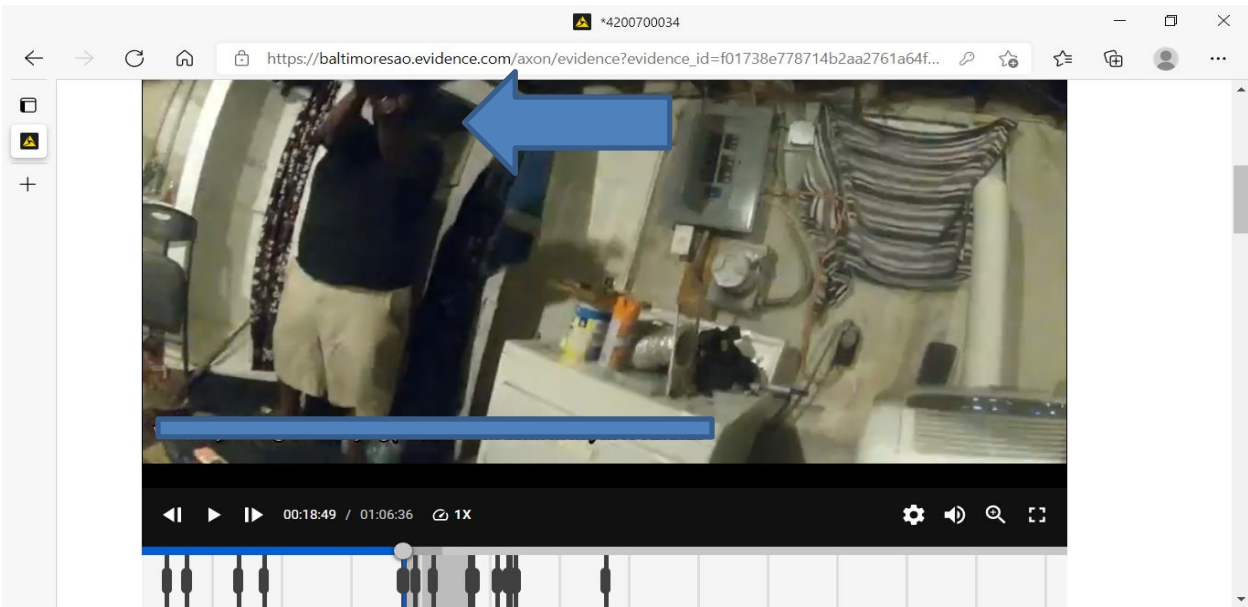
The Involved Citizen pulls a gun from his right pants pocket. At that time, none of the officers have their weapons drawn. They had been attempting de-escalation for approximately 11 minutes.



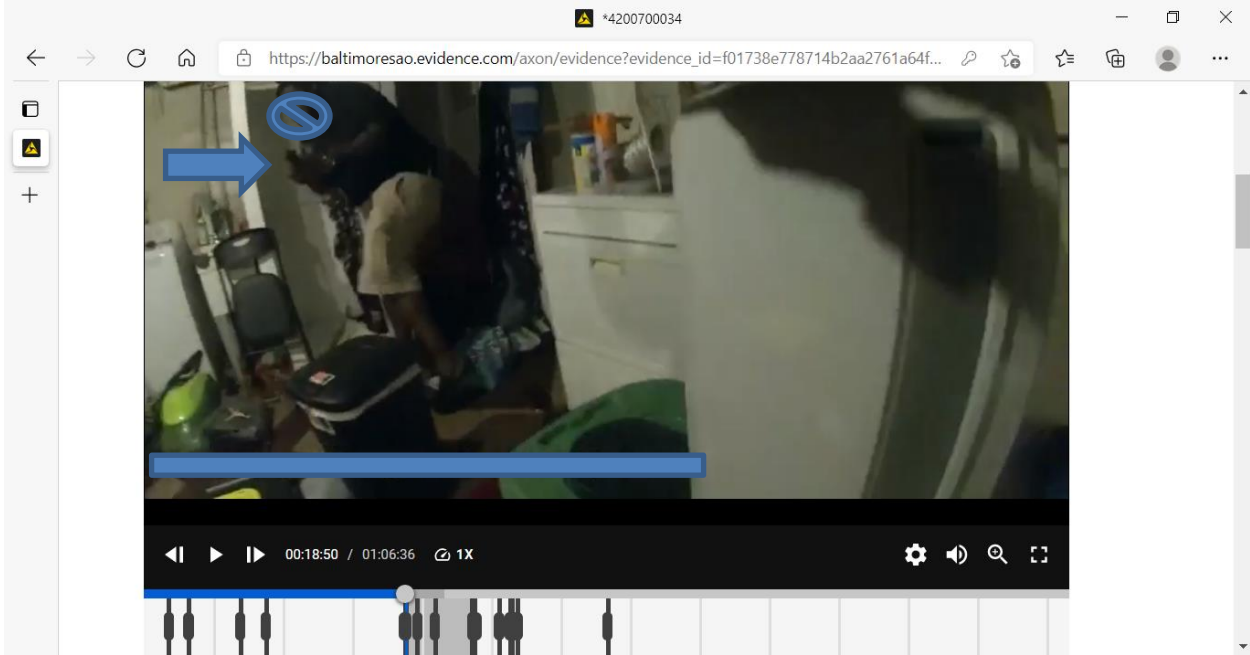
Involved Citizen turns to his left and points his gun directly at IO1.



This image appears to show IO1 point his service weapon once the Involved Citizen turned and faced him with his gun in his right hand at his side.



Involved Citizen points his gun directly at IO1.



The Involved Citizen continues to point his gun at IO1 even after being struck by multiple shots.

## LEGAL ANALYSIS

At issue is whether the Involved Officers' discharge of their service weapons against the Involved Citizen was a lawfully justified use of potentially deadly force.

The U.S. Supreme Court has held that “*all* claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the *Fourth Amendment* and its ‘reasonableness’ standard.” *Graham v. Connor*, 490 U.S. 386, 395 (1989) (emphasis in the original). The Court has further pointed out that it’s “*Fourth Amendment* jurisprudence law has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Id.* at 396 (citing *Terry v. Ohio*, 392 U.S. 1, 22-17 (1968)).

The reasonableness of a particular use of force by a police officer is judged from the perspective of a reasonable officer on the scene. The “reasonableness” inquiry in a use of force case is an objective one. The question is whether the police officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting the police officer, without regard to the officer’s underlying intent or motivation. *Id.* at 397.

BWC video evidence indicates that the Involved Citizen was suffering from a behavioral crisis. The officers responding to the call attempted to calm him by speaking to him in a non-confrontational manner and offered medical assistance for approximately 11 minutes. All three officers tried to persuade the Involved Citizen that they were there to help him and did not intend to harm him. The Involved Citizen’s conduct did not improve during the lengthy interaction and he refused to seek medical assistance that was lined up outside of the residence for him.

The evidence also shows that the Involved Citizen, unprovoked, pulled a handgun from his right pants pocket and then pointed it directly at one of the involved officers. Even after he pulled the gun, the officers continued to deescalate by continuing to speak to him in a reassuring, comforting manner. Given the circumstances, the manner in which the officers in pointed their weapons was reasonable and arguably done to persuade Involved Citizen to drop his weapon. That strategy worked briefly, as the Involved Citizen lowered the gun to his side when he saw all three officers with their guns drawn.

Unfortunately, Involved Citizen then turned toward IO1 and pointed his gun directly at him. IO1 and IO2 responded to this imminent danger by firing their weapons, striking Involved Citizen in the chest three times. Consequently, there is evidence that the Involved Officers acted in self-defense (IO1) and defense-of-others (IO2). There is sufficient evidence to support a finding that the involved officers’ use of deadly force towards the Involved Citizen was objectively reasonable to protect themselves from the immediate and imminent danger of death or serious physical injury. Based on the evidence, it is overwhelmingly clear that the involved officers acted in self-defense (IO1) and/or defense-of-others (IO2).

There is no evidence to suggest that the involved officers' actions were unjustified given the instant circumstances. The manner in which they responded was thoughtful, considerate, and measured. The officers used force when they had no other options.

### **CONCLUSION**

When considering all of the evidence, the objective conclusion is that: 1) the Involved Officers #1 and #2 reasonably believed that their lives were in imminent danger of serious physical harm or even death; 2) their use of deadly force was reasonable based on the totality of the circumstances; 3) there were no prudent or less lethal alternatives to the use of potentially deadly force as the Involved Citizen posed an imminent risk of serious harm; and 4) the involved officers' were legally justified. There is sufficient evidence that their actions at all times were objectively reasonable.

It is therefore determined that the Office of the State's Attorney for Baltimore City declines to pursue criminal charges.