

DISTRICT ATTORNEY'S FINDINGS AND CONCLUSIONS
REGARDING THE POLICE SHOOTING DEATH OF
MALCOLM GRACIA IN NEW BEDFORD ON MAY 17, 2012

BACKGROUND

On Thursday, May 17, 2012 at approximately 8:30 p.m., a New Bedford Police Department detective assigned to the New Bedford Police Department gang unit approached Malcolm Gracia and Gracia's companion as they were walking northbound on Cedar Street, an area which has been harmed by violence and gang activity. The detective wanted to "meet and greet" the two young men, which is gang unit parlance for an encounter with unknown individuals to determine their identities and activities in the area. Detectives engage in these types of encounters frequently each day and they are designed to keep the detectives aware of who is in the area and give them early warning if gang-related problems are developing. Three other detectives assigned to the gang unit were nearby. Detective Tyson Barnes, the second detective at the location, was a short distance toward the south. The two remaining detectives were getting out of their cruiser, parked to the south of Detective Barnes's location. The brief encounter with the two young men quickly turned deadly when Gracia repeatedly stabbed Detective Barnes and moved on towards a third detective while he was still armed. After repeatedly ordering Gracia to get down and drop his knife, and after an attempt to subdue Gracia by non-lethal means through the use of a Taser device, two detectives at the scene shot and killed Malcolm Gracia.

An investigation by the Massachusetts State Police and the District Attorney's office, pursuant to the obligations of MGL ch. 38, sec. 4, followed. The New Bedford Police Department likewise conducted their own independent investigation. The findings and conclusions of that review were made separate and apart from the District Attorney's investigation. The findings and conclusions of that review were not provided to the District Attorney.

An autopsy was performed on Gracia by the Office of the Chief Medical Examiner. At autopsy, the medical examiner determined that the cause of Gracia's death were gunshot wounds.

THE INVESTIGATION

New Bedford Police and Massachusetts State Police immediately responded to the area of Cedar Street on the first reports of the incident. Even though the first responding officers arrived at the location within seconds, a crowd was already forming at the site. The first responding officers established a secure perimeter and, as investigators arrived, they quickly began to interview

people in the area. From all of these interviews, investigators could only find two non-police witnesses to the incident.¹ One of these people was Malcolm Gracia's friend and companion on May 17, 2012 (hereinafter referred to as the Companion). The other person was a man standing outside of an apartment at 69-75 Cedar Street (herein after referred to as the Cedar Street witness).

In the course of this investigation, the Massachusetts State Police interviewed the two civilian witnesses who are known to have witnessed the incident, all of the involved police officers, including the four gang unit detectives and the gang unit supervisor. All of the interviews of the police and eyewitnesses were recorded. Investigators received some additional information from other individuals who declined to submit to formal interviews. Investigators also consulted with the office of the Chief Medical Examiner, and the Department of Mental Health. The District Attorney and members of his staff met on two separate occasions with community-based leaders who raised their concerns about the incident.

In addition to the taking of witness statements and expert consultations, investigators conducted a physical examination of the scene, and took custody of physical evidence which was present there, including the knife used to assault the detectives and an additional knife located a short distance away. Screening tests were also performed on items of clothing of Mr. Gracia's companion. Surveillance video of Temple Landing was preserved. This surveillance footage includes the area of Magnet Park which was actively being viewed by detectives prior to the incident as well as digital video from Temple Landing's sixteen recorded security cameras. None of the recorded video includes the area of the incident on Cedar Street, because that area was not covered by video surveillance on May 17, 2012. A personal computer used by Gracia and his companion was recovered and images were copied. Investigators recovered information from Facebook postings made prior to the incident.

The investigation results are drawn from the sources listed above. Every effort has been made to expedite the conclusion of this investigation which involves issues of serious community concern. Statements made by some of the witnesses during interviews sometimes conflict with statements of other witnesses or with the physical evidence. Where this occurs, efforts have been made to point out what other evidence exists to help resolve the conflict in recollected facts.

MALCOLM GRACIA

Malcolm Gracia was born on December 9, 1996. He was fifteen years old at the time of his death. According to the information provided to investigators, in the weeks before he died

¹ In the days following May 17, 2012, newspaper articles reported statements by persons, other than the two non-police witnesses, indicating that they witnessed the incident. In some cases, investigators had already spoken with these individuals and had been informed by them that they were not present; in other cases investigators were able to confirm through people who had been with the purported eyewitness that the person had not been at Cedar Street; in other cases the person simply refused to meet with investigators to provide a statement. Notwithstanding repeated calls by investigators, the District Attorney, and the Mayor of the City of New Bedford for any eyewitness to come forward, no *additional* eyewitnesses have been identified and interviewed.

Malcolm Gracia had been living on his own, having run away from his family. His mother was no longer his custodian as she suffered from a mental condition which prevented her from parenting him. He sometimes stayed with the young man that was his companion on May 17, 2012, but would not confide in his friend where he was living when he was not staying at the friend's house. When pressed by his companion he responded simply, but cryptically, saying only that he had a spot. According to Gracia's guardian, who spoke briefly with the police but has declined to be further reinterviewed, Gracia ran away from home on May 7, 2012. No report that Gracia had run away from home was made to the police. However, investigators could not locate any adult who claimed to have been in supervision of Gracia in the days and weeks leading up to this incident.

Malcolm Gracia did not have contact with his biological father but the impact upon him of his father's death appears to be significant. On August 11, 2009, Gracia's father, Joseph Ramos, was killed by a single gunshot when he attacked two Dartmouth Police officers with a homemade weapon. The District Attorney's investigation into that shooting revealed that Ramos suffered from a long history of mental illness. The Dartmouth police came into contact with him when neighbors, concerned about his incoherent actions, called for emergency assistance and the two Dartmouth officers arrived.

According to Gracia's companion, Gracia spoke about his father's death and confided to him that he blamed the police for the death. Gracia told him that "his father got killed by the police and that's why he hated them." Gracia told his companion and others that he (Gracia) had sold his soul to the devil and was going to go out of this life in a way that made him famous. Other people who knew Gracia, described that Gracia had problems with his mental health and stated that Gracia claimed to have made a pact with the devil. Gracia told an acquaintance that not only was he not afraid to die, but he would die and come back and haunt people. This acquaintance thought that Gracia was suicidal. In February, 2011, during a contentious conversation with a police officer at school, Gracia threatened to kill the police officer, stating that he would put three bullets into the officer.

Gracia had a history of absenting himself from the home. In 2010 he was reported as a runaway after he had been gone from the house for two days. Three days later the New Bedford Chief of Police Ronald Teachman found him on Kempton Street and had him taken into custody on a court warrant as a runaway.

Like both of his parents, Gracia also experienced mental health problems. He confided to his companion that he had been recently admitted to an inpatient mental-health facility. This investigation showed that on April 12, 2012 Gracia was taken into custody on a warrant and brought in for medical care. This information is consistent with the information provided to investigators by other sources. It is also consistent with prescription pill bottles recovered from the house of Gracia's guardian. The recovered prescription pill bottles showed that Gracia had been prescribed both anti-depressant and anti-psychotic medications which he, evidently, stopped taking approximately nine days before May 17, 2012. Of particular note was the dosage of anti-psychotic medications prescribed to Gracia which directed him to take 60 mg. per day, only 4 mg. less than the maximum allowable dosage for adults.

Gracia's guardian told police that Gracia was being treated for "psych" issues, but she did not know what they were. She said that when he ran away from home on May 7th, he did not take his psych medications with him. Investigators also learned from Gracia's family that they felt that he may be unstable when he was not taking his medications. Gracia's companion reported that Gracia was schizophrenic and heard voices. Gracia frequently and obsessively spoke about secret groups, whom he referred to as Illuminati, who controlled the world through a conspiracy. Gracia was described as forcing conversations about this topic. Gracia's belief that the Illuminati controlled the world was a central and important aspect of his daily life. According to his companion, Gracia frequented the Internet looking for information on the Illuminati. A search on Illuminati on the Internet shows posts that attribute plans to take over the world by force, responsibility for the September 11th attacks and various other irrational conspiratorial theories to this group.

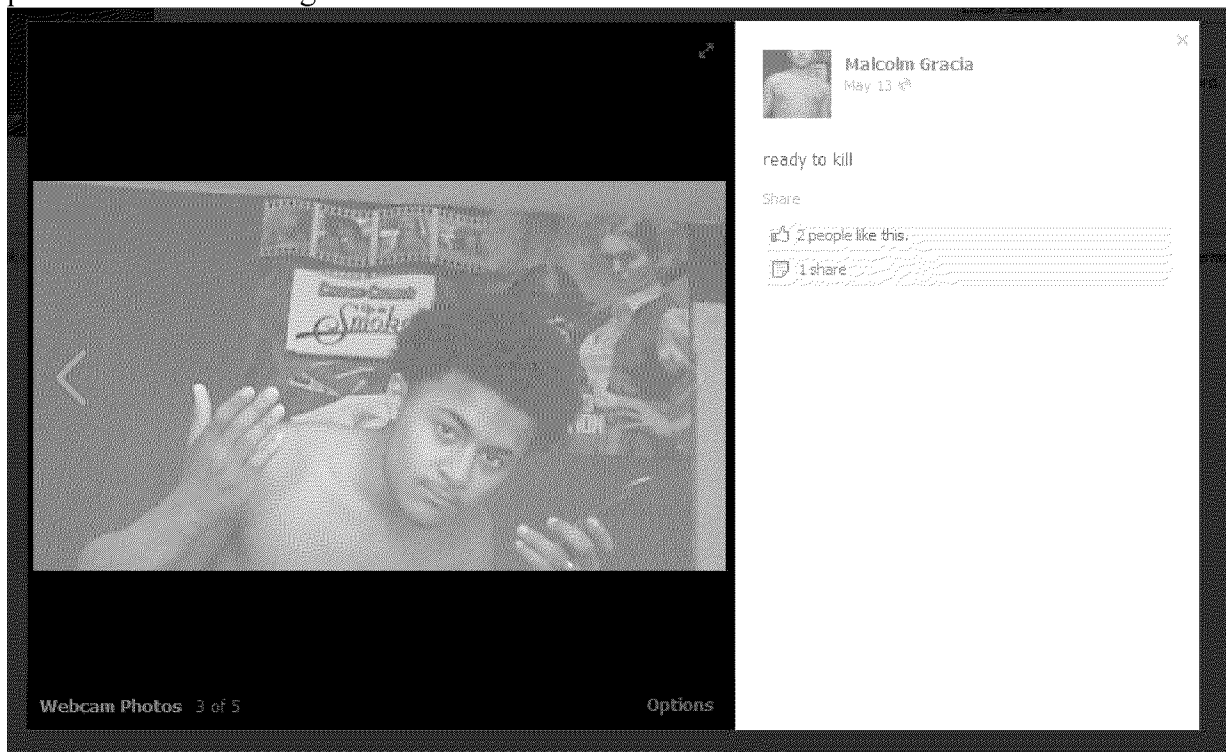
Gracia's companion also told investigators that in addition to statements about killing himself, Gracia made attempts to do that. His companion reported that Gracia had made cuts to his left arm and the inside of his left wrist. He reported that he had bandaged these wounds for Gracia approximately two weeks before the May 17, 2012 incident. He described one of the injuries as very deep. At or about this time, Gracia's companion gave him the knife that was used in the attack on Detective Barnes. The knife has a hook at its tip that is used to gut animals. Although Gracia's companion initially denied that he ever owned the knife, he eventually admitted that it was his until a few weeks before the incident on May 17th. In October of 2011, before giving the knife to Gracia, Gracia's companion attempted to sell the knife on Facebook. This Facebook posting shows a photograph of the knife in its sheath.



When the medical examiner performed an autopsy on Gracia, in addition to numerous well-healed scars, he found a number of recent (made within a short time prior to death) incised² wounds on Gracia's left wrist. The nature of these wounds indicated that they were self-inflicted cuts made on the day of his death. The cuts were so recent that the medical examiner described them as peri-mortem or having occurred at or around the time of death.

When Gracia's companion was interviewed and he looked back over the time that he had known Gracia, he remarked just how far into mental illness Gracia had gone over the years. "He is not killing himself, like, out of depression or nothing I don't think. I think [it] was just in his head he believed like this was going to happen, he was going to see the devil, and make a deal with him or something, and then sell his soul and he would be famous and all this."

By May 13th, 2012, four days before his death, Gracia had cut himself numerous times, in a manner consistent with suicide attempts. He had been, once again, on the run from his house and living without any adult supervision and without his medication. No report that this mentally ill fifteen year old had run away was ever made. He turned to his friends and acquaintances who knew how troubled he was, but lacked the ability to get him help from people who could help. On May 13th, Gracia made the following post on his Facebook account. The caption reads "ready to kill." In the photograph, Gracia is holding the knife he used to stab Detective Barnes on May 17th. Two people responded that they "liked" his posting. No one took any steps to prevent him from acting on his statement.



² Incised wounds are wounds that are longer than they are deep.

FIELD INTERVIEWS AND OBSERVATIONS, “MEET AND GREET”

Community policing requires that police officers have frequent contact with citizens. Not all of these contacts, not even all contacts initiated by the police, implicate a citizen’s individual rights. Encounters which do not interfere with citizens’ rights are important means by which law enforcement officers communicate with them, obtain information about people and activity in the local area and provide a reassuring presence in the community.

Experienced and trained police officers rely on their ability to engage citizens in a non-custodial environment as a means of interdicting gang-related activity. Anti-gang and violence prevention policing requires officers to establish their presence in areas where violent crimes occur, and encounter the very people who may be engaged in the violent or gang activity. During these encounters, officers get out of their cars and meet with individuals to learn the identities and affiliations of people in the area. This type of information provides early warning of the possibility of problems when gang-affiliated outsiders suddenly appear in areas they are not known to frequent and helps build the framework of police understanding of the issues and people involved if violence does occur.

The New Bedford Police Gang Unit was formed to engage in this type of police activity. The manner in which the unit accomplishes this task is through what they term a “meet and greet.” This involves an approach to an individual or a group of individuals by a single detective who attempts to engage the target in conversation. These approaches happen at night and in areas known to have experienced prior violent crimes. Because of this, the gang unit detectives work as a unit and detectives who are not engaged in conversation provide assistance and back-up by positioning themselves in the area of the encounter.

The legal authority and limitations on these encounters are prescribed by law. Our Courts have repeatedly ruled that “[s]treet encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life.” Terry v. Ohio, 392 U.S. 1, 13 (1968). “Not every encounter between a law enforcement official and a member of the public constitutes an intrusion of constitutional dimensions that requires justification.” Commonwealth v. Gomes, 453 Mass. 506, 510 (2009). The particular character of such an encounter will determine whether it is an intrusion of constitutional dimensions by law enforcement officials such that justification is required. See Commonwealth v. Stoute, 422 Mass. 782, 789 (1996).

The United States Supreme Court makes clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free “to disregard the police and go about his business,” California v. Hodari D., 499 U.S. 621, 628 (1991), the encounter is consensual and no reasonable suspicion is required. The encounter does not trigger Fourth Amendment scrutiny unless it loses its consensual nature. The Court made precisely this point in Terry: “[o]bviously, not all personal intercourse between policemen and citizens involves ‘seizures’ of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.”

"The particular character of such an encounter will determine" what level of justification, if any, is required. Commonwealth v. Lyles, 453 Mass. 811, 814 (2009). Thus, police officers may approach individuals on the street to ask them about their business without implicating the balance between State power and individual freedom. See Florida v. Bostick, 501 U.S. 429, 434 (1991), quoting Florida v. Royer, 460 U.S. 491, 497 (1983) (plurality opinion) ("law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or another public place"); Lyles, 453 Mass. at 815. Such interactions as field interviews and observations properly are deemed consensual encounters because the individual approached remains free to terminate the conversation at will. See Id. at 814-815. That is, they are constitutionally insignificant, and a police officer may initiate such an encounter without any information indicating that the individual has been or is presently engaged in criminal activity.

Within the Commonwealth, the Supreme Judicial Court has held that a person has been "seized" by a police officer "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Commonwealth v. Borges, 395 Mass. 788, 791 (1985). "[T]he police do not effect a seizure merely by asking questions unless the circumstances of the encounter are sufficiently intimidating that a reasonable person would believe he was not free to turn his back on his interrogator and walk away." Commonwealth v. Fraser, 410 Mass. 541, 544 (1991) (officer did not seize defendant when he approached defendant, identified himself as police officer, and asked defendant to remove hands from pockets); Commonwealth v. Lopez, 451 Mass. 608, 610-612 (2008) (no seizure where officers merely asked to speak with citizen in absence of intimidating circumstances); Commonwealth v. Thomas, 429 Mass. 403, 405-407 (1999) (no seizure where officer only asked questions during field interview without show of authority).

However, once the officers act in such a way that they intend to pat frisk an individual, that person is seized within the meaning of the Fourth Amendment and art. 14. DePeiza, 449 Mass. at 371 (defendant seized when officers announced their intention to frisk him). The constitutional question then becomes whether the officers possessed the requisite justification to seize the defendant at that particular moment, as well as whether the officers possessed the necessary justification to frisk the defendant. Commonwealth v. Wilson, 441 Mass. 390, 393-394 (2004). As the Supreme Court of the United States recently reaffirmed, a "stop and frisk [is] constitutionally permissible if two conditions are met. First, the investigatory stop must be lawful. That requirement is met in an on-the-street encounter. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous." Arizona v. Johnson, 129 S. Ct. 781, 784 (2009). This is true even where the officer comes into contact with an individual solely to conduct a consensual interview. See United States v. Burton, 228 F.3d 524, 527 (4th Cir. 2000), quoting United States v. Sokolow, 490 U.S. 1, 7 (1989) ("A police officer may elevate a police-citizen encounter into an investigatory detention only if the officer has a 'reasonable suspicion supported by articulable facts that criminal activity "may be afoot"").

Decisions in these cases are highly fact specific. See Commonwealth v. Knowles, 451 Mass. 91 (2008). Police officers may not escalate a consensual encounter into a protective frisk absent a reasonable suspicion that an individual is armed and dangerous. In such cases, to lawfully pat-

frisk an individual during a consensual encounter the officer must possess a reasonable belief that an individual has a weapon and appears inclined to use it. When an individual appears to be ready to commit violence, either against police officers or bystanders, it is reasonable to believe that he is "about to commit a crime," Commonwealth v. Wilson, 441 Mass. 390, 394 (2004). The individual's conduct simultaneously gives rise to a reasonable belief that he is armed and dangerous, satisfying the second. Commonwealth v. Pagan, 63 Mass. App. Ct. 780, 783 (2005) (defendant reached for waistband indicating he "might be drawing or concealing a weapon").

MAY 17, 2012

On May 17, 2012 five members of the New Bedford Police Department gang unit were located at New Bedford Police Department headquarters on Rockdale Avenue. The officers were having their dinner. While the detectives ate, Sergeant Brian Safioleas, the gang unit supervisor monitored the live video surveillance of Temple Landing from his desktop computer. Sergeant Safioleas recognized a number of people in the area of the basketball courts, but could not place two young men who were interacting with them. Unable to identify the two, Sergeant Safioleas asked other members of the unit if they recognized them, and none of the detectives were able to. The two young males were later identified as Malcolm Gracia and his 16 year old companion.

While observing the two, the officers saw the two young men exchange a handshake with the others that appeared to be a gang handshake. This raised the concern of the members of the unit that they had unknown, possibly gang-involved, people at Temple Landing and they determined that the appropriate course was to go to the location and attempt to identify the two.

Four detectives left the station in two unmarked police cruisers. As the detectives later told investigators, they drive these two vehicles through the area dozens of times a day and the two vehicles are readily identifiable as police cruisers. The detectives, while not wearing formal police uniforms, all displayed identification as police officers, either by wearing shirts, prominently displaying the words police or by badges on their chest areas or both.

As the two vehicles approached the area of the basketball courts, the crowd which the detectives were observing at the station dispersed. The two unidentified youths walked to the north along Cedar Street. The two were easily identifiable by the detectives by the clothes they were wearing and the detectives continued to watch the two individuals as they also headed in their vehicles to Cedar Street.

The lead vehicle drove past Gracia and his companion as they walked north on the sidewalk and then stopped ahead of them. The detective in the passenger got out and walked to the front of the cruiser and then turned toward the south to face Gracia and his companion.

As this Detective approached the sidewalk, he called out to the two, "Hey guys, what's going on tonight. I just want to talk to you."³ The detectives engage in these kinds of interactions, dozens

³ The Cedar Street eyewitness did not hear the detective attempt to engage the two. The first words that he heard the detective speak amounted to an instruction to the two individuals to stop and put their hands up. The witness said he was not sure what the exact wording of this command was.

of times a night. In a normal encounter, a conversation would follow. Sometimes, such as when the person is armed with an unlawful weapon or possesses contraband, the person will take off from the scene and elude the officers. The detective, who first made contact with the two, told investigators that he had recently had an encounter with a person who fled when he approached. As this person ran, he discarded a firearm. This specific encounter began differently. Both young men had their hands in their pockets.⁴ As the aforementioned detective approached the two individuals they grew noticeably tenser and their previously normal walking gait changed.⁵ Gracia's companion would not make eye contact with the officer. Based on the detective's training⁶ and experience he immediately perceived a threat. He asked Gracia and his companion to remove their hands from their pockets, but they did not do so in the face of multiple requests. They said nothing to the detective.

The detective determined that he wanted to pat-frisk both of them and he closed the distance between him and the two of them.¹⁷ As he got near them, he put one of his hands on each of their shoulders and waited for Detective Barnes, the driver of the vehicle, to come and assist him. The two detectives in the other cruiser had parked their vehicle farther to the south, along the sidewalk, and they were together, walking north towards the encounter. Gracia and his companion continued to face north themselves and likely were not aware of the three detectives approaching from their south.

The detective told Gracia and his companion to put their hands on a nearby car. They did not comply. He then tried to guide Gracia and his companion towards a car parked along the sidewalk. As they moved towards the car, Gracia suddenly turned and ran south and easterly towards the row of Cedar Street residences. Gracia was then faced with the two detectives approaching together from the south. Gracia abruptly stopped and backed up towards his initial direction. He now appeared to be grasping at his waist or pocket with both of his hands. The detectives are trained, in particular, that this motion is consistent with a person trying to unholster or retrieve a weapon and it appeared that way to Detective Barnes who approached Gracia from the west. It also appeared that way to all of the other detectives and the Cedar Street

⁴ Both young men were carrying knives in their pockets.

⁵ The Cedar Street eyewitness described that the two picked up the pace when the officer approached them.

⁶ T The detective received specific trainings on the characteristics of armed felons.

⁷ When he was interviewed, Gracia's companion told investigators that the detective who approached the two engaged did not attempt to engage them in conversation and instead told them only to put their hands behind their backs. This description of the initial encounter is not believable since it describes a method entirely inconsistent with officer safety and the purpose of the encounter. It is undisputed that the detective approached the two from the front. Among other things, the detective's fear for his own safety was heightened by his inability to observe the hands of Gracia and his companion. Simply telling the two to put their hands behind their backs would have done nothing to address that concern and is entirely inconsistent with known police behavior. In fact, in repeated street encounters, officers instruct subjects to show their hands because by observing the subject's hands, an officer can see that the subject is not arming himself.

Eyewitness who was standing on the doorstep of one of the houses facing Cedar Street. Barnes came face to face with Gracia and placed his hands on Gracia's shoulders in an attempt to control his movement.

Gracia put his left hand on Barnes's back and immediately thrust the knife he was holding in his right hand into Barnes's abdomen. Barnes, all the other detectives present and the Cedar Street eyewitness now realized that Gracia had a knife. Before Barnes could get away Gracia thrust the knife at Barnes's abdomen again striking Barnes. According to Cedar Street eyewitness there were multiple attempts by Gracia to stab Barnes. Barnes backed up slightly and fell to the ground. The Cedar Street eyewitness corroborates this sequence of events. He stated that the stabbing of Barnes was, in his observation, consistent with an intent to injure Barnes.

Gracia put his left hand on Barnes's back and immediately thrust the knife he was holding in his right hand into Barnes's abdomen. Barnes, all the other detectives present and the Cedar Street Eyewitness now realized that Gracia had a knife. Before Barnes could try to get away Gracia thrust the knife at Barnes's abdomen again striking Barnes. According to Cedar Street Eyewitness there were multiple attempted by Gracia to stab Barnes. At this point, Barnes backed up slightly and fell to the ground. The Cedar Street eyewitness corroborates this sequence of events. He stated that the stabbing of Barnes was, in his observation, consistent with intent to injury Barnes.

Gracia then moved toward the south. He again faced the two detectives coming from the southern cruiser. He ran towards one of these detectives, who was located near the sidewalk. Both of these detectives instructed Gracia to stop, drop his knife and get on the ground. Gracia advanced. The Cedar Street eyewitness heard the detectives repeatedly yelling to Gracia to stop. One of these two detectives was now located on Gracia's right. As Gracia advanced, this used his Taser in an attempt to bring Gracia under control by non-lethal means.⁸ A Taser can prevent an attacker from advancing by overriding neuro-muscular impulses and causing the attacker to lose control over his own muscles. The type of Taser employed by New Bedford police uses two probes connected to the Taser electrical supply by means of two electrical wires. In order to be effective, both Taser probes must come into contact with the target. When this happens, electrical impulses pass between the two probes and interfere with muscle operation. When deployed by the New Bedford Police detective at this juncture in the incident, the Taser had no effect, probably because one probed missed striking Gracia. One probe and wire were recovered from the scene. The other probe and portions of the wire were recovered from Gracia's sweatshirt at the hospital.

Gracia continued to advance on the detective directly in front of him. According to the Cedar Street eyewitness who was standing outside of his apartment in the 69-75 area of Cedar Street, Gracia continued to ignore both of the detectives' commands and was advancing toward one of them. The other detective, who had tried to stop Gracia with his Taser, was now located behind Gracia. Both of these detectives had their service weapons drawn and pointed at Gracia. They both continued to yell at Gracia to stop. Gracia ignored their commands to stop. Based on the

⁸ The shooting was a dynamic event and during its brief duration the relative positions and angles between the two detectives and Gracia changed.

detectives' prior observation of Gracia stabbing Detective Barnes, Gracia's refusal to respond to commands to stop and drop the knife, and fear for the safety of the detective towards whom Gracia was advancing, both Detectives decided to fire at Gracia. Initially three shots were fired and the firing of those shots were recorded by Shot Spotter and observed by the Cedar Street eyewitness. This initial firing momentarily halted Gracia's advance and he stumbled to the ground. At this point, it appeared to the detective who had been firing from the grass that Gracia was within a few feet of his partner. Both detectives again instructed Gracia to drop the knife and stay on the ground. The Cedar Street eyewitness heard the detectives telling Gracia to "stay down, stay down." According to this eyewitness, Gracia fell when he was shot and then got up on one knee with his other foot planted on the ground. According to all eyewitnesses, he was still holding his knife. That is when the second set of three shots were fired. These three shots were also recorded by Shot Spotter. Both detectives made their own independent determinations that the use of deadly force was necessary and fired Gracia nearly simultaneously.

Three shots were fired initially at Gracia which caused him to stumble to the ground. When he started to get up, three more shots were fired. In total, three projectiles were recovered. Because of insufficient indications on the recovered projectiles, however, it is not possible to determine which bullets were fired by which detective.

Subsequent attempts by first responding Emergency Medical Service personnel and medical personnel at St. Luke's Hospital to revive Gracia were unsuccessful. At 9:21 p.m. Malcolm Gracia was pronounced dead.

The knife that Gracia used and a sheath that covered it was recovered at the scene.

Gracia's companion fled north on Cedar Street and then through an alleyway. He was located at his home early the next morning and he agreed to come to the police station. There he was interviewed, in the presence of his mother. He told investigators that he discarded the knife that he was carrying next to a church along his line of flight. This knife was also recovered by investigators.

Detective Barnes was transported to Rhode Island Hospital. There he was treated for the stab wound to his chest and abdomen area and the stab wound to his arm. The stab wound to the chest and abdomen area was within inches of his heart.

AUTOPSY

Dr. Peter Cummings of the Office of the Chief Medical Examiner performed an autopsy on the body of Malcolm Gracia on May 18, 2012. The autopsy included an external and internal examination of the body as well as toxicological screening of blood to determine the presence of illicit drugs.

On external examination of the body Dr. Cummings noted a number of well-healed scars at a number of locations on the body. At certain locations of the body, there were instances of multiple scars. The location and frequency of these scars is consistent with at least some of them being self-inflicted.

The autopsy showed that Gracia had been shot four times. None of the wounds indicated any damage to skin from either gun-powder or the gases associated with the escape of a projectile from the gun. Consequently, all of the wounds came from some distance and the wounds are not close-contact or near gunshot wounds.

One gunshot wound is a barely penetrating wound of the lower right back. The projectile passed under the skin of the lower back without striking any organs for a distance of approximately two inches. The projectile then exited the body and continued on. Because of the nature of the wounds associated with this, the medical examiner was not able to determine the direction of travel of this projectile.

One gunshot wound was an entrance into the right side of the head just below the right ear. The bullet then travelled through the skull and exited the left side of the head at the level of the left ear. No bullet which could be associated with this wound was recovered during the autopsy. This wound was independently fatal and likely would have had a very quick effect on Gracia's ability to continue to function.

One gunshot entered on the right side of the upper back, approximately one inch from backbone. After passing through a portion of the vertebrae and the upper lobe of the right lung, the bullet became lodged in the right collar bone. This bullet was recovered.

The fourth gunshot wound entered the left-side of the lower back. The bullet passed through a rib, the left lung and exited on the left-side of the chest. No bullet was recovered.

Dr. Cummings could not provide an opinion, with a medical certainty, how long Gracia could continue to function after the infliction of these latter two gunshot wounds.

The autopsy also discovered recently inflicted sharp force injuries or cuts on three of Gracia's extremities. There were multiple incised wounds on the left wrist and forearm. There was a two inch long incised wound of the left thigh. There was a single incised wound on the right wrist.

Dr. Cummings also noted areas of abrasions or bruising consistent with the incident on the body. The toxicology screen showed the presence of marijuana which was consistent with Gracia's companion's description of Gracia obtaining and using marijuana on May 17, 2012.

Dr. Cummings determined that the cause of death was by gunshot.

NEW BEDFORD POLICE DEPARTMENT USE OF FORCE POLICIES

There are three New Bedford Police Department use of force policies applicable to the May 17, 2012 incident.

General Order 12-1 Use of Deadly Force states police officers are equipped with firearms as a means of last resort to protect themselves and others from the immediate threat of death or serious bodily injury. Police officers are required to exhaust all other reasonable means for apprehension and control before resorting to the use of firearms.

Pursuant to policy and existing law, police officers are authorized to use a firearm to protect themselves from immediate danger of death or serious bodily injury.

General Order 12-2 Use of Less Lethal Force, states that whenever deadly force is not authorized, officers should assess the situation in order to determine which less lethal use of force technique will best de-escalate the incident and bring it under control in a safe manner. Officers may not use more force than is reasonably necessary to gain control of an individual.

Pursuant to policy and existing law, police officers are authorized to use approved less lethal force to protect themselves or another from physical harm, to place a resistant individual into custody or to bring an unlawful situation safely and effectively under control.

General Order 12-3 Electronic Control Weapons controls the use of Taser weapons. This policy specifically describes that Tasers are not a substitute for lethal force. Officers are not expected to respond to a lethal force threat with a less lethal force option such as a Taser.

CONCLUSION

The attempt by a single detective of the New Bedford police to engage Malcolm Gracia and his companion in conversation on May 17, 2012, was consistent with the New Bedford police department approach to provide a community-based police effort in areas of the city that have experienced violent crime.

Officers, however, must be careful not to transform an encounter justified only on the basis of consent into a seizure of the person without reasonable suspicion. Here, to the extent that the detective inhibited Malcolm Gracia's freedom to end the encounter, that action was balanced by the detective's observations. In the fact-specific circumstances of these encounters, it is difficult to articulate all of the circumstances and the exact moment when the officer determines his safety is in danger. Here, the detective had special training and experience to recognize the responses and behavior of armed individuals who present an immediate danger. The detective relied on this training and experience when he recognized these characteristics in Gracia and his companion, both of whom were armed with knives.

The characteristics of those who simply want to avoid consensual contact with the police can be difficult to distinguish from those who are, in fact, armed. Where the actions of a person in a fast-moving street encounter are subject to either interpretation, an officer must quickly decide whether to make a constitutional intrusion or take a chance that no harm will come. In hindsight, it would have been easy to predict that any individual with a mental illness, unmedicated, possessing obsessive conspiratorial thoughts, and a deep animosity toward the police, who has stated that he is "ready to kill" and is armed with a knife presented an imminent danger to a police officer. Although this information was not known to the detective when he approached Gracia and his companion, this detective took graduated steps of minimally intrusive actions to dispel his perception of danger. However with each step, the resulting behavior of the two individuals he was encountering only increased his concerns. When he asked the two armed individuals to remove their hands from their pockets where their knives were secreted, they refused. When they would not respond, the detective asked the two to put their hands on a car.

Again they did not comply. The detective's perception of danger, in our view, was real and the precautionary steps that he undertook were designed to prevent the violence that ensued.

Determining whether the officer's perception of danger met the threshold for a minimal constitutional intrusion is not a matter for the ambit of this investigation. Gracia's violent assault on Detective Barnes and his threatening advance on another detective was the sole cause of the escalation of this incident and was independent of any action of the police.

The use of deadly force by two members of the New Bedford Police gang unit resulted only after Malcolm Gracia attempted to kill Detective Barnes by stabbing him and then advanced in a threatening manner towards another detective while Gracia was still armed with a knife. After witnessing the stabbing of Barnes, the police continued to avoid the use of deadly force by using verbal commands and a Taser. When these attempts failed, the police fired three shots at Gracia to end his attack. He stumbled. The police yelled at him to stay down. He started to get up, continuing to wield the knife that he used to attack Detective Barnes. He was within several feet of the detective, towards whom he had been advancing, when the first three shots were fired. At this juncture, the police fired three additional shots. It is our conclusion, taking into consideration all of the aspects of this incident and mindful of how rapidly events proceeded after the stabbing of Detective Barnes, that this shooting, although tragic, was justified under the circumstances.