



EXPERT REPORT/ANALYSIS INTERNAL MEMORANDUM

In the matter of
Departmental Shooting of Leonard Lancelot Shand
in Hyattsville, Maryland
on Thursday, September 26, 2019

Prince George's County State's Attorney Office Submitted
by
Tyrone Powers, Ph.D.

August 14, 2020

CONFIDENTIAL

I. FORCE CONTINUUM

A. Police officers are taught, trained, and usually governed by the Continuum of Force. It is expected that the Continuum of Force is taught in all certified, police entrance level training academies and in-service training programs. A continuum of force, from least to greatest use of force involves police actions to match the intensity of a suspect's resistance in a *legal* contact or *lawful* arrest situation. It is expected and required that officers employ the least amount of force necessary to gain control of a situation or to effectuate a lawful arrest.

B. And while the Continuum of Force prescribed by each department may vary slightly, the use of force usually involves seven (7) steps:

Level 1: Mere Presence – This is the level of least force employed by an officer. The mere presence of an officer is a manner of force because of the power invested in police officers. Police officers in the United States are given the legal authority to restrict or to take away one's freedom, in a nation where freedom is at the foundation. Police are invested with the authority to legally remove another human being from existence – given the right circumstances. In many cases mere presence is enough to deter criminal conduct, create peace and control a situation. Mere Presence involves nonphysical force. It operates on the premise that the passive authority of state can deter illegal and unlawful behavior. The police officer's uniform is part of this non-physical force. It may also include eye-contact and other body language.

Level 2: Verbalization – This level is best described as verbal force. At this level, the Police officer instructs or gives directives to an individual or a group of individuals with an expectation of compliance from the individual/s.

Level 3: Command Voice – This is an elevated level of verbal force. The commands are issued in the form of an order. Whereas at the level of verbalization, the officer utilizes the power of persuasion. At this level, the officer is clearly vocalizing the legal authority invested in him or her. It is clear, that failure to obey such an order will lead to increased levels of force from the officer and or other legal consequences.

Level 4: Firm Grips – At this level, physical contact, grasps, or grips on the body of the suspect are applied to direct the suspect when and where to move. These grips are intended to direct a suspect, but they are not intended to cause pain. These are also sometimes referred to as “empty-hand-control” or “soft-empty-hand control.” These grips can include restraining, holding, lifting, and pulling.

Level 5: Pain Compliance – At this level of force a suspect’s compliance and cooperation is gained by the use of physical pain. This level is also considered a level of “empty-hand-controls” because no weapons are used. The pain should be applied in a manner that avoids lasting injuries. Several techniques are taught to police officers in the police academy to ensure the appropriate application of pain devoid of creating lasting injuries. ‘Come-along,’ ‘Hand Holds,’ and pressure applied to strategic points on the body are utilized at this level of force. Pressure point application involves effectively applying pressure to several nerve pressure points such as the Infra-Orbital [under the base of the nose], Mandibular Angle [behind the ear] and Hypoglossal [under the jaw] pressure points.

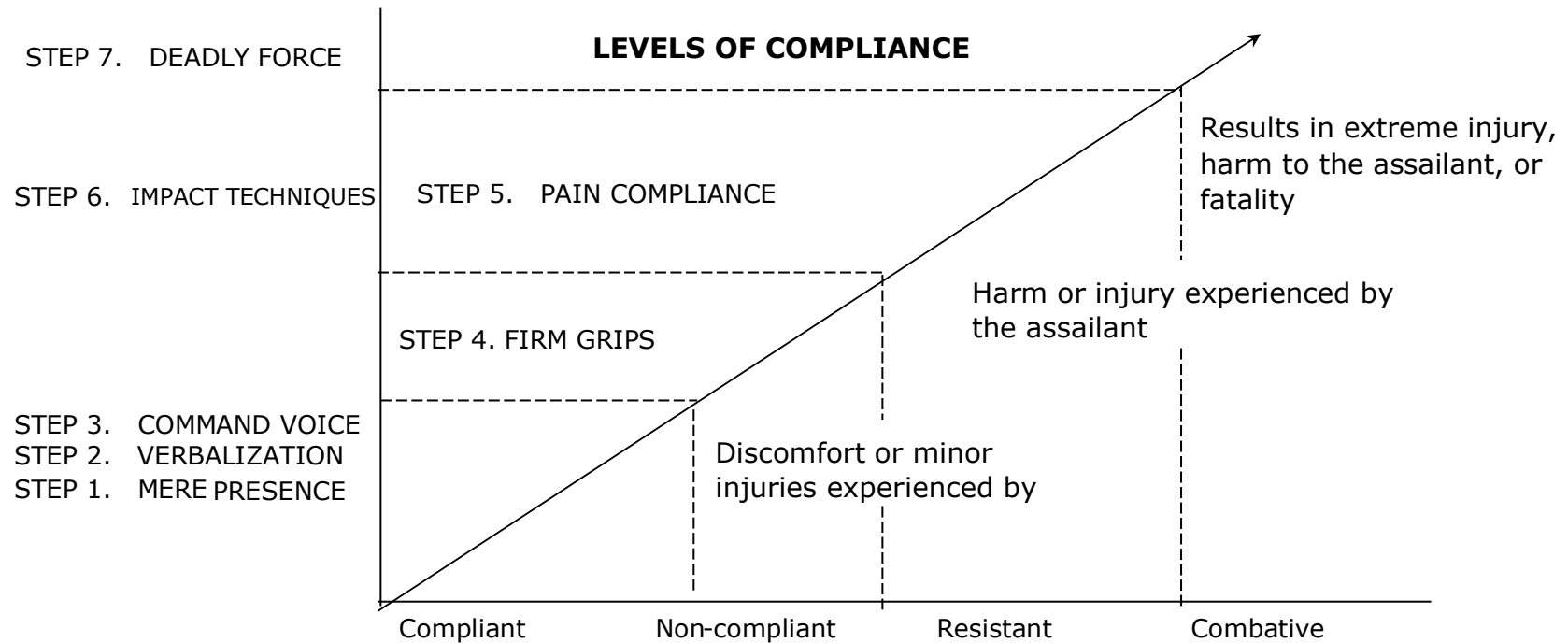
Level 6: Impact Techniques – Impact Techniques consist of non-lethal application of physical force through the use of physical contacts or weaponry. This level of force is intended to incapacitate a dangerous suspect that is resisting apprehension and is not responsive or compliant to lesser levels of force. The use of less-than-lethal weapons such as O.C. (oleoresin) sprays and other chemical agents are used at this level, including the baton. The O.C. sprays are less powerful and are considered below the level of a baton. If at all possible, the less-lethal tactics should be used before the application of hard weapons such as the baton, that may cause permanent damage.

Level 7: Deadly Force: Deadly Force is the most severe level of force. The objective of deadly force is to incapacitate an extremely dangerous suspect that poses an immediate threat to the officer or to others. The objective of deadly force is not to kill the suspect or perpetrator. However, acute, or severe injury or death is highly possibility.

7 STEPS IN THE USE OF FORCE CONTINUUM

Law Enforcement and Correctional Officers are authorized to use that amount of force necessary in order to quell a disturbance. The choice and use of force should represent a level one-degree higher than the threat presented by the assailant. When evaluating whether or not sufficient, legal, and excessive force was used during a confrontation, the courts consider several factors:

- The level of threat presented by the assailant as perceived by the officer
- Actual threat presented by the assailant
- The knowledge and experience of the officer
- The presence and nature of any weapon being used by the assailant
- Weapons or alternative uses of force available to the officer



With rare exception, most use of force policies are consistent with those historically articulated by the United States Department of Justice. The United States Department of Justice Use of Force Policy reads as follows:

II. USE OF FORCE

A. General Policy

1. Law enforcement agencies must recognize and respect the value and dignity of every person. Investing law enforcement officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.
2. Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effectuating an arrest is where a suspect complies with simple directions given by an officer. When officers are confronted with a situation where control is required to effect arrest or protect the public safety, officers should attempt to achieve control through advice, warnings, and persuasion. Where such verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use force that is reasonably necessary.
3. Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from a risk of imminent harm. Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others.

B. Deadly Force

1. Law enforcement officers are authorized to use deadly force only when it is reasonable and necessary to protect the officer or others from an imminent danger of death or serious physical injury to the officer or another person. If non-deadly force reasonably appears to be sufficient to accomplish an arrest or otherwise accomplishes the law enforcement purpose, deadly force is not necessary.
2. Agencies should develop use of force policies that address use of firearms and other weapons and particular use of force issues such as: firing at moving vehicles, verbal warnings, positional asphyxia, arm bar restraints, and the use of chemical agents.

C. Non-deadly Force

1. Law enforcement officers are authorized to use agency-approved non-deadly force techniques and agency-issued equipment where reasonable and necessary to resolve incidents: to protect themselves or another from physical harm; to restrain or subdue a resistant individual; or to bring an unlawful situation safely and effectively under control.
2. Where non-deadly force is authorized, officers should assess the incident to determine which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner.

D. Continuum of Force

1. When the use of force is reasonable and necessary, officers should, to the extent possible, use an escalating scale of options and not employ more forceful means unless it is determined that a lower level of force would not be, or has not been adequate. The levels of force that generally should be included in the agency's continuum of force include verbal commands, use of hands, chemical agents, baton or other impact weapons, canine, less-than-lethal projectiles, and deadly force.
2. Each situation is unique. Good judgment and the circumstances of each situation will dictate the level on the continuum of force at which an officer will start. Depending on the circumstances, officers may find it necessary to escalate or deescalate the use of force by progressing up or down the force continuum. It is not the intent of this policy to require officers to try each of the options before moving to the next, as long as the level of force used is reasonable under the circumstances.

E. Use of Canines to Apprehend Suspects

1. The deployment of a canine to attempt to apprehend or seize a civilian is a use of force. Special precautions are required to ensure that such force is not used unnecessarily or unreasonably. A canine should be deployed to apprehend or seize an individual only where: (a) the individual is suspected of having committed a serious or violent felony, (b) less potentially injurious techniques are insufficient, and (c) unless it is precluded by officer safety, a verbal warning is given prior to deployment and a supervisor's approval is obtained. Agencies should train their canines to follow the approach of "find and bark," rather than "find and bite."

F. Administrative Review of Shootings and Use of Deadly Force

1. An internal investigation and review should be conducted of all firearms discharged by officers, except those that occur in the regular course of training, and of any other use of deadly force. To the extent possible, the review should be conducted outside the officer's chain of command by internal affairs or other specialized units.

2. The review should determine whether the firearms discharge or other use of deadly force was within agency policy and reasonable and necessary, and, if not, whether and what discipline should be issued; indicate a need for additional training or counseling, or any other remedial measure for the involved officer; and suggests the advisability of revising or reformulating agency policy, strategy, tactics, or training.

3. To the extent possible, the review of use of force incidents and use of force reports should include an examination of the police tactics and precipitating events that led to the use of force, so that agencies can evaluate whether any revisions to training or practices are necessary.

4. Law enforcement agencies should analyze data on firearms discharges, in conjunction with other data, to detect potential patterns of at-risk conduct and take appropriate corrective actions.

G. Use of Force Reporting

1. Uses of non-deadly force should be reported in a thorough, factual, and objective manner by law enforcement officers to supervisors for evaluation and review. Such reports should be in writing.

2. To ensure comprehensive reporting of uses of non-deadly force, agencies should define "force" broadly. As a general matter, uses of force that should be reported include any use of a weapon, electronic restraint device, or chemical agent such as pepper spray; and any use of punches, hits, kicks, or other physical efforts to seize, control, or repel a civilian (with or without a weapon or other implement). The routine uses of handcuffs need not be considered a reportable use of force.

H. Administrative Review of Non-Deadly Force

1. All reported uses of non-deadly force should be reviewed promptly and evaluated by a supervisor to determine whether the particular use of force was

within agency policy and reasonable and necessary; should result in a misconduct investigation by the internal affairs unit or the entity responsible for conducting investigations of serious misconduct allegations; indicate a need for additional training or counseling, or any other remedial non-disciplinary measure, for the involved officer; and suggest the advisability of revising or reformulating agency policy, strategy, tactics, or training.

2. To the extent possible, the review of use of force incidents and use of force reports should include an examination of the police tactics and precipitating events that led to the use of force, so that agencies can evaluate whether any revisions to training or practices are necessary.

Use of Force Continuum	
<p>Each circumstance in a use of force situation is known as a variable, and each can work both ways in use-of-force situations. A variable may justify an increase in force in one instance but may require a de-escalation of force in another. Also, the use of force is often influenced by several variables that are known as the totality of circumstances. Some factors affecting the totality of circumstance are:</p>	
Officer/Subject Factors	Special Circumstances
Number of Officer(s)/Subject(s) Size/Age/Strength Difference Skill Difference Mental State	Proximity to a Firearm Position of Disadvantage Special Knowledge Imminent Danger
<p>According to the U.S. Department of Justice, the levels of force that should be included in an agency's continuum of force are:</p>	
Verbal Commands Use of hands Chemical agents Baton or other impact weapon	Canine Deadly force Less-than-lethal projectiles

Courts decide whether an officer's use of force was unreasonable on a case-by-case basis, considering:

- the severity of the crime
- whether the suspect posed a threat, and
- whether the suspect was resisting or attempting to flee (*Graham v. Connor*, 490 U.S. 386 (1989)).

III. SUMMARY OF STATED EVENTS

A. According to the stated facts contained in statements and other documents in the matter involving Mr. Leonard Lancelot Shand on Thursday, September 26, 2019 at approximately 7:14 AM, Hyattsville City Police Department received a call for a second sighting of a subject (Leonard Lancelot Shand) that assaulted an employee at the Starbucks three days earlier – on September 23, 2019.

B. According to the Prince George’s County Police Department’s Executive Summary, on Thursday, September 26, 2019 at approximately 7:14 AM, Hyattsville City Police Department received a call for a second sighting of a subject that assaulted an employee at the Starbucks three days earlier, that was called in by [REDACTED].

C. According to an interview conducted on Thursday September 26, 2019 at 1:04 PM of [REDACTED] by Lieutenant Robert Black, Mr. Leonard Lancelot Shand entered the Starbucks on Monday September 23, 2019 and asked one of the employees for a glass of water. [REDACTED] stated that [REDACTED] fellow employee indicated to Mr. Shand that, “he had a few drinks and to give him a minute.” According to [REDACTED], Mr. Shand did not like the answer and when he received the water, he took the cup and threw the cup at said employee – [REDACTED]. [REDACTED] indicated that [REDACTED] ([REDACTED]) with the assistance of another employee, escorted Mr. Shand out of the Starbucks and spoke to him saying, “go your separate ways.”

According to [REDACTED], Mr. Leonard Lancelot Shand returned to the Starbucks with a baseball bat or pipe and “bashed my barista on the head. Um, my barista was bleeding, got drops of blood everywhere. Um, and was sent home.”

According to [REDACTED], Mr. Leonard Lancelot Shand returned to the Starbucks on Thursday, September 26, 2019 at approximately 7:00 AM. [REDACTED] indicated he quickly came in and then went back out after making eye contact. [REDACTED] indicated that he may have used the bathroom, as he came in the front door and exited through the side door of the Starbucks. [REDACTED] indicated that at the time Mr. Shand entered the Starbucks, [REDACTED] ([REDACTED]) was present with coworkers, [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] indicated that [REDACTED] contacted the police and notified them that Mr. Shand had returned.

According to [REDACTED], Mr. Leonard Lancelot Shand was a regular in the store before September 23, 2019. [REDACTED] indicated that he came into the store every day. [REDACTED] noted that he would get a hot cup of water in the morning halfway full and would add his own instant coffee. [REDACTED] indicated that he would return in the evening to get ice water. [REDACTED] explained that they had not had any issues with Mr. Shand before September 23, 2019. [REDACTED] indicated that a few months prior to September – around January or between February and March – Mr. Shand had entered the store and hung an “anti-police Go Fund Me” poster on the store’s Community Board. [REDACTED] indicated that [REDACTED] advised him that he could not hang it there. [REDACTED] indicated that he understood and noted that his response to [REDACTED] has been cordial ever since and that [REDACTED] has never had any problems.

[REDACTED] indicated when [REDACTED] placed [REDACTED] call to the Hyattsville City Police Department on September 26, 2019 – [REDACTED] indicated that Mr. Shand had left the Starbucks and was at or had walked in the direction of the Sunoco Gas Station. [REDACTED] indicated the responding officer(s) did not come in contact with [REDACTED] in the Starbucks. [REDACTED] indicated that [REDACTED] did not see and had no further interaction with Mr. Shand after he exited the store and headed in the direction of the Sunoco Gas Station.

When asked to describe Mr. Shand, [REDACTED] indicated, "he was on the shorter side, um, definitely a lean build. Um, he had kind of a sunken in face, um, you could tell, you know. He's had hardships. Um, he had a Jamaican accent, um, but other than that. Ah, African American."

[REDACTED] indicated that prior to the incident [REDACTED] only knew Mr. Shand as Leonard.

The incident Report from the September 23, 2019 assault noted:

A Prince George's County Officer called out with an assault that occurred in the Starbucks located at 3601 East West Hwy. He said the victim who is an employee of the Starbucks was just assaulted by a male with a bat. Upon arrival, the Victim [REDACTED] was speaking to the County Officer. I spoke to the Witness [REDACTED] who said [REDACTED] was waiting for [REDACTED] drink when the Suspect came in and out of nowhere struck the Victim [REDACTED] on the head. The suspect almost hit [REDACTED]. He fled out of the side door toward East West Hwy. After the Prince George's County Fire Dept checked the Victim, I spoke to [REDACTED]. [REDACTED] stated that the Suspect frequents the business and only orders water. On today's date, at around 1030am, the Suspect came in, walked past a line of people, and said, "when you get a chance give me water". The Victim [REDACTED] told him it 'll be a minute. The Victim [REDACTED] gave the suspect water and [REDACTED] left. The Suspect came back into the business approximately 20 minutes later and threw the water at the Victim [REDACTED] and said "I'll See you later" then left. At approximately 1252, the Suspect walked into the business and without a word hit the Victim [REDACTED] on the head and ran out of the door towards East West Hwy. The Victim [REDACTED] had a 1" l gash on the top of [REDACTED] head but refused medical treatment. The area was checked, the Suspect was not located. The Victim [REDACTED] and the Suspect has never had confrontation in the past, the attack was for unknown reasons.

D. According to the Prince George's County Police Department's Executive Summary on Thursday, September 26, 2019 when officers arrived, they immediately located Mr. Leonard Lancelot Shand at East West Highway and Belcrest Road in Hyattsville, Maryland. The officers immediately engaged Mr. Shand who was pacing, yelling, and displaying a knife in each hand. Mr. Leonard Lancelot Shand continued walking on Belcrest Road towards Toledo Road, as officers repeatedly told him to drop the knives. Officers followed the Mr. Shand and continued to order him to drop the knives. At some point police officers deployed their issued, Tasers three separate times - each apparently not having the expected/desired/intended effect of rendering a suspect temporarily immobile with minimal injury. At some point during the engagement with

Mr. Leonard Lancelot Shand, police officers also deployed OC spray in an attempt to distract and disarm Mr. Shand. The OC spray did not appear to be effective.

According to the Prince George's County Police Department's Executive Summary, police officers continued to move with Mr. Leonard Lancelot Shand as he moved/walked to the intersection of Belcrest Road and Toledo Road. At this location, Mr. Shand stopped for a short period of time. Officers continued to engage and communicate with Mr. Shand for an "extended" period of time. According to the Prince George's County Police Department's Executive Summary, Mr. Shand "remained armed, uncooperative and extremely agitated." Mr. Shand walked away from the officers down Belcrest Road and proceeded into the parking lot of the Plaza Tower Apartments. Officers followed Mr. Shand and continuously gave Mr. Shand commands to drop the knives. According to the Prince George's County Police Department's Executive Summary - Mr. Shand yelled at officers repeatedly, "You are going to have to kill me here!" Mr. Shand then walked back to the intersection of Belcrest Road and Toledo Road. According to the Prince George's County Police Department's Executive Summary, at this location, "Officers used less than lethal Remington shotgun beanbag rounds and a flash bang, which took no effect." According to the Prince George's County Police Department's Executive Summary, at this time, Mr. Shand "made threatening comments to officers and charged at the officers." Several officers then discharged their issued firearms striking Mr. Shand several times.

The Special Investigation Response Team, CID/Homicide were notified and responded to investigate. Officers' Body Worn Cameras, Mobile Video Systems, and cell phone videos were recovered. The surrounding area was canvassed for additional surveillance video and a request was submitted for recovery by the Video Analysis Unit.

E. According to the Prince George's County Police Department's Executive Summary, During the course of events involving Mr. Leonard Lancelot Shand:

Sergeant David Cheatham of the Prince George's County Police Department discharged four (4) rounds from his Smith & Wesson 9mm towards Mr. Shand.

Officer Dario Daniel of the Prince George's County Police Department discharged seven (7) rounds towards Mr. Leonard Lancelot Shand.

Prince George's County Police Officer Kesha Nsiah-Ababio discharged three (3) rounds from her assigned Smith & Wesson M&P 9mm towards Mr. Leonard Lancelot Shand.

Mt. Rainer Police Officer Damien Graham discharged seven (7) rounds from Glock 19 Gen4 9mm, towards Mr. Leonard Lancelot Shand.

Hyattsville City Police Department's Police Officer First Class (PFC) Scott Hall discharged five (5) rounds from his H&K VP9 9mm towards Mr. Shand.

Hyattsville City Police Department Corporal Jerry McCauley discharged three (3) rounds from his H&K VP9 9mm towards Mr. Shand.

Hyattsville City Police Department Corporal Mitchell Lowery discharged six (6) rounds from his H&K VP9 9mm towards Mr. Shand. Corporal Mitchell Lowery also deployed his Taser.

Hyattsville City Police Department Corporal Christopher Evans discharged three (3) rounds from his H&K VP9 9mm towards Mr. Shand.

Hyattsville City Police Department Detective Katelyn Koslosky discharged one (1) round from her H&K VP9 9mm towards Mr. Shand.

Hyattsville City Police Department Police Officer First Class Michael McQuade discharged four (4) rounds from his H&K VP9 9mm towards Mr. Shand.

Hyattsville City Police Department Lt. Zachary Nensor discharged four (4) beanbags from his Remington 870 .12-gauge beanbag shotgun towards Mr. Shand.

Hyattsville City Police Department Police Officer First Class Kelly Hernandez deployed his Taser towards Mr. Shand.

Hyattsville City Police Department PFC Scott Hall also deployed his Taser and deployed a Flashbang Grenade at and towards Mr. Leonard Lancelot Shand.

F. Flashbang Grenades are typically, non-lethal weapons used to produce a blinding flash of light and a loud "bang" that temporarily disorients, blinds, and deafens anyone standing in their proximity. They were first invented in the 1970s to disorient criminals in hostage situations. Flash Diversionary Devices (NFDD), are designed to produce dramatic pyrotechnics which are intended to provide a brief distraction without causing permanent injury (<https://policeandsecuritynews.com/2020/01/14/flashbang-training-options-getting-the-mostbang-for-your-swat-training-buck/>). Flashbang Grenades are commonly utilized in raids, and in building-entry, hostage situations. Frequently, Flashbang Grenades are used as a military and civil police control tactic to disperse crowds and to temporarily incapacitate individuals – the deployment of which usually results in little to no injury. However, if there is intimate contact with an individual (including the deploying officer), the munition can cause serious, physical injury.

The use of the Flashbang Grenade, like all other lethal or non-lethal munitions, requires technical training, minimally to address nomenclature; the effects of surface-types on the roll and control of the device upon deployment; and methods to reasonably control the device and to keep the device in proximity to where it was thrown. In the article, "Flashbang 101" (Ijames, 2005), training should include the following (Police 1,

<https://www.police1.com/policeproducts/tactical/tactical-entry-tools/articles/flash-bang-101-BEniQIy5NJZcgfZw/>):

- **Visual inspection:** The user MUST confirm positively that all areas are safe prior to tossing the device (no "blind deployments" or "window drops"). Special emphasis must be given to avoiding deployment out of fear. This happens when officers are involved in an extremely high-risk incident, and they pitch the device blindly immediately following the breach. Few officers admit to doing this. Likewise, numerous suspect injuries have occurred that have no other reasonable explanation as to how the device and suspect got together. If the event is so dangerous that an officer might avoid positioning himself where he can look inside the door, an alternative deployment plan must be considered.
- **Avoid looking directly at the suspect when releasing the device:** This almost always causes the device to be thrown closer to the suspect than the suggested five feet, due to the "pitch and catch" process we have subconsciously practiced since childhood. Officers should instead focus on the floor 45 degrees to the side, and 5 feet away from the suspect.
- **Use a "coming out" location:** Officers must be instructed on what to do if they realize after breaching that the device cannot be safely deployed. A common practice is to choose a "coming out" location during the pre-raid briefing. This is a point away from the entry team where the live device can be deployed if the primary location is found to be unsafe (children, flammable material, numerous persons laying on the floor, etc.). Outdoor deployments usually involve the yard directly behind the team. The team member will recognize the danger, announce "coming out", then deploy the device safely to the pre-designated area. Indoor deployments are more challenging. Extremely close quarters such as row houses and apartment hallways frequently have persons unexpectedly stepping into the event. As a result, there may not be a safe place for alternative deployment. In cases such as this the officer will announce "coming out", clear the doorway to allow immediate entry, and remove himself from further participation. The device will be properly held with the web of the hand firmly depressing the spoon against the body.

G. Prior to the deployment of the shotgun bean bag – and deployment of the Flashbang Grenade, Mr. Shand indicated that if the beanbag was fired, he would charge officers. Mr. Leonard Lancelot Shand was surrounded by officers and was communicating/conversating with them. And prior to the deployment of the shotgun bean bag – and deployment of the Flashbang Grenade, to tossing the Flashbang Grenade, according to the facts presented, the other officers – who had been communicating with Mr. Shand throughout, had no notice of when the

beanbag shotgun would be fired, and had no notice that a Flashbang Grenade would be deployed. They were not prepared with a plan that would have allowed a coordinated response to any action by Mr. Shand or any response to the deployments. There was no communication between the majority of officers – although the majority of officers communicated demand/commands to Mr. Shand. Given the nominal standard use of the Flashbang Grenade and based on the facts presented, in this instance, the decision to use the Flashbang Grenade against Mr. Leonard Lancelot Shand remains unclear. As well, given the nominal standard use of the Flashbang Grenade and based on the facts presented, in this instance, the decision to use the Flashbang Grenade without standard preliminary communications between officers and required precautions, could have placed officers’ safety at risk, including the safety of the officer who deployed the Flashbang Grenade.

H. The United States Court of Appeals for the Seventh Circuit indicated that the use of a Flashbang Grenade is reasonable only

- when there is a dangerous suspect; and
- **a dangerous entry point for the police; and**
- **when the police have checked to see if innocent individuals are around before deploying the device; and**
- when the police have visually inspected the area where the device will be used; and
- when the police carry a fire extinguisher.

The court noted:

We have previously indicated that the use of flash bang devices should be limited and is not appropriate in most cases. {Italics added} In *Molina v. Cooper*, 325 F.3d 963 (7th Cir. 2003, while we found that the officers’ use of flash bang devices during the execution of a “high risk” search warrant—which was obtained for Molina’s home on suspicion of drug activity—was reasonable because Molina had a criminal history that included aggravated assault, was alleged to be the head of a drug distribution organization, was associated with gangs, was home and had access to a stash of weapons, we expressly stated that “we in no way suggest that the use of flash bang devices is appropriate in every case (or even most cases).”

Id. at 966 n. 1, 973. In finding that the officers' deployment of flash bang devices was reasonable, we emphasized that the officers had a significant reason to be concerned about their personal safety and we expressly limited our holding to the circumstances presented in that case. See id. at 973. In *United States v. Folks*, 236 F.3d 384 (7th Cir. 2001), we discussed, in dicta, the potentially serious injuries that may arise from the use of a flash bang device during a search. We suggested that a sufficiently careful (or perhaps reasonable) use of a flash bang device occurs when officers take a moment to look inside a residence or a room to ensure that no one would be injured by the device before tossing it and where officers carry a fire extinguisher to quickly extinguish any fires resulting from deployment of the device. Id. at 388 n. 2. We also, in no uncertain terms, pointed out that the use of a flash bang device is justified when "potentially violent people [can] be found in [a] house," as opposed to individuals who pose no threat to the police or others. Id. at 388 n. 2 (emphasis added). We noted that if the government does not use discretion in when and how they use flash bang devices, [*18] they "may [] risk significant damage claims from the careless deployment of flash-bang devices." Id. In *United States v. Morris*, 349 F.3d 1009 (7th Cir. 2003), we explicitly stated that this Court has "often emphasized the dangerous nature of flash-bang devices and has cautioned that the use of such devices in close proximity to suspects may not be reasonable." Id. at 1012. (Emphasis added). We suggested, also in dicta, that the use of a flash bang grenade is reasonable only when there is a dangerous suspect and a dangerous entry point for the police, when the police have checked to see if innocent individuals are around before deploying the device, when the police have visually inspected the area where the device will be used and when the police carry a fire extinguisher. See id. at 1012 n. 1.

We also discussed the appropriateness of using flash bang devices in *United States v.*

Jones, 214 F.3d 836, 837-38 (7th Cir. 2000). In *Jones*, we were disturbed by the officers ['] use of flash bang devices and stated that while the district court found their conduct to be reasonable, we were less certain. Id. Specifically, we unambiguously stated that "police cannot automatically throw bombs into drug dealers' houses, even if the bomb goes by the euphemism 'flash-bang device,'" particularly where they do not believe the drug dealer [*19] is an unusually dangerous individual. Id. We found this to be true even though guns are normally used in the drug trade and even where a drug dealer has a prior weapons offense. Id. Lastly, while *Jones* was a criminal case that discussed the use of flash bangs in the context of suppressing evidence, we specifically stated that "[i]f this were a damages action seeking compensation for injury to the occupants or to the door, the claim would be a serious one." Id.

Other circuits have similarly considered the constitutional limits of using a flash bang device. See, e.g., *Boyd v. Benton County*, 374 F.3d 773, 777-79 (9th Cir. 2004) (use of flash bang device unconstitutional use of excessive force where

police deployed it without either looking or sounding a warning when there were innocent individuals in a room as well as suspected robbers).

In *Boyd v. Benton County, City of Corvallis et al*, the United States Court of Appeal for the 9th Circuit held that the use of a Flashbang Grenade while executing a warrant may constitute excessive force under the Fourth Amendment. The Court stated, "...given the inherently dangerous nature of the [flashbang] device, it cannot be a reasonable use of force under the Fourth Amendment to throw it 'blind' into a room occupied by innocent bystanders absent a strong governmental interest, careful consideration of alternatives and appropriate measures to reduce the risk of injury" (www.policeandsecuritynews.com).

I. On Thursday, September 26, 2019 at 10:20 AM, Sergeant Canela conducted an interview with [REDACTED]. [REDACTED] indicated that as [REDACTED] was standing at 6600 Belcrest Road, waiting at the bus stop, [REDACTED] heard an individual yelling to the right of where [REDACTED] was standing. Mr. Benson indicated that [REDACTED] looked up the hill, [REDACTED] could see this individual – later identified as Mr. Leonard Lancelot Shand - standing in traffic and waving his arms. [REDACTED] [REDACTED] noted that approximately one minute later [REDACTED] observed a "police car come down Belcrest Road, make a U-turn at the light to block the traffic." [REDACTED] indicated that the police officer exited his vehicle and ran up the hill. [REDACTED] indicated that [REDACTED] could see other officers responding. [REDACTED] indicated that as the officers responded, Mr. Leonard Lancelot Shand walked down the hill. The officers "followed him with their guns drawn and they were giving commands." [REDACTED] indicated the officers were telling Mr. Shand to stop at one point. [REDACTED] indicated that [REDACTED] couldn't hear all of the commands.

[REDACTED] indicated that there were other individuals and children near [REDACTED] and [REDACTED], [REDACTED] [REDACTED], instructed them to back up. [REDACTED] indicated that a female officer ran down the street in an attempt to clear everyone out of the way and asking bystanders to go into their

homes. [REDACTED] indicated that at that point Mr. Shand started to walk from the middle of the street, down the street past [REDACTED] location. [REDACTED] indicated that there were approximately ten officers, guns drawn, following him. [REDACTED] indicated that Mr. Shand was being really belligerent. [REDACTED] noted that [REDACTED] heard Mr. Shand say, "The police are going to kill me today." He said, "I have a YouTube channel." [REDACTED] indicated that Mr. Shand was talking about things that were going on in America.

[REDACTED] indicated that Mr. Shand walked down to the corner and was then out of [REDACTED] vision, where we couldn't see him. [REDACTED] indicated that [REDACTED], [REDACTED], could still see the officers. "We could just see the officers." [REDACTED] indicated that the officers continued to give commands. [REDACTED] [REDACTED] noted that Mr. Shand then walked back across towards building 6600. [REDACTED] indicated that at that point [REDACTED], [REDACTED], went inside the house. [REDACTED] indicated that from [REDACTED] house [REDACTED] watched as Mr. Shand walked back to the intersection. [REDACTED] indicated that [REDACTED] noted other people outside and proceeded to instruct them to get back.

[REDACTED] indicated that while Mr. Shand was standing in the intersection, he, Mr. Shand, continued yelling and at one point, he lifted his shirt up above his head. Mr. Shand continued to yell and hold his shirt up. [REDACTED] indicated that a couple of minutes later, "I believe it was a smoke grenade or smoke bomb went off. As soon as that was thrown and it went off, that's when it looked like he started to run towards the officers. That's when we heard the shots."

J. On Thursday, September 26, 2019 at 11:46 AM, Sergeant Canela, interviewed [REDACTED]. [REDACTED] indicated that as [REDACTED] was coming into work, [REDACTED] turned on to Belcrest from Adelphi and noticed that police had blocked off the street. [REDACTED] indicated he pulled onto the parking lot and parked his car. [REDACTED] indicated that [REDACTED] began to eat [REDACTED]

meal. ■ indicated ■ was getting out of the car shortly after 7:30 and ■ heard yelling and noticed “a lot” of movement from police. ■ indicated that ■ noted that the police officers had their guns drawn. They were located directly across the street from ■. ■ indicated that ■ noted a few other people in the parking lot. ■ indicated that a female police officer yelled to ■ and ■ coworker to get into the building or to get back into their vehicles. ■ indicated that ■ and ■ coworker rushed inside of the building.

Once in the building, eventually they went to a window where they could view police officers following Mr. Leonard Lancelot Shand “back and forth.” ■ indicated that the officers were giving commands, but Mr. Shand was not complying. According to ■, Mr. Shand had a knife in his hand and a cigarette in his mouth. ■ indicated that Mr. Shand kept walking towards the police. ■ indicated as Mr. Shand walked towards the police “they would back up but were trying to just circle him and follow him up and down the street...” ■ indicated that this went on for a while – “just back and forth went on for a while. Umm, a little while.”

■ indicated that Mr. Shand had a knife in his right hand. ■ indicated that Mr. Shand kept pulling up his shirt and walking towards the officers – ■ indicated that when he walked towards the officers – they – the police officers – backed up. ■ indicated that the officers were giving Mr. Shand time to comply with their commands. ■ indicated that Mr. Shand never complied.

■ indicated that later they heard “a barrage of gunshot and we dropped down to the floor.” They waited a while and then stood up and noted smoke and Mr. Shand laying in the street.

K. On Thursday September 26, 2019, Detective Bond interviewed Police Officer Shawn Murphy. Officer Murphy indicated that he responded to Belcrest Road and Toledo on September 26th because Hyattsville City Police requested additional officers for a subject armed with two knives in the middle of the intersection. Officer Murphy indicated that when he arrived on the scene, he blocked oncoming traffic from traveling down Belcrest. Officer Murphy indicated that he believes that he walked towards the area of the suspect and when he arrived, a Hyattsville City officer and two other officers were already at the scene surrounding the suspect - Mr. Leonard Lancelot Shand. Officer Shawn Murphy indicated that he walked, “all the way down the street, went around get out of the crossfire, draw - drew 40 my weapon and sat and watched and assisted.”

He indicated that there were approximately ten (10) officers total there. Officer Shawn Murphy indicated that initially there was a request for a less lethal shotgun, “which we didn't have.” He indicated that a less lethal shotgun was retrieved from Greenbelt. Officer Shawn Murphy indicated, “once the Greenbelt guy came down there with his less - less lethal shotgun, if I remember correctly once he started to, um, attempt to shoot the suspect with that, the suspect got irate and charged into the group - the mass group of officers that were already there and led to the shooting. I - I don't know who shot, but tons of them opened fire on him.”

Officer Shawn Murphy explained that prior to the deployment of the beanbag – commands and orders had been given for Mr. Shand to put the knives down. Officer Shawn Murphy explained that during the shooting of Mr. Shand – he – Officer Murphy – was hit with a ricochet round fired by one of the officers.

L. On Thursday, September 26, 2019 at 11:23 AM, Sergeant Adrian Blount interviewed Corporal Michael Gainey. Corporal Gainey indicated that on September 26, 2019 he responded to the area of Belcrest Road and Toledo Terrace to assist Hyattsville City with a subject who was armed. Corporal Gainey indicated that he was at the station when he heard over the police radio that the subject - Mr. Leonard Lancelot Shand – had been tasered. He indicated that there was a request for any other less lethal objects. Corporal Gainey indicated that upon hearing these radio communications and the requests, he responded to the scene.

Corporal Michael Gainey indicated that upon arriving on the scene he noted the subject – Mr. Shand – standing in the middle of the street with “two sharp objects in both hands talking to himself and yeah, I mean talking to himself like he was on drugs or something.” Corporal Gainey indicated that he didn’t know exactly what Mr. Shand was saying “but it was just something to the nature of like, ‘No y'all just y'all trying to kill me,’ and just stuff like that.” Corporal Gainey indicated that at that point, most of the officers had their weapons drawn and they were trying to talk the subject down – telling him that everything was going to be okay. Corporal Gainey indicated that a K9 dog arrived on the scene and the officers continued to try to get Mr. Shand to drop the weapons for at least ten (10) minutes but Mr. Shand refused.

Corporal Michael Gainey indicated at that point that he returned to his cruiser to contact his lieutenant. He indicated that while he was speaking to his lieutenant, he heard gunshots. He indicated that after the gunshots - officers were able to rush in and retrieve the sharp objects away from Mr. Shand. Corporal Gainey indicated that the sharp objects turned out to be knives. He indicated after getting the knives away from Mr. Shand – officers commenced CPR.

M. On Thursday, September 26, 2019, Sergeant Adrian Blount interviewed

Corporal Robert Hartman. Corporal Hartman indicated that he responded to the area of Belcrest Road and Toledo Terrace because,

“As I was coming into work this morning, I was on Route 1 South at East West Highway. I saw two county marked cars running priority from, um, you know, towards direct on East West headed towards the mall. Um, and we were split this morning, so I didn't really know what was going on. I thought they were going to an 86 or something like that. I kind of ignored that. Then I saw sergeant's SUV going from - coming from Route 1, um, made the lemon East West going towards that way too. So, I'm like, 'Let me jump behind him see what's going on.' So, I'm trying to figure out what channel they're on, what's going on, put my vest on, get out there. Um, near the mall I make a left. I'm not super familiar with A Sector, but it's the left just prior to, um, Belcrest, um, on East West. Come down there and then cut through one the side streets. Come out, still trying to figure out what's going on. A lot of commotion down the hill from where I am, that's the intersection where the incident happened Belcrest and, uh, Toledo. So, start making my way down there. Um, realized that there's a mix of Hyattsville City and County officers down there. Um, there's a man number one male, um, standing in the intersection shouting...”

Corporal Hartman indicated that the subject, Mr. Shand, is yelling but he cannot discern what he is saying. Corporal Hartman indicated that Mr. Shand had two knives – one in each hand. He indicated that the officers were giving loud commands, telling Mr. Shand to drop the knives and to get on the ground. Corporal Hartman also indicated that Hyattsville City officers were trying to contain the situation and to keep citizens away.

Corporal Robert Hartman indicated that at some point, “the Hyattsville City officers comes up with a less lethal bean bag shotgun.” Hartman indicates the officers give more verbal commands. Corporal Hartman indicated that he – Hartman – turned around to check his bearings, as pedestrians were walking up. He indicated as he turned back to the scene, he saw the suspect – Mr. Shand – running towards the group of officers. Corporal Hartman indicated that it looked like a Hyattsville City discharged a less lethal shotgun first, the bean bag gun, and then

simultaneously, Mr. Shand charged. Corporal Hartman indicated that then, shots were fired. He indicated that after Mr. Shand was down – officers rendered aid.

N. On Thursday September 26, 2019, Sergeant Adrian Blount interviewed Corporal Tulio Quevedo of the Hyattsville City Police department. Corporal Quevedo indicated that on the morning of September 26, 2019 he was getting ready and cleaning out his cruiser when he heard the radio call indicating a second sighting of a subject that assaulted a Starbucks employee. He indicated that Starbucks is located at the intersection of Belcrest Road and East-West Highway. He indicated that he believed that the second sighting was from the manager of the store. He indicated that it was his understanding that the subject - Mr. Leonard Lancelot Shand - walked into the store a few days earlier and struck an employee with a pole. Corporal Quevedo indicated that he believed that it was a first-degree assault incident and thus he proceeded to get the subject identified.

Corporal Tulio Quevedo indicated that while in route to the Starbucks he believes that the first officer who called out on scene in the area looking for the subject was Officer Evans. Corporal Quevedo indicated that while in route, he heard a police radio transmission - that was broken up – indicating that the subject was heading down Belcrest and that he had a knife. Corporal Tulio Quevedo indicated that he - Corporal Quevedo - stopped at Adelphi and Toledo Road and got my (canine) partner prepared. “He wasn't dressed yet, put a harness on him, getting my lead ready. I then came into the area.” Corporal Quevedo indicated that once in the area an officer advised that the subject - Mr. Leonard Lancelot Shand - was on Belcrest headed towards Toledo. He also heard that a taser was deployed and that the taser was ineffective.

Corporal Tulio Quevedo indicated that once he arrived on the scene, he blocked the intersection of Toledo Road and Belcrest Road. "I then grabbed my partner from the back and put him on a short lead." Corporal Quevedo indicated that he immediately observed the subject and noted that he was carrying a knife in his hand. Corporal Quevedo indicated that other officers were covering down on Mr. Shand. Corporal Quevedo indicated that he believed that lethal and less lethal force were displayed by the other officers. He indicated that he was more focused on his canine partner. Corporal Quevedo stated that as soon as he exited his cruiser, "I engaged with the suspect." He indicated that he communicated to the subject - Mr. Leonard Lancelot Shand - "I have a dog. I will release the dog if you don't drop the knife..." I then proceeded forward. He looked at me and he said something to the effect of, "Go ahead, send him. Go ahead and send him."

Corporal Tulio Quevedo indicated that Mr. Shand stopped in the intersection and "Um, he, the subject, then maybe threw his hat on the ground." He indicated that Mr. Shand still had a knife in his hand. Corporal Quevedo indicated that Mr. Shand was yelling and that there were officers yelling and giving commands. Corporal Quevedo indicated that he and other officers were continuously commanding that Mr. Shand put the knives down. Corporal Quevedo indicated that they said to Mr. Shand, "Let's not do this... drop the knife. We want to talk to you.... What can I do or say to make this - make this easier for all of us?"

Corporal Quevedo indicated that Mr. Shand continued to yell and scream. He indicated that at one point in the confrontation, Mr. Shand was in the middle of the intersection gesturing and lifting his shirt up, pointing to scars on his stomach and abdomen, saying that he was involved in an assault with a police officer and said it was in New Carrollton. Corporal Quevedo

indicated that he – Quevedo – and some of the other officers asked if they could talk to him about the situation in New Carrolton. Corporal Quevedo indicated that we advised Mr. Shand that in order to talk about the situation he needed to put the knife down. Corporal Quevedo indicated that they advised Mr. Shand that there were people around – there were children going to school.

Corporal Tulio Quevedo indicated that Mr. Shand continued to linger in the intersection. Corporal Quevedo noted that at some point Mr. Shand pulled out a dollar bill or something and put it in his hat. Corporal Quevedo indicated that Mr. Shand commented something to the effect, “You're going to have to kill me here. You're going to have to kill me here. This is my place. You're going to have to kill me here.”

Corporal Tulio Quevedo indicated that Mr. Shand proceeded to walk down Belcrest Road towards Toledo Terrace, up Toledo Terrace. Corporal Quevedo indicated that one of the other officers suggested that we do a vehicle takedown or a barricade. A mild vehicle takedown was attempted and unsuccessful. Believing that the vehicle takedown might make the situation dangerous, I said, "Let's cancel that. Cancel that."

Corporal Tulio Quevedo indicated that the officers then followed the subject – Mr. Shand - into the Towers Apartment, Belcrest Towers Apartment. Corporal Quevedo indicated that Mr. Shand proceeded through a set of cars and through the apartment complex. Officers continued to follow him and continued to give commands – telling/commanding/requesting Mr. Shand to put the knife down. Mr. Shand continued from that apartment complex and crossed over Toledo Terrace into the Belcrest Plaza Apartments. Corporal Quevedo indicated that he noticed that people – civilians - were starting to come out of their apartments. Corporal Quevedo indicated

this was in area where children are going to school. He indicated that there was/is a high school in close proximity. He indicated that officers were asking people to return inside. He indicated that he yelled to people to back into their apartments.

Corporal Tulio Quevedo stated that the officers continued to follow Mr. Shand and continued to give commands. He indicated that they ended back in the middle of the intersection of Belcrest and Toledo Road. "At this point in time the subject has continued to linger in the area stating the same thing, pulling his shirt up, gesturing to his stomach and his abdomen that, um, he was assaulted by an officer, New Carrollton officer."

Corporal Tulio Quevedo indicated that they communicated to Mr. Shand that they wanted to know what was going on with Mr. Shand. They indicated that they wanted to know what happened. The officers requested that Mr. Shand talk to them about the incident so that they could understand. They requested that Mr. Shand drop the knife and talk.

Corporal Tulio Quevedo indicated that Mr. Shand displayed a second knife, "I don't know if it was at this exact moment but he - he displayed a second knife. So, at this point in time he had two knives in his hands, um, same thing." Corporal Quevedo indicated that they continued to communicate with Mr. Shand saying something to the effect of, "Hey, man do you like cigarettes? Do you want to smoke a cigarette? Would you like to smoke a cigarette?" Corporal Quevedo indicated that Mr. Shand went to his pocket and retrieved his own cigarette and lit it while holding the two knives.

Corporal Tulio Quevedo indicated that he heard over the radio that someone was bringing a less lethal beanbag shotgun round and a shield. "So, we - we continued to contain the subject in that area." Corporal Quevedo indicated that the shotgun operator arrived on scene. He indicated

that everyone was still giving commands to Mr. Shand. Mr. Shand still had the knives displayed. Corporal Quevedo indicated that he was posted up with the canine. He indicated that because of all the traffic and everybody moving around, and all of the moving parts, the canine was spinning. Corporal Quevedo noted, "I was more focused on what the canine was doing. I didn't want another officer to get bit by the canine, then we would have another situation."

Corporal Tulio Quevedo indicated, "So, as I am looking at the subject, I'm looking at the dog, looking at the subject, looking at the dog. I did - I noticed the - the subject - when the shotgun operator came out, the subject made a statement something to the effect of, 'Go ahead. Go ahead, shoot me with that. Watch what happens' or 'I'm gonna - I'm gonna rush you' or something like that. Something to that effect."

Corporal Tulio Quevedo indicated that the officers continued to give commands. Mr. Shand would not comply. Corporal Quevedo indicated that he heard – he believed was the shotgun beanbag round go off:

"As the beanbag round went off, I looked to my side and I see the range - the orange shotgun and then as I looked back, it almost looked like the subject was - he was stunned by it but he - he almost I guess aggressively continued towards the officer, towards the line that we had, um, and then I don't even remember noted - I don't even remember the subject going down. I remember looking down at the dog to see what the dog was doing. And then I heard some booming and then the subject went down to the ground. As he was on the ground, we were - we deployed an arrest team. Somebody said, 'He still has the knife. He still has the knife.' So, I approached with the canine to make sure he wasn't going to try to encounter anyone. We were able to get him detained. As soon as he was detained, I ran back to the car, put the canine up..."

Corporal Tulio Quevedo said, "I seen red while I was there, so I knew the subject was injured." According to Quevedo, he grabbed his medical kit and returned back to the scene where officers were already there trying to render care to Mr. Shand. Corporal Quevedo

indicated that he assisted with rendering medical care to Mr. Shand – “handing all my equipment out” and rendering care to the back part of Mr. Shand’s wounds.

O. Any use of force must be reasonable and no more than necessary to affect a lawful purpose. In this matter, police had probable cause to approach and arrest Mr. Leonard Lancelot Shand. Witness [REDACTED] explains and describes - from a citizen/witness/victim point of view - the events leading up to the police contact with Mr. Shand on September 26, 2019.

Almost every witness indicated that Mr. Shand created a clear and present danger to the lives of officers at different points during their engagement with him. In some cases, officers demonstrated professional, expected and yet remarkable restraint, as it was clear that they were in imminent danger and fear of serious bodily injury or possibly death. Dispatch calls and conversations indicate an effort to bring non-lethal technology to the situation. Cell phone video and witness conversations indicate that witnesses believed that Mr. Shand was a danger to officers and was placing himself and others in danger. Some witnesses and officers discussed the concern about civilian citizens – a school bus and children in the area. After Mr. Leonard Lancelot Shand was down and injured, officers immediately administered medical care until the arrival of the paramedics.

P. It must be noted that the deployment of the Flashbang Grenade was inconsistent with the purpose of said device. The combination of the firing of the less than lethal shotgun beanbag and then the Flashbang Grenade - may have hastened Mr. Shand’s charge towards officers. Mr. Shand had indicated that he would charge if the beanbag shotgun were fired.

Q. The use of the Flashbang Grenade was inconsistent with tactics and techniques that the officers were employing at the time – maintaining distance – communicating with Mr. Shand – giving commands/demands – strategically blocking off the streets and keeping citizens out of the area in preparation for extended engagement. The Flashbang Grenade gave the officers no advantage. Officers were not going to charge Mr. Leonard Lancelot Shand and thus did not require a distraction. This was not a raid on a building or residence.

R. All of the maneuvers and actions that officers took prior to the combination of deployment of the less than lethal bean bag in combination with the Flashbang Grenade - were designed to de-escalate, mitigate, and protect. Although, the impact and effect of so many officers communicating at one time – yelling to a confused and agitated subject – Mr. Shand – was not proper technique or a very effective tactic. There needed to be a lead communicator to and for Mr. Shand and to officers from the various departments. Instructions needed to be consistent and uniformed. Despite the chaotic communications – most officers demonstrated a patience that denoted an acknowledgement that time was on their side; that they had the numbers, weaponry, and advantage. However, the combination of the firing of the beanbag and the Flashbang Grenade deployment led to the exact opposite action/reaction. It was an aggressive action that condensed time and may have instigated or hurried the actions by Mr. Leonard Lancelot Shand. The Flashbang Grenade may have also disoriented officers and upon seeing Mr. Shand charge – created a scenario where most of the officers responded by discharging their weapons – to defend life – but also because of the heightened and disorienting environment enhanced by said beanbag Flashbang Grenade combination – timing – that appears to have come without planning – signal or notification to any of the officers. Corporal Tulio Quevedo noted,

“As the beanbag round went off, I looked to my side and I see the range - the orange shotgun and then as I looked back, it almost looked like the subject was - *he was stunned by it but he - he almost I guess aggressively continued towards* {Italics added} the officer, towards the line that we had, um, and then I don't even remember noted - I don't even remember the subject going down.”

S. Clearly the officers were not or were inadequately advised and seemingly, were shocked or/and disoriented themselves from the deployment of the Flashbang Grenade, and after the deployment of the beanbag shotgun. In such a situation, even the response from the officers is unpredictable. This might explain why so many officers fired simultaneously. Some of the officers that fired were not in the direct path of Mr. Shand.

T. Based on the facts presented, apparently, a Mental Health Mobile Crisis Team was not radioed by officers present, nor was a Mobile Crisis Team contacted and directed to the scene by police dispatch operations.

Minimally, Prince George's County Police Department and surrounding Municipal Police Departments have at their disposal, Prince George's County Crisis Services through the Santé Group. According to its website, the Prince George's County Crisis Services operates a Mobile Crisis Team led by a Mental Health Professional. Its Mobile Crisis Team can be dispatched by 911/law enforcement radio or operations center; operates seven days a week between 10:00 a.m. and 1:00 a.m.; can be dispatched to aid suicidal and *mentally ill individuals; assist in situational crisis events*; emergency petitions; and other acute situations. All officers in Prince George's County need to be aware of this (<https://www.thesantegroup.org/prince-georges-county-crisis>).

U. The intervention of the Mobile Crises Team (MCT) and its experts may have allowed for further de-escalation or at the very least – from a safe distance – the Mobile Crises Unit members could have advised of the likely action/reaction of the deployment of the shotgun beanbag in combination with the Flashbang Grenade at this point of engagement.

Also, again, Corporal Hartman and others indicated that at some point, ten to twelve officers were yelling commands at Mr. Shand. For an individual already agitated and possibly suffering mental health issues, this creates more chaos and confusion. Mr. Shand's perception may have been that he was cornered and as indicated by some of his communications – he seemed to fear a reoccurrence of his confrontation with a police officer in New Carrollton. In situations such as the engagement with Mr. Shand, the commands/demands and response must be coordinated with a lead officer/ agency – negotiator. The Mobile Crises Unit may be able to serve – from a safe distance in an advisory capacity – to advise on and direct communications with a troubled suspect/subject.

IV. EXPERT OPINION

Based on stated facts contained in statements, video and audio recording and other documents in the matter involving Mr. Leonard Lancelot Shand on Thursday, September 26, 2019:

A. The shooting of Mr. Leonard Lancelot Shand was objectively reasonable and consistent with accepted standards of police practices, policies, and training.

B. Before using lethal force, the officers attempted de-escalation measures, and deployed a number of non-lethal weapons to stop, take control of, and seize Mr. Shand. They gave reasonable commands, constantly communicated with him, and attempted to reason with him. The officers backed away from Mr. Shand when Mr. Shand moved toward them brandishing knives in an aggressive, threatening manner. The Officers attempted a vehicle takedown. The Officers also attempted to temporarily incapacitate Mr. Shand by using a taser.

C. The number of shots/rounds fired towards Mr. Shand is to be evaluated and may have been impacted by the deployment of a Flashbang Grenade - inconsistent with its purpose, best practices, routine practices, and appropriate training. However, the deployment of the Flashbang Grenade had no impact on the finding that the shooting of Mr. Leonard Lancelot Shand was objectively reasonable, and consistent with accepted standards of police practices, policies, and training.

D. The use of the Flashbang Grenade, in this instance, was deployed not consistent with the standard use of the particular munition. In evaluating its use during this instance, agencies should consider the following:

1. The use of the Flashbang Grenade seemed spontaneous, unplanned, and uncoordinated between the officers. Officers were not informed or were inadequately informed that the Flashbang Grenade was going to be used, therefore increasing risk to officer safety.

2. The Flashbang Grenade was “tossed” immediately after the use of the beanbag. The assailant, Mr. Shand, was apparently in an agitated, confused, and unstable mental state. According to statements, Mr. Shand informed officers that if they used the shotgun beanbag against him, he would attack them. Ignoring his threat, an officer deployed the beanbag at Mr. Shand. As he forewarned, Mr. Shand began movement towards the officers, and it appears – simultaneously or very shortly thereafter, the Flashbang Grenade was deployed. While Mr. Shand undoubtedly posed a threat, the logic and purpose for deploying the Flashbang Grenade is unclear – and it clearly did not produce a positive outcome. The deployment only heightened and exacerbated the hostile encounter between Mr. Shand and the officers.

3. In the manner that it was used, the Flashbang Grenade may have disoriented, confused, and stunned officers who were ill prepared for its use; and or temporarily

obscured their senses. However, the deployment of the Flashbang Grenade had no impact on the finding that the shooting of Mr. Leonard Lancelot Shand was objectively reasonable, and consistent with accepted standards of police practices, policies, and training. The deployment of deadly force by officers was justified as their lives or the lives of other officers were in imminent threat of death or serious bodily harm.

E. In reference to accepted standards of police officer training and policies regarding the definition of an imminent threat, Federal Bureau of Investigation (FBI) retired Supervisory Special Agent John C. Hall, a nationally recognized authority and published author in police use of force, wrote an article in April 1996 in *The FBI Law Enforcement Bulletin*, that outlined the Department of Justice's lethal force policy. In said article he notes:

Imminent Danger: 'Imminent' does not mean 'immediate' or 'instantaneous,' but that an action is pending. Thus, a subject may pose an imminent danger even if he is not at that very moment pointing a weapon at the agent. For example, imminent danger may exist if agents have probable cause to believe any of the following:

- a. The subject possesses a weapon, or is attempting to gain access to a weapon, under circumstances indicating an intention to use it against the agents or others; or,

Hall also noted:

Time constraints: The inherent disadvantages posed by the issue of action/reaction, coupled with the lack of a reliable means of causing an instantaneous halt to a threatening action, impose significant constraints on the time-frame in which agents must assess the nature and imminence of a threat. (John C. Hall, "FBI Training on the New Federal Deadly Force Policy," *FBI Law Enforcement Bulletin*, Volume 38, Issue No. 4 (April 1996) Pages: 25-32.)

F. The courts have noted that The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness"

of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. . . The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Fourth Amendment. The calculus of reasonableness must embody allowance for 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. (Citations Omitted)

G. The term reasonable objectiveness takes into consideration training and experience. The reasonable objectiveness of a trained officer would be different than the reasonable objectiveness of an untrained citizen. Training academies, training, and experience impacts standards of objectiveness.

H. A statement indicating that an officer simply feared for his life and the lives of others at the time of a particular use of force does not, in and of itself, denote reasonable objectiveness. Again, what he or she should have known via training, supervision, experience, etc. is taken into the evaluation and situation. The reasonable objectiveness requirement is not simply – as it has been all too often used - a statement of fear.

In the case involving Mr. Leonard Lancelot Shand it is this expert's opinion that the reasonable objectiveness standard was met, and the shooting of Mr. Leonard Lancelot Shand was justifiable. Mr. Shand charged towards officers with two knives. The officers' lives were in

imminent danger. Given these facts and circumstances, the officers were justified in deploying deadly force.

I reserve the right to amend my opinions as expressed in this report when or if further facts, materials, reports, and/or any other evidence is submitted/presented for my review.

V. RECOMMENDATIONS

A. The use of a Flashbang Grenade in this matter seemed to serve no purpose. In fact, it most probably – in combination with the firing of the shotgun beanbag - enhanced Mr. Leonard Lancelot Shand agitation; and likely to have impacted other officers. If flash bangs are to be used extensive training must be conducted.

In *City of Canton, Ohio v. Harris*, the United States Supreme Court stated, “Failure to train may be fairly said to represent a policy for which a municipality is responsible and for which it may be held liable where injury results, if in light of the duties assigned to specific officers, the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the municipality can reasonably said to have been deliberately indifferent.”

Lieutenant Colonel (Ret.) Mike Wood, an NRA Law Enforcement Division-certified Firearms Instructor and the author of [Newhall Shooting: A Tactical Analysis](#), notes Diversionary devices, often referred to as flashbangs, are a critical tool for law enforcement. When used properly, they can save lives, including the lives of criminals. However, if used without proper training and precautions, they can injure and kill (<https://www.police1.com/columnists/mike-wood>).

When using a Flashbang Grenade, a pre-event plan is necessary. Other officers must be aware and warned of the imminent deployment of a Flashbang Grenade. There awareness in this matter may have allowed officers to create more distance and reasonably expect a “disoriented” reaction from Mr. Leonard Lancelot Shand. Again, if Flashbang Grenades are to be used then extensive training must be conducted.

B. Joint training between all police agencies/departments in Prince George’s County to facilitate a coordinated response to incidents that might involve multiple agencies. Corporal Hartman and others indicated that at some point ten to twelve officers were yelling commands at Mr. Shand. For an individual already agitated, feeling cornered, and possibly suffering mental health issues, this creates more chaos and confusion. In situations such as the engagement with Mr. Shand, the commands/demands and response must be well coordinated with a lead officer/agency – negotiator.

C. Establish a Prince George’s County Public Safety Fusion Center where cases from various county police agencies are reviewed for coordination, consistency in response, consistency in training and interdepartmental communication. A representative from the State’s Attorney Office should be included along with any state and federal partners.

D. Review of policies for deploying less-lethal technology (flashbangs, wrap systems etc.).

E. Conduct annual aggregate reviews of less lethal technology deployments to determine appropriateness, volume, civil judgments etc.

F. Enhance the agency Judgmental Training scenarios that feature situations involving mental deficiencies and trauma (simulators).

- G. Review, redeploy, or enhance the Mobile Crisis Team (MCT).

The Treatment Advocacy Center has indicated that people with untreated mental illness are 16 times more likely to be killed during a police encounter than other civilians approached or stopped by law enforcement.

According to the Treatment Advocacy Center individuals with untreated severe mental illness are involved in at least 1 in 4 and as many as half of all fatal police shootings, the study reports. Because of this prevalence, reducing encounters between on-duty law enforcement and individuals with the most severe psychiatric diseases may represent the single most immediate, practical strategy for reducing fatal police shootings in the United States.

According to researchers “It should horrify but not surprise us that people with untreated mental illness are overrepresented in deadly encounters with law enforcement.... Individuals with untreated mental illness are vastly overrepresented in every corner of the criminal justice system. Until we reform the public policies that have abandoned them there, these tragic outcomes will continue.”

If a robust dedicated – appropriately staffed – readily available MCT one does not exist - seek grant funding or redirect funds to establish an MCT. In Baltimore County such a robust Team and plan has been established.

“The Baltimore County Crisis Response System (BCCRS), which has been awarded the National Association of Counties Award for innovative police services, is a collaborative program between the Baltimore County Police Department, the Baltimore County Health Department and Affiliated Sante Group. The cooperative partnership is designed to provide comprehensive crisis intervention services to persons in a mental health crisis. The program, which became operational in July 2001, consists of a telephone hotline (410-931-2214), Home Intervention Team, Urgent Care Clinic, Critical Incident Stress Management and Mobile Crisis Team. The Mobile Crisis Team pairs a mental health clinician with a police officer to provide emergency police response to persons in need of crisis intervention. This team responds to calls throughout Baltimore County.

System Goals:

- Create a partnership with the mental health and police systems,
- Develop an accessible, coordinated, and comprehensive system of psychiatric emergency services;
- Fill service gaps identified in the emergency system;
- Appropriately divert persons who have mental illness from the 911 emergency system and hospital emergency departments;

- Link frequent mental health consumers to the mental health system;
 - Reduce police time on calls associated with mental health consumers;
 - Increase disposition and treatment options for police officers responding to crisis calls;
 - Increase overall treatment satisfaction for mental health consumers.
- System Components
- 24-hour Operations Center that is staffed by mental health professionals to conduct telephonic assessments, triage, information/referral, and suicide prevention/intervention.
 - In-Home Intervention Teams (IHIT) - This team is comprised of mental health clinicians, with police back up when necessary, to stabilize a crisis, decrease the risk for unnecessary hospitalization and refer persons in crisis to the appropriate resources.
 - Urgent Care Clinic - Urgent appointments are appropriate for individuals who would benefit from an emergency, one-time assessment by a licensed therapist or psychiatrist. Appointments are available during evenings and weekends when traditional outpatient mental health services are unavailable.
 - Critical Incident Stress Management Team staffed by trained members of Baltimore County Crisis Response System (BCCRS) who can, when needed, partner with specially trained members of the Baltimore County Police Department.
 - Mobile Crisis Teams (MCT) - Police officers and master's level licensed clinicians are paired together in an unmarked police car and wear plain clothes (khaki pants, black polo shirts). The team is available from 10:00 am to 1:00 am, seven days per week and serves every Baltimore County citizen. The mobile crisis team provides on-site, immediate response to a person in crisis. They conduct a mental health assessment; provide crisis resolution, family education, information, and linkage for individuals in need. The mobile crisis team receives calls through 911 as well as the operations center hotline. The teams handle approximately 200 calls per month.”
(https://www.baltimorecountymd.gov/Agencies/police/workplace_violence/wvmo_bilecrisisteam.html - accessed 06/25/2019).

There appears to be such a team in Prince George's County. All officers and dispatchers must be aware of such teams and consider employing such a team in similar situations such as the matter involving Mr. Leonard Lancelot Shand.

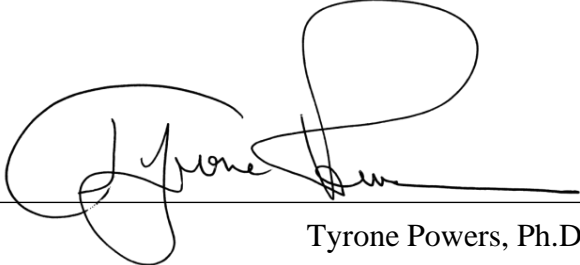
H. Conduct a “Call for Service” (CFS) Analysis to determine the beneficial times to deploy the MCT.

I. Establish and maintain joint Judgmental Training Opportunities for MCT members and Police personnel that feature scenarios that involve mental deficiencies and trauma.

J. Supply/require Body cameras for all officers in all policing agencies in Prince George's County.

K. Consistently use and analyze body camera footage to enhance in-service and recruit level training for contemporary situations involving mental illness.

L. Expand and provide greater detail in the Police Department's Executive Summary or rename the Executive Summary to reflect that it is a very preliminary report. This will allow for a more comprehensive and meticulous review, and presentation by the State's Attorney office and other authorized individuals before it is published. Although it is an internal report, if and when made available to the public, it could be construed as conclusionary in nature.



Tyrone Powers, Ph.D.