New Bedford Police Department
Office of the Chief

871 Rockdale Avenue, New Bedford, MA 02740
Phone: 508-991-6300 Fax: 508-961-3022

Jonathan F. Mitchell
Mayor

David A. Provencher
Chief of Police

David M. Lizotte
Deputy Chief of Police

Interoffice Memorandum

To: Chief David A. Provencher

From: Deputy Chief David M. Lizotte

Date: March 28, 2013

Subject: Complaint Investigation # 1631

Having reviewed this investigation, I concur with the findings of Sgt. Pamela Melo and her direct supervisor Lieutenant Paul Demers. The four gang unit officers that were involved in this tragic incident were directed to the Temple Landing Development by their Sergeant to check out two males. Once the officers located the males, they were involved in an ordinary street encounter when the actions of Malcolm Gracia raised their concerns that he may have been armed. It was only after Mr. Gracia had refused to remove his hands from his pockets that Officer Barnes attempted to physically engage him to check him for a weapon. It was then that Gracia removed a knife from under his clothing and struck Officer Barnes in the chest.

At this point, having just witnessed the use of deadly force by Gracia the remaining officers were faced with an extremely dangerous situation. Having been alerted by Barnes, that Gracia was armed with a knife, they shouted verbal commands for him to drop the knife when he refused; they justifiably used deadly force to stop the threat. Incredibly Officer Paul Fonseca first tried to use his taser but when that failed, he went to his firearm. These sequences of events were all observed by a civilian witness who confirmed what the officers later told investigators.

It is worth noting here that the location that the officers were sent to has a long history of criminal activity from assaults to homicides. In an effort to reduce the violence in these areas, the officers have been encouraged to spend more of their time in these high crime areas. In this particular incident, Sgt. Safioleas did not recognize these two males and he felt that his officers should check them out. It was later determined that both males were armed with knives at the time the officers approached them.

Deputy Chief David Lizotte

2/14/13

NEW BEDFORD POLICE DEPARTMENT
DIVISION OF PROFESSIONAL STANDARDS

TO: CAPTAIN PAUL OLIVEIRA

FROM: LIEUTENANT PAUL DEMERS

SUBJECT: REVIEW OF CASE # 1613

DATE: September 18, 2012

I have reviewed Sgt.Melo's report regarding an investigation conducted by her.

The case involves an investigation conducted per New Bedford Police General Order 12-1X (D) as a result of the death of Mr. Malcolm Gracia.

On May 17, 2012 at approximately 20:30 hrs members of the New Bedford Police Gang Unit encountered Mr. Malcolm Gracia in a public setting and attempted to speak with him and his companion ([redacted]) in order to gather any/all information as it pertained to their names and addresses and any possible gang affiliation. During this encounter Mr. Gracia removed a knife from the area of his trousers and stabbed New Bedford Police Gang Unit Detective Tyson Barnes. Fearing for their lives, as well as the life of Det. Barnes, Detectives Fonseca and Sylvia discharged several rounds from their .40 caliber Glock service weapons in an attempt to stop the imminent deadly threat posed by Mr. Gracia who had just stabbed Detective Barnes and was actively refusing to obey lawful commands to drop the knife he was holding and to stop advancing in their direction. Mr. Garcia ultimately died as a result of injuries sustained when he was struck by the .40 caliber projectiles discharged by Detectives Fonseca and Sylvia.

Sgt.Melo's investigation revealed that the officers involved in this incident were Detective Tyson Barnes, Detective David Brown, Detective Trevor Sylvia, Detective Paul Fonseca and Detective Sergeant Bryan Safioleas, the Sergeant in charge of the Gang Unit. Sgt. Melo was present when all Police Officers as well as several witnesses in this incident were interviewed.

The officer's statements with regards to the incident, the description of the manner in which the events happened, and the chronological order in which they happened are all consistent. The undersigned has no reason to disbelieve them nor was any doubt raised as to the truthfulness of the officers during the interview.

During his interview Det. Sgt. Safioleas stated that on the day of the incident he and other members of his unit were in their office located at 871 Rockdale Avenue New Bedford and he (Safioleas) was monitoring the video surveillance cameras installed throughout the city in an attempt to gather information as it related to gangs within the city and their members. While watching a camera installed in the park/basketball courts area within the Temple Landing Housing development Sgt. Safioleas observed two males who were in the immediate area of a group of males but yet seemed to be independent of the group. At one point Sgt. Safiloeas observed one of the two males reach over and engage in an elaborate handshake which he immediately recognized as a method of gang alliance identification and a personal greeting amongst gang members. Sgt. Safiloeas then directed members of his unit to respond to the area of the basketball court/park within the Temple Landing Housing Development and attempt to speak to these two unknown males to obtain as much information as possible about them.

Through their testimony, provided during interviews conducted as a result of the investigation into the circumstances surrounding this incident, Detectives Barnes, Fonseca, Sylvia and Brown stated that they proceeded to the area of the basketball courts at Magnet Park and were able to locate the two males who, during the time it took the detectives to reach the area, had left on foot. Upon contacting the males, who were at the time walking in a northerly direction on Cedar Street, Detectives Brown and Barnes attempted to initiate a conversation with them. While attempting to speak with the males they were observed to have their hands in their pockets and appeared to "tense up" immediately upon being engaged in conversation. The two males then appeared to change the gait and speed of their walk and appeared to be trying to avoid the detectives. Detectives rightfully took those actions as an indicator that the men may be engaged in an unlawful activity or about to flee the area in an attempt to conceal a crime already committed. The two were then asked to remove their hands from their pockets in order to ensure the safety of the officers. One of the males, [redacted], complied and placed his hands on a privately owned vehicle which was located in front of him.

Det. Brown then closed the gap between him and the two males and was able to get a hand around each males arm in an attempt to guide the two males to an area where an encounter could safely continue. Det. Brown quickly felt Mr. Gracia's muscles tense up and was alerted to the fact that he (Gracia) was about to engage him (Brown) in some manner. Det. Brown states that Mr. Gracia then turned and ran in an easterly direction towards a chain link type fence between two housing units. Mr. Gracia, who had stopped at the fence, was then approached by Detective Barnes. Detective Barnes was immediately engaged by Mr. Gracia who had placed his hands in the area of his trouser's waistband and had retrieved an unknown weapon. Mr. Gracia then reached around and placed his left hand on the back of Det. Barnes and simultaneously plunged his right hand, which contained a knife, into the chest of Det. Barnes.

Det. Barnes, as a result of the assault, then fell to the ground and alerted fellow officers to the fact that he had been stabbed. Detectives Fonseca and Sylvia then engaged Garcia as Det. Brown attempted to assess the extent of Det. Barnes' injury/injuries.

Detectives Fonseca and Sylvia ordered Mr. Gracia, who was at this time advancing toward Detective Sylvia, to drop the knife and to get on the ground. For a reason unknown to all Mr. Gracia refused to comply with the orders of the detectives and continued to advance toward them. Fearing for their lives as well as the life of Detective Barnes they (Fonseca and Sylvia) were left with no viable or safe option other than to discharge rounds from their department issued service weapons in the direction of the advancing Garcia in an attempt to stop the imminent and deadly threat posed by him. Gracia, who was struck by the discharged rounds, fell to the ground but was able to maintain possession of the knife. Garcia, who was now on his hands and one knee then, despite being ordered several more times to stay down and to drop the knife, attempted to stand. Detectives were then again left with no other viable option but to discharge their service weapons in the direction of Garcia in order to attempt to stop the imminent and deadly threat he posed.

Garcia was subsequently rendered first aid by officers on scene and transported to St. Luke's Hospital where he succumbed to the injuries and was pronounced dead at 21:21 hours by emergency room physician Dr.William Porcaro. Detective Barnes was transported to St. Luke's Hospital and then transferred to Rhode Island Hospital for further evaluation and treatment. It was later learned that Det. Barnes was stabbed three times by Mr. Gracia, once in the chest, once in the abdomen and once in the arm.

Eyewitness [redacted] who lived just feet away from the where the incident began, informed investigators that he observed the police arrive and exit their vehicle. [redacted] stated that when he first saw the officers drive into the area he didn't know who they were but quickly realized they were officers upon seeing them with their badges and shirts that had the word POLICE emblazoned on the front. [redacted] substantiated the officer's testimony in its entirety. He ([redacted]) recalled the officers approaching the males ask them to "put their hands up" and the one male, Gracia, take off running. [redacted] stated that he had observed the males coming from the area of the basketball courts, where initially observed on camera by Sgt. Safioleas, and then "pick up their steps" when they saw the officers. Further, [redacted] observed Mr. Gracia turn around and reach inside his pocket and pulled out something chrome. [redacted] then saw this male, Garcia, "take a little hop" toward the officer and jab at him. [redacted] then stated that the male ran in the direction of the remaining officers, with the knife still in his hand, and refused to obey their commands to "stop, stop".

Following the Detectives discharging their service weapons in the direction of Mr. Garcia [redacted] stated that he (Garcia) fell and was given commands to "stay down" as he still had the knife in his hand. [redacted] recalled he had told his wife that "the dude (Garcia) was crazy" and he "couldn't understand why he got up again".

This incident, in its entirety, was investigated as required by Massachusetts General Law, specifically Chapter 38 Section 4, by the Massachusetts State Police assigned to the Bristol County Crime Prevention and Control (CPAC) division as well as members of the Bristol County District Attorney's Office. This incident was also reviewed, at the request of the Chief of Police and the District Attorney, by an independent entity and the actions and responses of the police were deemed proper. The events that led detectives to the area, the actions of the two males and the subsequent responses by the detectives, to include the shooting of Mr. Gracia was found to be in compliance with Massachusetts General Laws as well as the Rules and Regulations and the General Orders of the New Bedford Police Department.

3824 Lt. Paul M Demers

Reviewed/approved

Capt. Paul Oliviera

NEW BEDFORD POLICE DEPARTMENT

DIVISION OF PROFESSIONAL STANDARDS

CASE # 1613

Complaint Filed by: Chief David Provencher

Case Investigated by: **Detective Sergeant Pamela A. Melo #3795**

New Bedford Police Department
Division of Professional Standards

TO: Lt. Paul Demers

FROM: Sergeant Pamela Melo

SUBJECT: Case # 1613

DATE: September 18, 2012

On May 17, 2012 I was assigned by Captain Paul Oliveira, Commanding Officer of the Professional Standards Unit, to conduct an administrative investigation following the discharge of a firearm by a sworn member of the department which resulted in death. That investigation was conducted per General Order 12-1 IX(D).

On May 17, 2012 at approximately 8:30PM members of the New Bedford Police Gang Unit were directed to the Temple Landing Housing Development by Unit Supervisor Sgt. Bryan Safioleas in order to obtain the identity of two males observed on surveillance cameras.

Following a brief encounter with the males a chase ensued between Det. Tyson Barnes and one of the males, Malcolm Gracia, which resulted in Gracia stabbing Det. Barnes. After stabbing Det. Barnes, Gracia continued his assault targeting Det. Trevor Sylvia. Gracia was tased by Det. Paul Fonseca which had no effect on the suspect. When Gracia continued his assault Detectives Sylvia and Fonseca deployed their department issued service weapons. Gracia was later pronounced dead at St. Luke's Hospital in New Bedford.

While detectives were addressing the assault by Gracia the other male, [redacted] fled the scene on foot and was chased by Det. David Brown. [redacted] was located later that evening and brought in for questioning.

Detective Barnes was transported to Rhode Island Trauma as a result of his injuries.

Myself, Capt. Paul Oliveira and Sgt. Kristofer Winterson responded to the scene and then to New Bedford Police Headquarters where witness statements were obtained.

Interview with Witness [redacted] ([redacted])

On May 18, 2012 at 12:22AM an interview was conducted on [redacted] at New Bedford Police Headquarters by Trooper Chad Laliberte and New Bedford Police Detective Sergeant Dean Fredericks. That interview was audio and video taped and observed by myself and Sgt. Kristofer Winterson.

[redacted] confirmed that sometime during the evening he was outside the home of his wife who resides at [redacted] having a smoke. While outside he saw a black car go through the one way street [redacted] was looking at him, kind of lurking. [redacted] didn't know who they were until he saw it was an officer. [redacted] knew by the time they reached the sidewalk that

they were officers because of the badge and a shirt that said police. [redacted] explained how one officer approached the two males first while the other was coming out of the car. [redacted] said that the first officer was the one who gave the command to stop. [redacted] described that officer as 5'9", white, heavy set with dark hair. [redacted] explained that the officer approached the two gentlemen and told them to stop. The white kid stopped that's how [redacted] knew the kids realized he was an officer because if someone approaches and tells you to stop if you don't know who they are you're either going to run or get ready to fight. The officer then told him to put his hands up which the kid did and told the kid to put his hands on the top of the car. [redacted] said the officer gave the command to both but it was the white kid who was doing what he said. When the white kid went to put his hands on the car the kid in the hoodie took off running. [redacted] said that the kids had come from around the basketball courts, when they saw the officers they started to pick up their steps that's when the officer came around [redacted] car and stopped them and proceeded to tell them what to do.

When the male with the hoodie took off the officer that was with the white male hollered stop him, stop him, stop him. [redacted] said the kid ran to near his next door neighbor but then he came out he tried to zig zag but he got stopped by the officer coming from the silver car who was now on the sidewalk. The male with the hoodie turned, he was now facing the basketball court, he was reaching inside his pocket. Whatever the male in the hoodie took out he spun around and did a little hop toward the cop. [redacted] wasn't sure at first what the male hand in his hand, he thought it was a gun, he remembered seeing chrome. [redacted] came to the conclusion that it was knife because of the way he was jabbing at the officer and he didn't hear a gun. [redacted] confirmed that it wasn't just one jab at the officer and then the male ran, [redacted] told investigators that the officer got blasted. [redacted] said that the officer got surprised by that. The officer went back the male tried to run past the other officers, he still had the knife in his hand, that's when they told him stop, stop, he didn't stop so that's when shots were fired. [redacted] said obviously he stabbed one he wouldn't stop and not stab the others. The male fell, they gave him the commands stay down, stay down, he didn't want to stay down, he was staggering but still had the knife in his hand and that's when they gave him the other shots. By then [redacted] had run inside the house because his wife was screaming. He told his wife that the dude was crazy and couldn't understand why he got up again.

[redacted] was able to tell investigators that he didn't see the first officer or the officer that got stabbed fire their weapons. He was unable to describe the other two officers who fired their weapons.

[redacted] said that when the other kid heard the gunshots he just started running. The first officer was more concerned about the officer that was stabbed so the kid went running. [redacted] knew the kid took off running to his left but didn't know where he went.

When [redacted] went inside the house he was still able to see outside through his door, he could hear officers yelling officer down, officer down and he could see the officer who got stabbed grabbing himself in the chest area, he could hear the officer saying ah, ah, ah, ah. [redacted] turned to wife and told her the officer had been stabbed.

[redacted] went upstairs to his son's room and looked out the window. He could see the other officers talking to the officer that got shot and then the ambulance came.

Interview with Witness [redacted] ([redacted])

On May 18, 2012 at 1:44AM an interview was conducted on [redacted] at New Bedford Police Headquarters by Trooper Chris Dumont and New Bedford Police Detective Sergeant Victor Mendes. That interview was conducted in the presence of [redacted] mother [redacted]. The interview was audio and video taped and later observed by me through a DVD.

Trooper Dumont advised [redacted] of his rights in the presence of his mother. [redacted] and his mother were given an opportunity to converse privately after being advised of those rights. Once the interview reconvened [redacted] signed a wavier of his rights which was witnessed by his mother.

At some point in the evening when it started getting dark (7:30PM – 7:45PM) [redacted] left his [redacted] home with his friend Malcolm because they decided to go to the store, Perry's. He knew Malcolm through another friend who had brought Malcolm to the neighborhood. Malcolm had been at his home since the morning sometime around 8:00AM, neither had gone to school that day. While there they listened to music, went on face book and talked about Leonardi which is a secret society to do with the government and new world order, conspiracy theories and stuff. Malcolm talked about that before and [redacted] just went along with it. [redacted] didn't think Malcolm acted out of the ordinary that day. [redacted] didn't know where Malcolm was residing, [redacted] indicated he was living on the street.

[redacted] continued to explain that they never made it to Perry's because the cops ended up taking them, they pulled up and told them to put their hands behind their backs. The route they were taking to Perry's was up Ash St. to the basketball courts and then to Cedar. [redacted] confirmed that on the way to Perry's they made a stop at the basketball courts to see the people that were over there. [redacted] told investigators that they saw a couple of their friends at the basketball courts but didn't want to put any names out there. They didn't plan to go to the courts they just stopped because they saw some people they knew. [redacted]. [redacted] estimated that they were only there for about 5 minutes. They talked to a couple of people, it was just small talk nothing serious.

[redacted] continued to explain that it was both his and Malcolm's idea to leave the courts and proceed to the store to get some food. They left the courts and went up Cedar and a black car pulled up next to them, they didn't recognize the car, [redacted] didn't know it was a cop car and some people got out, he wasn't sure how many but knew it was more than one, it happened so quick it might have been three or four cops. [redacted] knew they were cops because they tried to arrest them, [redacted] thought they pulled up on them because Malcolm was on the run. [redacted] said they just jumped out told him to put his hands behind his back while the cop was still in the street, the cop then grabbed [redacted] by his shirt and that's when Malcolm ran. [redacted] told investigators that he had every intention of doing what the cops said. When Malcolm ran they let go of him, [redacted] heard gunshots and then started running, he was so scared.

Prior to [redacted] running he saw one of the Officers try to grab Malcolm. Malcolm pulled out a knife and tried to stab him with it. [redacted] told officers he wasn't trying to be in trouble for being an accessory to murder, he didn't know what was going on, it was totally unexpected. [redacted] saw the knife and described it as having a little hook on it and the handle looked like tree bark or a deer, it was a good size knife and didn't fold. [redacted] was aware that Malcolm had the knife on him, he had it on him earlier at the house. [redacted] told the investigators that it was Malcolm's knife. [redacted] had seen the knife earlier at his house but didn't know he was going to

do anything with it. [redacted] said Malcolm had the knife in his right pocket in a little holster that was brown. [redacted] admitted that he's touched the knife, Malcolm let him hold it he didn't hold it yesterday but did hold it a couple of days prior. [redacted] later admitted that the knife Malcolm had was his and Malcolm just took it. [redacted] told investigators that he didn't know what Malcolm's intentions were regarding the knife. He originally didn't want to tell investigators about the knife because he didn't want them to think he had something to do with it. [redacted] had bought the knife off of his friend for five dollars. At some point he tried to sell the knife for ten dollars. [redacted] admitted to putting a picture of that knife on face book when he was trying to sell it. Malcolm didn't buy the knife from [redacted]. [redacted] didn't want it anymore so he just gave it to Malcolm about a week prior.

[redacted] didn't know how many times Malcolm stab the officer because he ran he believed it was more than once and the stabbing was in an upward motion. [redacted] said that Malcolm and Officer were in the grass area and he was on the sidewalk. [redacted] told investigators that when he saw what happened he got so scared he ran, then he heard 3-4 gunshots he fell and got back up and ran. [redacted] told the officers that he ran through the church on Kempton. [redacted] never looked back he just kept running. After [redacted] heard the gunshots all he could hear was a bunch of sirens everywhere. After that [redacted] just walked around and went back to his house, he went down to Westlawn and then made his way back to Union and then back to his house.

[redacted] confirmed that he had been wearing a black shirt with NBMA and Harpoons on hit. At first [redacted] denied having any weapons, knives or drugs on him and denied throwing anything to the ground or leaving anything behind. He then told Trooper Dumont that he was carrying a knife but didn't use it at all he was so scared that he just put it somewhere because he didn't want them to think he tried to stab them. [redacted] told investigators that he could bring them right to the spot that he put it and they could check it. [redacted] had had the knife in his pocket and discarded it over by the church. [redacted] confirmed that he put it somewhere with the intention of going back and getting it, he put it in the alleyway. [redacted] described the knife that he was holding as having a black handle, smaller than his thumb, the tip has a blade but the rest is serrated and it folds, the knife had belonged to his father. The only other thing he had on him was his lighter.

[redacted] told investigators that a couple of weeks prior to the incident that [redacted] had told him that Malcolm had cut his own wrists because he was trying to sell his soul. [redacted] asked Malcolm to see the cuts, [redacted] observed a cut to Malcolm's left wrist which he ended up bandaging. [redacted] said that Malcolm had wanted to commit suicide but he talked him out of it, Malcolm wanted to finish it and sell his soul to the Devil. [redacted] said that Malcolm thought that if he killed himself he'd meet the Devil and make a deal with him, he could sell his soul and be famous, get power and wealth like Jay-Z and Kanye West.

Investigators presented [redacted] with several photographs from the Magnett Park cameras and asked him to identify particular individuals. [redacted]. Investigators then presented [redacted] with pictures from his face book page and again asked him to identify the individuals. [redacted] did not see any of those individuals in their immediate area where Malcolm was stabbing the officer, they all remained on the basketball court.

[redacted] told investigators that Malcolm didn't like the police because his father had been killed by the police. Malcolm never told [redacted] that he would hurt the police.

Malcolm would use [redacted] computer when he would go over. Malcolm had his own face book page which he would access through [redacted] computer. [redacted] bought the computer but it was in [redacted]'s room. Investigators did obtain verbal and written consent from [redacted] mother to take custody of the computer and [redacted] shirt.

[redacted] admitted that earlier the morning of the incident Malcolm had smoked marijuana while at his house. They both had left [redacted] house so Malcolm could get the marijuana. [redacted] refused to give investigators the address they obtained the marijuana from. [redacted] also said that [redacted] could not give them that information. At that point [redacted] advised the investigators that he wished to exercise his right remain silent. Investigators seized questions.

Prior to leaving, [redacted] was photographed by members of the Massachusetts State Police Crime Lab. Forensic samples were also taken from his hands and sneakers and he was fingerprinted.

Interview Summary of Detective Trevor Sylvia (3939)

On May 21, 2012 at 9:00AM an interview was conducted on Detective Trevor Sylvia at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

After identifying himself Detective Sylvia confirmed that we was working on May 17th and that his partner was Detective Paul Fonseca.

Det. Sylvia explained that Sgt, Safioleas saw a group of kids at the basketball park through their cameras and instructed them to go to United Front Homes in the West End to ID them, do a "meet and greet". Det. Sylvia explained that was a part of their Gang Unit duties on a regular basis.

Det. Sylvia explained that when they got to the area they drove up the street towards the basketball park, once the group saw their cruiser they started to disburse. Det. Sylvia told investigators that their cruisers are well known due to the fact that they drive through that area 10-15 times a night. When the group disbursed they saw the two males who they couldn't identify walking north on Cedar Street from the basketball courts. They decided to encounter them just to see who they were. Det. Brown and Det. Barnes pulled up north of the two males in their cruiser while Det. Sylvia and Det. Fonseca pulled behind them, both cruisers traveling north on Cedar from the basketball courts.

According to Det. Sylvia he exited his cruiser and walked between the front of his cruiser and the rear of a Mitsubishi which was parked in front of them. Det. Sylvia exited the cruiser from the passenger side. Det. Sylvia started making his way onto the sidewalk and could see Det. Brown standing in front of the two males at which point one of the males started to back up little bit, turned around and started running. Det. Sylvia described one of the males as black, wearing a black hoodie that male was later identified as Malcolm Gracia. The other male was a lighter skinned male wearing a black t-shirt with red letters he was later identified as [redacted]. Det. Sylvia explained that Gracia was located on the outside near the grass while the other male was standing by the curb but they were side by side. Det. Sylvia

explained that while the males were standing in front of Det. Brown they had their hands in their pockets. At that point Det. Sylvia hadn't heard anything that was said to the males, a second later Gracia turned around and ran. As Gracia was running Det. Sylvia observed that he had his hands in his pockets, like in his waistband and Det. Sylvia could see Gracia fumbling doing something in his waistband. At that time Det. Sylvia thought that Gracia had a gun. Det. Sylvia couldn't remember any verbal commands being given to either of the two males at that point. When Det. Sylvia saw Gracia moving toward him he started moving toward Gracia. Det. Sylvia was wearing a t-shirt with an embroider badge with police written across the front and police gang unit across the back of the shirt, he was not wearing his badge that evening.

When Det. Sylvia started moving forward toward Gracia, Gracia stopped at which point Det. Barnes grabbed Gracia from the side. Det. Barnes pushed Gracia against the house because he was still reaching for his waistband. Det. Sylvia said he then heard "he's got a knife", he believed it was Barnes who said it. Det. Sylvia started moving closer and then saw Gracia put his left hand behind Barnes' neck where his shoulders were and then he could see Gracia repeatedly stabbing Barnes in the abdomen. Det. Sylvia then heard people screaming "knife, knife" and Barnes say that he got stabbed. Det. Sylvia said that Barnes fell backwards and then Gracia started running towards him(Det. Sylvia) with the knife in his left hand at chest/shoulder level. Det. Barnes was on the ground holding his chest. At that point Det. Sylvia didn't remember hearing or seeing much. As Gracia started getting closer to Det. Sylvia, when he was about 5 – 7 feet from Det. Sylvia he withdrew his weapon and fired, he could still see the weapon in Gracia's hand. Det. Sylvia didn't recall if he said anything to Gracia at that time. Det. Sylvia knew he fired once and then Gracia was still coming at him and he believes he fired again. Det. Sylvia saw Gracia stumble then fall on the ground. Det. Sylvia remembered telling Gracia to stay down on the ground, "don't get up, don't get up", Gracia didn't comply he started getting up, Det. Sylvia could still see the knife in his hand. Det. Sylvia kept ordering him to stay on the ground while he covered him with his weapon, the distance between them was still 5-7 feet. Det. Sylvia remembered that Det. Fonseca was somewhere near him but couldn't tell investigators exactly where. Det. Sylvia said that as Gracia was getting up he could see the wires from the Taser, he didn't know if it had been effective. Det. Sylvia assumed that Det. Fonseca had tased Gracia because he was the only one near Det. Sylvia and Det. Sylvia did not tase Gracia. Det. Sylvia was wearing a taser that day but had not deployed it.

Det. Sylvia explained that he knew he hit Gracia the first time because he saw the hole in his sweatshirt, he knew he hit him in the chest but Gracia still came after him, once Gracia fell he saw the taser he forgot all about that shooting and saw him still getting up so he figured the tase wasn't effective and he could still see the knife in his hand and Gracia still wasn't listening to their (his and Det. Fonseca's) commands. Det. Sylvia thought Gracia was going to get up and go after them again, when he continued to get back up, he was on his hands and knees attempting to stand back up, Det. Sylvia could still see the knife in his hand, that's when he fired again. Det. Sylvia didn't recall how many shots he fired the second time he fired his weapon. Det. Sylvia was in fear for his life, he thought Gracia was going to kill him.

Det. Sylvia told investigators that after they fired the second rounds Garcia fell down to the ground at which point people from everywhere came out screaming and hollering that they killed him. Det. Sylvia remembered hearing Det. Fonseca calling on the radio that Barnes had been stabbed and the male was shot. Det. Sylvia said that he got on the radio and started screaming that they had an officer stabbed and male had been shot and they needed two

ambulances, backup and he was trying to give out their location. Patrol units started coming in.

Det. Sylvia explained how they couldn't even render aide to Barnes and Gracia because there was just so many people there and it just wasn't safe to turn their backs and render care to either one because they didn't know what the crowd was going to do. Once more officers started showing up, patrol brought out their medical bags and started rendering care to both. The first back up officers that arrived helped secure the scene because the crowd was rushing the detectives trying to get to Gracia.

At some point patrol Sergeant John Beaudoin arrived at the scene. He did not take custody of their weapons at the scene. Det. Sylvia relinquished custody of his weapon at Station 1. Det. Sylvia cleared his weapon at Station 1 and placed it in the box. While at the scene Det. Sylvia had not cycled his weapon he indicated that he keeps a round already in the chamber.

Det. Sylvia was unable to tell investigators what the second male later identified as [redacted] was doing during the incident he had heard later from Det. Brown that [redacted] had run from the scene after Gracia stabbed Det. Barnes and that Det. Brown chased him.

Interview Summary of Detective Paul Fonseca (3901)

On May 21, 2012 at 9:33AM an interview was conducted on Detective Paul Fonseca at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

After identifying himself Detective Fonseca confirmed that we was working the evening of May 17th and that his partner was Detective Trevor Sylvia.

Det. Fonseca explained that the evening of May 17th they were patrolling the area of Cedar Street near United Front. They were in that area because prior to going there they were in their office and observed with a camera several youths at Magnett Park which is the basketball area at United Front.

According to Det. Fonseca they were in an unmarked black Taurus and made there way over to that area with Detectives Dave Brown and Tyson Barnes who were in another unmarked vehicle. Once they got to the area they observed several of the youths disburse from that area. Two males who were walking north from Court Street area attracted their attention because of their mannerisms, they kept looking back. Det. Barnes advised them to keep an on the males because something was up with them. Det. Fonseca did not know who the males were, he remembered seeing them on the camera and they didn't know who they were. After the two males left the basketball court they went north on Cedar Street.

That evening Det. Fonseca was wearing jeans, a regular t-shirt (Boston Red Sox Jersey) and a lanyard over his shirt with his police ID hanging. Det. Fonseca later said his regular badge was hanging from the lanyard and that he was wearing a full duty belt.

Det. Fonseca continued to explain that he and Sylvia were traveling north behind the two males but a little ways back, Barnes stopped his car and then he and Sylvia stopped. Det. Brown exited the vehicle first, he and Sylvia got out and then they saw Barnes. When they got out of the car they saw Det. Brown talking to the kid, he didn't know what he was saying to him or which kid he was talking to. Det. Fonseca described the attacker later identified as Malcolm Gracia as wearing a hooded sweatshirt and standing closer to the buildings. The other kid, who was wearing a Solstice skateboard shirt, was closer to the vehicles. Det. Brown was on the sidewalk facing south, facing Det. Fonseca and Det. Sylvia and the two males were facing north. Det. Fonseca and Det. Sylvia were looking at the two males' backs. Det. Barnes then appeared on the sidewalk and all of a sudden Gracia made some kind of movement towards his front. Gracia then quickly turned around, saw him and Det. Sylvia and stopped. Det. Fonseca wasn't sure if Barnes grabbed hold of him but all he could remember was Barnes holding and pushing Gracia toward the building. Det. Fonseca explained how Gracia grabbed Barnes behind the head with his left hand and with his right hand was poking at him in his top area. Det. Fonseca saw a metal object in Gracia's hand he didn't know at that time if it was a knife, a gun, a piece of (didn't finish thought), he could just see something in his hand. When that was happening Det. Fonseca could hear drop the knife, he wasn't sure if it was Det. Brown but somebody was saying it. Det. Fonseca wasn't sure if Det. Brown pushed them apart but then Barnes' fell to the floor and Gracia came running towards him and Det. Sylvia.

Det. Fonseca told investigators that he was standing on the grassy area somewhere near 69 Cedar Street when Gracia started running, not towards him but, directly at his partner who was on the curb. Det. Fonseca could still see the knife in his hand that's when he removed his taser and ordered Garcia to drop the knife twice but Gracia still continued, that's when Det. Fonseca deployed. When Det. Fonseca deployed his taser nothing happened, he's wasn't sure if he missed. After he deployed he could still see Gracia running toward Det. Sylvia with the knife in his hand at head level, he couldn't remember if the knife was in his right or left hand. Det. Fonseca estimated that Gracia was a couple of feet from Det. Sylvia and that Det. Sylvia had backed up, Det. Fonseca said that at that point he knew his partner was going to get stabbed too. He had just stabbed Det. Barnes, he was going right toward them, Gracia could have run into the street but he didn't. Det. Fonseca heard Det. Sylvia order Gracia to drop the knife at that point Det. Fonseca threw his taser to the ground and removed his service weapon. Det. Fonseca confirmed that Det. Sylvia had his firearm out while issuing verbal commands. At that point Det. Fonseca heard one round, one shot fired, Det. Fonseca didn't know if it was a hit or a miss. Det. Fonseca confirmed that it was Det. Sylvia who fired first. Gracia kind of went down but didn't go all the way down and was still lunging toward Det. Sylvia and that's when Det. Fonseca fired. Det. Fonseca remembered firing two to three shots but was sure it was more than once. Det. Fonseca indicated that Gracia was so close to Det. Sylvia a foot to two feet that he thought Det. Sylvia had been stabbed he even made him strip down at the station. Det. Fonseca said that once he fired Gracia went down but he didn't go completely down because he was still trying to get up and they could see the knife in his left hand, he was on his knees but not completely down. Det. Fonseca had thought about just running over and tackling him at that point. It appeared to Det. Fonseca that Gracia was trying to stand back up. Det. Fonseca remembered hearing Det. Sylvia still saying drop the knife repeatedly, he believed he said it a couple of times also. Det. Fonseca believed that another shot was fired by Det. Sylvia.

Det. Fonseca indicated that the threat stopped when Gracia was on the ground. He wasn't sure if he had rolled over because once that happened they couldn't even stay with the two

parties because a crowd came running over. Instead of tending to either of them they had to go back everybody off, people were just screaming obscenities. Det. Fonseca said that the fear continued because they knew a lot of the kids there and that they carry guns and they didn't know if they were going to go after them. Det. Fonseca turned away from Gracia to back up the crowd while Det. Sylvia stayed with him.

Det. Fonseca said he didn't see Det. Brown during the whole incident even while they were pushing the crowd back. Det. Fonseca indicated that Det. Brown went chasing the other kid and that he could hear him on the radio.

Det. Fonseca told investigators that his service weapon was taken from him at PD 1 and that he cleared it himself. Det. Fonseca didn't remember if he racked a round in the chamber while at the scene, it could have happened but he didn't know.

Interview Summary of Detective David Brown (3895)

On May 21, 2012 at 10:05AM an interview was conducted on Detective David Brown at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

After identifying himself Detective Brown confirmed that we was working on May 17th and that his partner was Detective Tyson Barnes.

Detective Brown told investigators that they were driving an unmarked Chevy Malibu and that they were in plainclothes that evening. Detective Brown was wearing his gray gang unit T-shirt, he's not sure if he had his black hooded sweatshirt on over it, either way he had his collar badge displayed over it, he always does when he gets out of the car. Detective Brown was wearing a tactical holster that evening, a taser and handcuffs.

Det. Brown explained that the evening of May 17th they were working in the west end of the city and in the office just prior to that monitoring the camera system. Det. Brown said they were all in the office watching the cameras because they had just had dinner. Sgt. Safioleas was monitoring the basketball courts at Magnett Park at that time. Sgt. Safioleas called them over to his computer because he noticed two males that he wasn't familiar with. Sgt. Safioleas asked if they knew either of the two males that he had focused in on because they weren't familiar to him, they were milling around talking to some other kids that they were familiar with. At first they didn't know who the two males were. They saw one of the males do an elaborate handshake which is quite common in most of the gangs, they all have their own little handshake when greeting or saying bye to someone, that's how they knew there was something to it. Det. Brown said that most of the kids involved in the United Front Gang have this handshake, they've seen it countless times in that area. Sgt. Safioleas asked them to go down there and try to identify the two males.

Det. Brown told investigators that they left the office to go down there one following the other. He and Det. Barnes were in one vehicle, the lead car and that Det. Fonseca and Det. Sylvia were in the other. Det. Brown and Det. Barnes first went down Chancery St. in a southerly direction from Kempton and then they went in an easterly direction on Middle St. as they approached the basketball courts the group started to disburse. They know their cars, they're in that area a dozen times a shift. Three individuals headed on Ash St. in a southerly direction and the two males they encountered later started heading in a northerly direction on Cedar St. from the courts. At first they drove by the three males who were walking south, Det. Brown recognized them so they weren't concerned about them. Det. Barnes got on channel 5 to contact Sgt. Safioleas to see if he could keep an eye on the two males that were walking north from his camera, they never got a response from Sgt. Safioleas, he's not sure if he heard them.

Det. Brown and Det. Barnes then drove in a northerly direction on Cedar St. in an attempt to encounter those two males. Det. Brown explained that usually when they are going to encounter someone they pull up ahead of them if they had PC to put their hands on somebody they'd do it a little differently they'd pull up to them quick before they could discard anything. This was going to be a simple encounter so they pulled up north of them so by the time Det. Brown got out of the vehicle the males were walking up to him and he didn't have to call them back.

Det. Brown told investigators he didn't think the males realized they were there yet, they were just walking normally. Det. Brown said he was the passenger in the vehicle so when Det. Barnes stopped he got out, walked around the front of the vehicle and encounter the two males on the sidewalk. As the males were walking towards Det. Brown he said to them hey guys what's going on tonight I just want to talk to you. Det. Brown was sure that the male who engaged Det. Barnes had a black hooded sweatshirt on and believed the other male also had a sweatshirt on. The two males both had their hands in their pockets and they tensed up immediately. The male who ended up taking off and running later, would not make eye contact with Det. Brown. At that point Det. Brown's threat perception went up. Their hands wouldn't come out of their pockets even though he asked them several times to do so, they tensed up, their gate as far as they were walking changed completely, it went from a normal stride to almost like they were looking for a way out. Det. Brown got nervous and had serious concerns about them being armed. Det. Brown explained to investigators that the same thing had happened a couple of weeks prior he got out and tried to identify himself as someone got out wearing the same thing and the gentleman just stepped back, reached for his waist, Det. Brown chased him down the street, the male was carrying a firearm and discarded it. Det. Brown said that he's gone to the class Characteristics of an Armed Felon and it was just a display to him that they had something in there.

Being very concerned for the detectives' safety Det. Brown asked the males to go over, take their hands out of their pockets and put them on one of the civilian cars parked between 69 and 71 Cedar St. Det. Brown's intention was just to pat frisk them for weapons. Det. Brown explained how he closed the gap on the males because he was really concerned that one of them or both of them had a weapon. Det. Brown walked up to both of them and had his hands on both their arms and shoulders waiting for Det. Barnes to come around and assist him. It went south shortly thereafter. Det. Fonseca and Det. Sylvia were also making their way out of the car. Det. Brown didn't believe that the two males were aware of Det. Fonseca and Det. Sylvia's presence at that time.

As Det. Brown was guiding the two males over it started out okay as they got close to the car Gracia really tensed up then immediately turned and ran in an easterly direction right at a fence between the buildings. Det. Brown believed that at that point Gracia saw Det. Fonseca and Det. Sylvia out of the corner of his eye. Det. Brown thought Gracia was going to go over the fence and thought Det. Barnes felt the same way. Det. Brown stayed with the other male, Det. Barnes went around Det. Brown's side and Det. Fonseca and Det. Sylvia stayed in the other corner. Gracia stopped abruptly at the fence, turned around and really went fumbling for something in his pockets. Det. Brown didn't think that Det. Barnes saw that because he was so close. Det. Barnes immediately grabbed Gracia by the shoulders from the front, he couldn't have been more than two feet from him at that point and drove him back into the building area.

At that point Det. Brown saw Gracia reach with his left hand and put it behind Det. Barnes' right shoulder blades area and he held him there that's when Det. Brown saw something come out. Det. Brown recognized it as some sort of weapon, initially he didn't see exactly what it was but was convinced it was a firearm. Det. Brown saw Gracia lunge at least twice in a thrusting uppercut motion to Det. Barnes' midsection. Det. Brown said it was like Gracia was preventing Det. Barnes from backing away from the stabbing, he was pushing him toward him with his left hand and thrusting up with his right hand. Det. Brown didn't see the knife until Det. Barnes backed away and was falling backwards and Det. Brown grabbed him. Det. Brown believed he remembered Det. Barnes saying he stabbed me, he stabbed me.

After Det. Barnes went down on the sidewalk and Det. Brown heard he had been stabbed he tried to make sure he was okay or at least stable, see what the extent of his injuries were. From the corner of his eye Det. Brown was also looking at the second male and obviously keeping an eye on what was going on with Gracia. At that point Det. Sylvia and Det. Fonseca had engaged Gracia and were telling him to drop the knife, drop the knife, get on the ground. Gracia was not responding to the commands and was actually going toward Det. Sylvia and advancing on him with the knife in his hand.

Det. Brown could see that Det. Sylvia had a weapon drawn but he couldn't tell for sure what Det. Fonseca had drawn, he had something in his hand, he wasn't sure if it was his taser or firearm. Det. Brown was trying to look at three things at once. Det. Barnes was his primary concern and the second male who was gradually starting to move away, not running at that point in a northerly direction. At that point Det. Brown heard loud bangs which he definitely knew were gunshots. Det. Brown didn't see the muzzle flash, he didn't see who exactly had fired but he definitely heard multiple gunshots at least two maybe four.

After the first rounds went off Det. Brown saw Gracia starting to go down and he could hear Det. Fonseca and Det. Sylvia still with the verbal commands, stay down, stay down, stay down. At that point Det. Brown was pretty sure they had that situation handled with Gracia, he was pretty sure that Det. Barnes was okay. Det. Brown's initial goal was to keep himself between Det. Barnes and Gracia.

Once Det. Brown determined that Det. Barnes' injuries were not life threatening and that Gracia was being handled by Det. Fonseca and Det. Sylvia he turned his attention to the other suspect. Det. Brown observed the second male to quicken his pace, he was still on Cedar just around Kempton heading towards the west. The male was looking back at them the whole time, he witnessed the entire incident. Det. Brown told the second male, hey come here, come here, get over here, get over here don't run. As soon as Det. Brown said that the male took off running and Det. Brown gave chase. Det. Brown stopped the chase at ¾ of the way up

Kempton St. around Chancery St. right around where the church was because the male jumped the fence in the church parking lot. The last Det. Brown saw of the male was when he was heading west on Mill St. At that point Det. Brown thought they had a real good picture of the male from the camera and that they would be able to ID him so he decided to go back and make sure Det. Barnes was okay and that they had the situation under control.

Det. Brown was the officer who called communications to inform them that there were shots fired, someone was down and he was in a foot chase, he gave a description of the male that was running from him and the direction. Det. Brown explained that it was tough to get any type of radio transmission because it was very chaotic.

When Det. Brown rounded the corner to go back, east on Kempton, south on Cedar the first thing he saw was a large crowd advancing on Detectives Fonseca, Barnes and Sylvia and the crowd was very angry and hostile, yelling at them.

Medics were not on scene yet, the Gang Unit cruisers did not have medic bags in them. Normally Det. Brown would try to render first aide to Det. Barnes and Gracia but none of them were able to do that until more officers came because it was not a safe scene. They were making verbal commands to tell people to get back, the crowd was not listening to the detectives at all, they were advancing and very very hostile. Det. Brown thought they were going to get overrun.

The crowd was brought under control only after State Police, north end units and south end units arrived. Once the crowd was brought to some normalcy they went to Det. Barnes and Gracia in an attempt to stop the bleeding.

During the entire encounter Det. Brown never deployed his taser or his firearm. Det. Brown indicated that at the end of the incident he had his taser and he didn't remember losing any ammunition. After the incident was over Det. Brown met Det. Sylvia and Det. Fonseca at PD 1. Det. Brown turned his weapon over to Sgt. Safioleas who put it in his lock box in the back of his cruiser.

Det. Brown did draw his weapon at the scene he had it out, he never discharged it. Det. Brown did not rack his weapon he keeps one in the chamber at all times. Det. Brown doesn't believe he actually pointed it at anybody, he had it at low ready because he felt that Det. Fonseca and Det. Sylvia had that under control. Det. Brown could not have taken a shot because from where he was located it would have been crossfire he would have chanced injuring one of the detectives or anyone coming around the corner. He did not have a clear or safe shot at that time. Det. Brown took his firearm out a second time when he came back to the scene and the crowd was advancing again he didn't aim it at anyone but had it at low ready

Det. Brown did not see any civilians in the area until after he came back from chasing the second male.

Interview Summary of Sergeant Bryan Safioleas (3844)

On May 21, 2012 at 10:45AM an interview was conducted on Sergeant Bryan Safioleas at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

After identifying himself Sgt. Safioleas confirmed that we was working on May 17th as the supervisor of the Gang Unit.

At approximately 8:30PM that evening Sgt. Safioleas was monitoring the city cameras in the Gang Unit which he does on a normal basis. All of the detectives except for Det. Roberts who was not on duty that evening were in the office. Sgt. Safioleas was seated at his desk top and he pulled up the camera program and checked the United Front camera at the park and he started panning around and he saw a large group, approximately 15 males, over by the benches on Ash St. by Ash and Middle on the basketball courts. Sgt. Safioleas started zooming in on the crowd to see if he recognized anyone or if anything was going on at that point.

Sgt. Safioleas' attention was drawn to two individuals, one with a black sweatshirt on and another one with a black t-shirt with cross harpoons that said NB on it, it looked like a Solstice skateboarding t-shirt and it was on a light skinned male with curly hair. Sgt. Safioleas observed those two engaged in conversation, talking to each other. They kind of stuck out because it seemed as though they were with the group but not with the group, they were there hanging out but their interaction seemed primarily between each other. At one point the male with the black sweatshirt on reached over to someone on the bench and did an elaborate handshake. It wasn't a normal hi I'll see you later handshake it was very elaborate and for what they do in the Gang Unit that's something that's consistent with a group identifier. Sgt. Safioleas has seen similar handshakes before between gang members, it's a greeting so they can identify themselves without verbally saying who they are or without showing it in there clothing it's an easy way to disguise their membership in a gang to the common eye. At first Sgt. Safioleas thought one of the males was a party they had recently dealt with so he zoomed in on him, observed his face and realized it wasn't him and he didn't know who he was nor did he know the second party that had the t-shirt with the harpoons. Sgt. Safioleas called the detectives over to his desk top and asked if any of them recognized the two males. One of the detectives thought it was the same individual that Sgt. Safioleas originally thought it was. They looked at the picture, Sgt. Safioleas zoomed back and forth a couple of times and they still couldn't determine who the males were.

Sgt. Safioleas instructed the detectives to head out on the road, head down to that location, roll up on those males, encounter them, do a "meet and greet" and see if they could identify any of the kids that were out at the park. Sgt. Safioleas told them he'd stay on the camera and zoom in just in case anything happened and then they'd have it all on camera. The detectives left the office and Sgt. Safioleas continued to manipulate the camera zooming in on the individuals there. Sgt. Safioleas explained that he usually does that and tries to get good shots of everyone involved before the detectives roll up on them just in case a situation arises or someone flees, this way they have a better picture of them for later investigations.

During that time Sgt. Safioleas walked away from his desk top for a few minutes, he had left his portable radio on the desk and when he returned he heard a lot of units, a commotion on the air. Sgt. Safioleas happened to hear some south end units calling off on scene. Sgt.

Safioleas sat back down and turned up the volume on the radio a little bit and at that point he clicked the button because his monitor had gone on sleep mode when it came back up he saw the court, the bleachers that they were originally watching and there was nobody there. Sgt. Safioleas was listening to the radio when he heard Det. Brown on the air saying that there was an officer down, he requested more units because of a large crowd. Sgt. Safioleas said he could hear the chaos and on the camera see the lights on Cedar St. and Middle so he grabbed his portable radio and keys, ran out to his cruiser and headed right down to the scene.

When Sgt. Safioleas got down to the scene there was a large crowd, civilians, all over the place. They were trying to set up a perimeter with caution tape. Patrol units from south, north and center were all there and Sgt. John Beaudoin was the street supervisor on scene. Once Sgt. Safioleas made it through to the taped off area he was informed by a patrol officer that one of his detectives, Detective Barnes, had been stabbed.

Sgt. Safioleas further explained the encounter process. He told investigators that he and the detectives utilize channel 5, it is monitored within communications but not every dispatcher monitors it, some do if they know his unit is out and about. Once detectives make an encounter or roll up on someone they immediately go to channel 1. Sgt. Safioleas confirmed that the encounters are normal practice within his unit and used to gather intelligence on gang members or people of interest. Sgt. Safioleas told investigators that through trial and error they've developed a system on conducting meet and greets and now it's consistent on how they do it. If they know they're going to encounter someone at a meet and greet and just want to talk to them, engage them in dialogue, find out who they are, they'll pull up ahead of them this way it allows detectives to walk toward the individuals, they're readily indentified as police officers there's no mistake about it. It also avoids the problem of detectives calling the individuals back to them which would change the scope of that particular encounter so consistently when they're going to encounter someone they roll up ahead of them sometimes two, three, four car lengths away. If they're lucky enough to have a second car available to them that car will always park away from them behind, they walk up right away so as not to encircle the parties so it doesn't become a seizure. Sgt. Safioleas said it's very systematic and they've done it this way numerous times a night for the past 2 ½ years.

Sgt. Safioleas described the dress code for the Gang Unit. He said that everyone wears a badge hanging, some of the detectives wear an outer vest carrier that say's police on it, they have Gang Unit t-shirts, they have gray t-shirts, they also have black t-shirts both long sleeve and short sleeve, they do have hoodless sweatshirts but they don't usually wear them. Sgt. Safioleas sometimes does allow detectives to go out on the road without emblems on but it depends on what they're going to do. A lot of times its easier even with encounters if they know they're going to be in a certain area to get out in plainclothes with a badge readily identifiable, it's a little easier to walk up and approach someone to talk to them. Sgt. Safioleas told investigators that they do a combination of the two. Sgt. Safioleas confirmed that you may get more information from a civilian if they're not in full colors like a uniform police officer but they still have their badge available hanging so the person they're confronting knows they're a police officer but people looking out the window may not. Sgt. Safioleas confirmed that none of the Gang Unit detectives wear thigh rigs or concealable weapons. They wear their department issued firearm on their belt, every one of them has been assigned a taser which they carry, they carry handcuffs and at least one spare magazine, they carry their OC and either a sap stick or a small collapsible baton.

Once Sgt. Safioleas was arriving on scene Det. Barnes was being placed in the medic rig he believes it was Det. Brown who handed him Det. Barnes' firearm, pancake holster and all, which Sgt. Safioleas took custody of. Sgt. Safioleas told investigators that while on scene he noticed a taser on the ground he didn't know at first if it had fallen off someone's belt that responded later on. Sgt. Safioleas went over and asked about the taser but did not take custody of it. Sgt. Safioleas transported Det. Brown to Station 1 and later that evening took custody of Det. Brown's firearm after confirming it had not been shot because Det. Brown was going to the hospital, Sgt. Safioleas placed Det. Brown's firearm in the lock box in his cruiser.

Interview Summary of Detective Tyson Barnes (3931)

On May 25, 2012 at 3:15PM an interview was conducted on Detective Tyson Barnes at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

After identifying himself Detective Barnes confirmed that we was working on May 17th and that his partner was Detective David Brown

Det. Barnes told investigators that on May 17th at around 8:30PM they were in office. Sgt. Safioleas was monitoring the cameras that were located at Magnett Park inside of Temple Landing and he observed a group of individuals that were on the basketball court at the time. Sgt. Safioleas asked the detectives to go over to his desk area and try to identify any of the individuals that were out there that night. They were focusing on two individuals that were away from the group, standing to the side of the group and that's who they were trying to identify. While detectives were monitoring there was an individual who made an elaborate handshake which is commonly used by gang members to identify themselves and show allegiance to the gangs. Sgt. Safioleas wanted the detectives to go out and identify the two individuals that were on the basketball court.

Det. Barnes and his partner Det. Brown left the building along with Det. Fonseca and his partner Det. Sylvia, there were four of them in two separate cars. They made their way to Magnett Park . When they approached the park from Chancery St. immediately there were three individuals that observed them. Det. Barnes explained that a lot of those individuals know their unmarked vehicles, they've been using them for two years. Det. Barnes said that he's had individuals recite his plate back that's on his car, they know their vehicles. Det. Barnes uses an unmarked 2007 Chevy Impala.

When they approached the basketball courts three individuals immediately started walking south on Ash St. They drove by those individuals and there was nothing suspicious about them, they just seemed like they were walking off the basketball courts. As Det. Barnes turned and focused his attention on the two individuals that Sgt. Safioleas wanted to identify they began walking at a fast pace north easterly towards Cedar St. Det. Barnes confirmed that those males were the two individuals that had the elaborate handshake on the basketball courts.

Det. Barnes got on the radio on channel 5 and asked Sgt. Safioleas, because he believed he was still on the cameras, if he could keep an eye on those individuals because they were walking at a fast pace north easterly onto Cedar which raised their concerns. Det. Barnes and Det. Brown made their way onto Cedar St. and pulled up approximately 10 feet in front of the males. Their intention was just to encounter the males, identify them and to see if there was any affiliation with gangs in our city. When Det. Barnes looked back in his side mirror he saw Det. Sylvia and Det. Fonseca pulling up behind them. Det. Barnes was doubled parked in the vicinity of 71 Cedar St.

Det. Brown who was seated in the passenger seat exited the vehicle and began walking at a fast pace which made Det. Barnes think the individuals were running, when Det. Barnes went to exit the vehicle he forgot he had left his radio hooked up to the car charger so he went back to get it and when he was exiting the vehicle the second time Det. Brown was actually standing in front of the two individuals in the vicinity of 73 Cedar St.

Det. Brown had his badge displayed around his neck, he had his firearm readily displayed. Det. Barnes did not recall what Det. Brown was wearing for a shirt that evening but remembered he(Barnes) was wearing a police shirt but had put on a long sleeve black thermal over it because it had gotten a little chilly when they went back out. Det. Barnes was wearing a belt with his firearm, taser, handcuffs, his extra magazines and had his badge displayed around his neck on a lanyard system.

When Det. Barnes re-exited the vehicle he heard Det. Brown say hey, hey, let me see your hands, let me see your hands. While Det. Barnes was walking between two cars to get to the sidewalk he observed Gracia with his hood up turn around and run south onto the grass area. Det. Fonseca and Det. Sylvia had already exited their vehicle and were walking north toward their location. When Gracia saw the two detectives he stopped, he back pedaled a couple of steps and frantically tried to get something from his pocket or waistband on his right side with both his right and left hand. From where he was located Det. Barnes couldn't see what the item was. Det. Barnes told investigators that he alerted the other detectives by saying "he's got something". Det. Barnes feared that Gracia was removing a firearm to possibly use it on Det. Fonseca and Det. Sylvia. Det. Barnes ran over to Gracia and grabbed him, right before Det. Barnes got to him, Gracia turned toward him and they began struggling. Det. Barnes had the top of Gracia's arm and Gracia had his left arm on Det. Barnes trap area. Det. Barnes saw Gracia make a thrusting motion with his right arm. At the time Det. Barnes didn't see anything in his hand or feel anything nor was Gracia verbalizing anything. When Gracia did it a second time Det. Barnes saw a cutting instrument in Gracia's hand. Det. Barnes couldn't describe it because it happened so fast. Det. Barnes put his hand up in a blocking motion to push the instrument down which caused an abrasion on his left forearm. Gracia then made a trusting motion toward Det. Barnes' chest. Det. Barnes tried to move away and fell back onto the beginning of the sidewalk. At that time Det. Barnes still wasn't sure if he was injured, Det. Barnes remembered yelling out "he has knife, he has a knife". Once Det. Barnes realized what was going on he felt as though Gracia was trying to kill him.

Det. Brown went up to Det. Barnes and asked him if he was alright and he told him he thought so. Det. Barnes explained that when he hit the ground he was in a lot of pain but still didn't know how severely he was injured. Det. Barnes looked down and saw a hole in his shirt at which time he heard a pop and then he heard the sound of the taser prior to that he heard verbal commands from Det. Sylvia and Det. Fonseca saying drop the knife, drop the knife, drop the knife. Det. Barnes heard several rounds go off at which point he covered his head, Det. Barnes assumed it was either Det. Fonseca or Det. Sylvia firing but where he was

positioned Det. Barnes knew he was just south of him and he was in fear of a ricochet. After the sound of the gunfire Det. Barnes looked over and observed Gracia get up, not to a full standing upright position, he was still crouched over and the detectives were still giving him commands of stay down, stay down, get down, get down, get down. At that time Gracia was still trying to move forward and engage the detectives. From Det. Barnes' location, north of Gracia and lying down, he could only see the back of Gracia therefore he couldn't see if Gracia had anything in his hands. Det. Barnes heard several more rounds, he didn't know how many, he just covered his head again. Det. Barnes then observed Gracia lying on the sidewalk.

Det. Barnes never deployed any of his weapons, impact, OC, taser or firearm. After the incident was over Trooper Mark Lavoie went over along with Trooper Brian Anderson and Det. Gangi. Det. Gangi was applying pressure to Det. Barnes' chest. Just prior to that he heard Det. Fonseca and Det. Sylvia calling for ambulances, they said officer down, suspect down, they gave the location of 69 Cedar. At that time there was a large crowd forming, Det. Barnes heard a lot of yelling. Det. Fonseca and Det. Sylvia's attentions were drawn south of their location, he heard a lot yelling he heard them telling people get back, stay back, get back, stay back, he heard them calling for more units for assistance due to the crowd. Det. Barnes told investigators that Det. Fonseca and Det. Sylvia couldn't render assistance to him because of having to control the crowd.

After Det. Brown checked to see if Det. Barnes was okay he went to engage the other male who ended up taking off on him running north on Cedar. Det. Barnes didn't see that he just knew that Det. Brown headed in his direction.

Det. Barnes removed his own badge and then the medics cut his shirt. Trooper Lavoie took off Det. Barnes' belt and took possession of his weapon, his taser, his handcuffs and his extra magazine. The belt and its contents were removed to put Det. Barnes in the ambulance. Det. Barnes does not recall what Trooper Lavoie did with his equipment. Det. Barnes did receive his firearm back several days later from Sgt. Safioleas. Det. Barnes has yet to receive his taser back and does not know of its whereabouts.

INVESTIGATION SUMMARY

On May 17, 2012 I was assigned by Captain Paul Oliveira, Commanding Officer of the Professional Standards Unit, to conduct an administrative investigation following the discharge of a firearm by a sworn member of the department which resulted in death. That investigation was conducted per General Order 12-1 IX(D).

On May 17, 2012 at approximately 8:30PM members of the New Bedford Police Gang Unit were directed to the Temple Landing Housing Development by Unit Supervisor Sgt. Bryan Safioleas in order to obtain the identity of two males observed on surveillance cameras.

Following a brief encounter with the males a chase ensued between Det. Tyson Barnes and one of the males, Malcolm Gracia, which resulted in Gracia stabbing Det. Barnes. After stabbing Det. Barnes, Gracia continued his assault targeting Det. Trevor Sylvia. Gracia was tased by Det. Paul Fonseca which had no effect on the suspect. When Gracia continued his assault Detectives Sylvia

and Fonseca deployed their department issued service weapons. Gracia was later pronounced dead at St. Luke's Hospital in New Bedford.

While detectives were addressing the assault by Gracia the other male, [redacted], fled the scene on foot and was chased by Det. David Brown. [redacted] was later located that evening and brought in for questioning.

Detective Barnes was transported to Rhode Island Trauma as a result of his injuries.

Myself, Capt. Paul Oliveira and Sgt. Kristofer Winterson responded to the scene and then to New Bedford Police Headquarters where witness statements were obtained.

On May 18, 2012 at 12:22AM an interview was conducted on [redacted] at New Bedford Police Headquarters by Trooper Chad Laliberte and New Bedford Police Detective Sergeant Dean Fredericks. That interview was audio and video taped and observed by myself and Sgt. Kristofer Winterson.

[redacted] told investigators that he was outside his wife's house located at [redacted] in New Bedford smoking. [redacted] observed a black car go through a one way street. When the males exited the vehicle he knew they were police officers because of their badges and the shirt said police. [redacted] described how when the two males saw the officers they started to pick their pace and that's when the white officer told the two males to stop and the white kid, later identified as [redacted], stopped. [redacted] told investigators that's how he knew the kids knew they were police officers because if someone tells you to stop and you don't know who they are you get ready to fight or run.

The officer told both males to put their hands up and put them on the car. The only male that followed those orders was [redacted]. When [redacted] put his hands on the vehicle the other kid with the hoodie, later identified as Malcolm Gracia, took off running. When Gracia took off running the white officer hollered stop him, stop him, stop him. Gracia tried running toward [redacted] next door neighbor but then came out and started to zig zag but was stopped by an officer on the sidewalk who had exited a silver vehicle. Gracia then turned and reached for something in his pocket, took it out and hopped toward the police officer. [redacted] at first thought it was a gun because it was chrome but later concluded it was a knife because of the jabbing motion Gracia was making at the officer coupled with the fact that he didn't hear a gun shot. [redacted] told investigators that it wasn't just one jab that the officer got "blasted".

[redacted] said that the officer getting jabbed went back and Gracia tried running past the other officers while still holding the knife in his hand. [redacted] heard the officers tell Gracia to stop, stop and when he didn't shots were fired. [redacted] said that Gracia fell to the ground at which point the officers gave him commands to stay down but he wouldn't. [redacted] said Gracia was staggering but still had the knife in his hand and that's when the officers shot again.

[redacted] explained how the first officer was more concerned about the officer that got stabbed which allowed [redacted] to take off running when he heard the gunshots. At that point [redacted] went inside the house, he could still see outside and saw the officer who had gotten stabbed holding his chest.

On May 18, 2012 at 1:44AM an interview was conducted on [redacted] at New Bedford Police Headquarters by Trooper Chris Dumont and New Bedford Police Detective Sergeant

Victor Mendes. That interview was conducted in the presence of [redacted] mother [redacted]. The interview was audio and video taped and later observed by me through a DVD.

[redacted] told investigators that he and Gracia left [redacted] home located at [redacted] at round 7:30PM-7:45PM with the intention of going to the store, Perry's. On the way there he and Gracia stopped by the basketball courts and saw a couple of their friends and talked to a couple of people. At some point he and Gracia decided to leave the courts and proceed to the store for some food.

[redacted] said when they left the courts they headed up Cedar St. That's when a black car, that he didn't recognize, pulled up to them. [redacted] said some people got out, he knew they were cops because they tried to arrest him. [redacted] said they jumped out, told him to put his hands behind his back. When the officer grabbed [redacted] by the shirt, Gracia ran.

[redacted] observed one of the officers grab Gracia and Gracia pull out a knife and try to stab the officer. [redacted] didn't know how many times Gracia stabbed the officer but knew it was more than once and that it was in an upward motion. When [redacted] saw what happened he got so scared he ran. [redacted] said he heard 3-4 gunshots, he fell, got back up and continued running. [redacted] admitted that he too was carrying a knife which he discarded near the Church when he ran.

On May 21, 2012 at 9:00AM an interview was conducted on Detective Trevor Sylvia at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

Det. Sylvia explained that Sgt, Safioleas saw a group of kids at the basketball park through their cameras and instructed them to go to United Front Homes in the West End to ID them, do a "meet and greet". Det. Sylvia explained that was a part of their Gang Unit duties on a regular basis.

Det. Sylvia explained that he, Det. Fonseca, Det. Brown and Det. Barnes proceeded to the area. Det. Sylvia explained that he and Det. Fonseca pulled up behind the males who were walking north on Cedar St. while Detectives Brown and Barnes pulled up north of the males.

When Detective Sylvia exited his cruiser he observed Det. Brown standing in front of two males both of which had their hands in their pockets. Det. Sylvia then observed one of the males, Gracia, back up a bit, turn around and start running. When Gracia was running he had his hands in his waistband, fumbling. Det. Sylvia saw Gracia moving toward him so he started moving toward Gracia. Det. Sylvia was wearing a t-shirt with an embroider badge with police written across the front and police gang unit across the back of the shirt, he was not wearing his badge that evening.

Gracia stopped and that's when Det. Barnes grabbed Gracia from the side. Because Gracia was still reaching for his waistband Det. Barnes pushed him against the house. Det. Sylvia then heard someone say he's got a knife. As Det. Sylvia got closer to Gracia and Det. Barnes he observed Gracia put his left hand behind Det. Barnes' neck. Det. Sylvia then witnessed Gracia repeatedly stabbing Barnes in the abdomen.

Detective Sylvia observed Det. Barnes fall backwards and Gracia running towards him with the knife in his left hand at chest/shoulder level. As Gracia got closer to Det. Sylvia, approximately 5 – 7 feet he withdrew his weapon and fired once. Det. Sylvia did not recall if he said anything to Gracia at the time.

Det. Sylvia remembered that Det. Fonseca was somewhere near him but couldn't tell investigators exactly where. Det. Sylvia said that as Gracia was getting up he could see the wires from the Taser, he didn't know if it had been effective. Det. Sylvia assumed that Det. Fonseca had tased Gracia because he was the only one near Det. Sylvia and Det. Sylvia did not Taser Gracia. Det. Sylvia was wearing a Taser that day but had not deployed it.

Det. Sylvia observed Gracia stumble then fall to the ground. Det. Sylvia ordered Gracia to stay down on the ground but Gracia wouldn't comply and started getting up and he could still see the knife in Gracia's hand. Det. Sylvia thought Gracia was going to get back up, go after them and kill him, that's when Det. Sylvia fired again.

After the second round of shots Gracia fell to the ground at which point people from everywhere came out screaming that they had killed Gracia. Det. Sylvia explained how they couldn't even render aide to Barnes and Gracia because there was just so many people there and it just wasn't safe to turn their backs and render care to either one because they didn't know what the crowd was going to do.

Det. Sylvia relinquished custody of his firearm, a 40 caliber Glock model 23 serial #[redacted], at Station 1. Det. Sylvia cleared his weapon at Station 1 and placed it in the box.

In addition to a supplement to report 12-5497-OF Det. Sylvia filed the necessary use of force report as per general order 12-01.

On May 21, 2012 at 9:33AM an interview was conducted on Detective Paul Fonseca at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President Sergeant, Graciano Pereira.

Det. Fonseca explained to investigators that while they were in the office they observed several youths on the cameras at Magnett Park the basketball area of United Front.

While patrolling the area of Cedar St. and United Front they observed two of the males they couldn't identify from the cameras earlier walking north on Court St. The males kept looking back at them and Det. Barnes told Det. Fonseca and Det. Sylvia to keep an eye on the males because something was up with them.

Det. Fonseca and Det. Sylvia were traveling north behind the two males. When Det. Barnes stopped he and Det. Sylvia stopped. When Det. Fonseca and Det. Sylvia exited their vehicle they saw Det. Brown talking to one of the kids. Det. Fonseca did not know what was being said.

Det. Barnes then appeared on the sidewalk at which point Gracia made some kind of movement to his front. The two males were facing north with their backs to Det. Fonseca and Det. Sylvia.

Det. Fonseca observed Det. Barnes hold and push Gracia toward the building, Gracia grabbed Barnes behind the head with his left hand and with his right hand was poking at him in his top area. Det. Fonseca saw a metal object in Gracia's hand he didn't know at that time if it was a knife or a gun, he could just see something in his hand. When that was happening Det. Fonseca could hear someone saying drop the knife. Det. Fonseca then observed Det. Barnes fall to the floor and Gracia went running towards Det. Sylvia who was on the curb. Det. Fonseca could still see the knife in Gracia's hand that's when he removed his taser and ordered Garcia to drop the knife twice but Gracia still continued, that's when Det. Fonseca deployed his taser and nothing happened, Gracia continued his assault on Det. Sylvia with knife in hand.

Det. Fonseca explained how Gracia could have run into the street but instead went right toward them. Det. Fonseca said that Gracia was within feet of Det. Sylvia at which point he thought Gracia was going to stab Det. Sylvia. Det. Sylvia ordered Gracia to drop the knife. Det. Fonseca dropped his taser and drew his firearm, Det. Sylvia already had his firearm drawn and was issuing verbal commands to Gracia. Det. Fonseca then heard one shot fired which came from Det. Sylvia. Det. Fonseca didn't know if it was a hit or a miss. Gracia kind of went down but didn't go all the way down and was still lunging toward Det. Sylvia and that's when Det. Fonseca fired. Det. Fonseca knew he fired more than once. Det. Fonseca said that once he fired Gracia went down but he didn't go completely down because he was still trying to get up and they could see the knife in his left hand, he was on his knees but not completely down. Det. Fonseca had thought about just running over and tackling him at that point. It appeared to Det. Fonseca that Gracia was trying to stand back up. Det. Fonseca remembered hearing Det. Sylvia still saying drop the knife repeatedly, he believed he said it a couple of times. Det. Fonseca believed that another shot was fired by Det. Sylvia. Det. Fonseca indicated that the threat stopped when Gracia was on the ground.

Det. Fonseca explained that they couldn't attend to either Gracia or Barnes because a crowd came running over, they were screaming obscenities and he and Det. Sylvia were trying to back them up. Det. Fonseca said that the fear continued because they were aware that a lot of the kids carry guns and they didn't know if they'd go after them

Det. Fonseca relinquished custody of his firearm, a 40 caliber Glock model 23 serial #[redacted] at Station 1.

In addition to a supplement to report 12-5497-OF Det. Fonseca filed the necessary use of force report as per general order 12-01. 12-02 and 12-03.

On May 21, 2012 at 10:05AM an interview was conducted on Detective David Brown at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

Det. Brown told investigators that they had been in the office watching the cameras. Sgt. Safioleas was monitoring the basketball courts at Magnett Park when he noticed two males that he wasn't familiar with and ask the detectives if they knew who they were. Det. Brown observed one of the males make an elaborate handshake which is quite common in most street gangs. Sgt. Safioleas asked the detectives to go down to Magnett Park and identify the males.

Det. Brown explained that he and Det. Barnes were in the lead car and that Det. Fonseca and Det. Sylvia were in the other. Det. Brown explained that when they intend to do an "encounter" one vehicle pulls up north of the subjects so they don't have to call them back.

Det. Brown asked the males what was going that night and advised them he wanted to talk to them. Det. Brown was wearing his gray Gang Unit T-shirt, he wasn't sure if he had a black hooded sweatshirt over it but did have his collar badge displayed and was wearing a tactical holster, a taser and handcuffs. Upon viewing from the department's Avigilion recording system it appears as though Det. Brown was seen putting on a black hooded sweatshirt in the police headquarters parking lot prior to responding to Magnett Park. Both males had their hands in their pockets, tensed up and wouldn't take their hands out of their pockets even after being asked to several times by Det. Brown. Det. Brown said that the males' strides changed from a normal walk to appearing as though they were looking for a way out. Det. Brown had serious concerns that the males were armed because he had had a similar encounter a few weeks prior which resulted in the retrieval of a firearm as well training he received from a class he took on the characteristics of an armed felon.

Concerned for his and the other detectives' safety he asked the males to take their hands out of their pockets and place them on a parked vehicle. Det. Brown said that his intention was to pat frisk them for weapons.

As Det. Brown guided the males to the car Gracia tensed up and ran toward a fence between the buildings. Both he and Det. Barnes thought Gracia was going to go over the fence. Det. Brown stayed with [redacted] and Barnes followed after Gracia. Gracia turned around abruptly and was fumbling for something in his pockets. Det. Barnes grabbed Gracia by the shoulders from the front and drove him back into the building area. At that point Det. Brown saw Gracia reach with his left hand and put it behind Det. Barnes' right shoulder blade area and he held him there that's when Det. Brown saw something come out. Det. Brown recognized it as some sort of weapon, initially he didn't see exactly what it was but was convinced it was a firearm. Det. Brown saw Gracia lunge at least twice in a thrusting uppercut motion to Det. Barnes' midsection. Det. Brown said it was like Gracia was preventing Det. Barnes from backing away from the stabbing, he was pushing him toward him with his left hand and thrusting up with his right hand. Det. Brown didn't see the knife until Det. Barnes backed away and was falling backwards and Det. Brown grabbed him. After Det. Barnes went down on the sidewalk and Det. Brown heard he had been stabbed he tried to make sure he was okay or at least stable, see what the extent of his injuries were. Out of the corner of his eye Det. Brown was also looking at the second male and obviously keeping an eye on what was going on with Gracia. At that point Det. Sylvia and Det. Fonseca had engaged Gracia and were telling him to drop the knife, drop the knife, get on the ground. Gracia was not responding to the commands and was actually going toward Det. Sylvia and advancing on him with the knife in his hand. Det. Brown could see that Det. Sylvia had a weapon drawn but he couldn't tell for sure what Det. Fonseca had drawn, he had something in his hand, he wasn't sure if it was his taser or firearm. Det. Brown was trying to look at three things at once. Det. Barnes was his primary concern and the second male who was gradually starting to move away, not running at that point in a northerly direction. At that point Det. Brown heard loud bangs which he definitely knew were gunshots. After the first rounds went off Det. Brown saw Gracia starting to go down and he could hear Det. Fonseca and Det. Sylvia still with the verbal commands, stay down, stay down, stay down. At that point Det. Brown was pretty sure they had that situation handled with Gracia, he was pretty sure that Det. Barnes was okay so he turned his attention back to [redacted]. Det. Brown told [redacted] to go over to him and not run as soon as he said that [redacted] took off running and Det. Brown chased him until around Kempton and Chancery at which point Det. Brown stopped and returned to the scene.

When Det. Brown arrived back at the scene he observed a hostile crowd advancing on Det. Fonseca, Det. Sylvia and Det. Barnes. The crowd was finally brought under control when State Police, north and south end units arrived.

Det. Brown never deployed his taser or firearm but did remove his firearm from its holster twice and kept it at low ready never aiming it at anyone. Det. Brown turned his weapon over to Sgt. Safioleas who put it in a lock box in the rear of his cruiser.

On May 21, 2012 at 10:45AM an interview was conducted on Sergeant Bryan Safioleas at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

Sgt. Safioleas told investigators that the evening of the incident he was monitoring the city cameras in the Gang Unit, which he does on a normal basis, and checked the United Front cameras, basketball courts. Sgt. Safioleas' attention was drawn to two males, Carreira and Gracia, who he did not recognize at the time. They appeared to him to be with the group yet not with the group. At one point he observed Gracia reach over to someone on the benches and do an elaborate handshake which is consistent with a group identifier. When the detectives in his office weren't able to identified the males Sgt. Safioleas instructed them to head down to the location and encounter the males do a "meet and greet". Sgt. Safioleas confirmed that these types of encounters are normal practice within his unit and are used to gather intelligence on gang members or people of interest.

Sgt. Safioleas told investigators that through trial and error they've developed a system on conducting meet and greets and now it's consistent on how they do it. If they know they're going to encounter someone at a meet and greet and just want to talk to them, engage them in dialogue, find out who they are, they'll pull up ahead of them this way it allows detectives to walk toward the individuals, they're readily indentified as police officers there's no mistake about it. It also avoids the problem of detectives calling the individuals back to them which would change the scope of that particular encounter its very systematic and they've done it this way numerous times a night for the past 2 ½ years.

After the detectives left Sgt. Safioleas stepped away from his desk where he had left his portable radio. When he returned he heard a lot of commotion on the air. He then heard Det. Brown say that there was an officer down. Sgt. Safioleas could see the lights on Cedar and Middle through the camera at that point he headed right down to the scene where he was informed that Det. Barnes had been stabbed.

Sgt. Safioleas took custody of Det. Barnes' firearm at the scene from Det. Brown. He then transported Det. Brown to Station 1 and later took custody of Det. Brown's firearm after confirming it had not been shot. Sgt. Safioleas placed Det. Brown's firearm in a lock in his cruiser.

On May 25, 2012 at 3:15PM an interview was conducted on Detective Tyson Barnes at New Bedford Police Headquarters. That interview was conducted by Sergeant Christopher Dolan of the Massachusetts State Police and Detective Lieutenant Joao Chaves of the New Bedford Police Major Crimes Unit. Also present for observation were myself, Attorney Andrew Gambaccini of

Reardon, Joyce and Akerson and New Bedford Police Union President, Sergeant Graciano Pereira.

Det. Barnes told investigators that they were in the office monitoring the cameras at Magnett Park inside of Temple Landing and were focusing on two individuals they were trying to identify. One of the individuals made an elaborate handshake which is commonly used by gang members to identify themselves and show allegiance to the gangs.

Det. Barnes and Det. Brown headed down to their location while Det. Fonseca and Det. Sylvia proceeded in a separate vehicle. When they arrived at the courts 3 people immediately started walking south, when detectives determined there was nothing suspicious about those individuals they focused their attention on the two individuals Sgt. Safioleas wanted identified. Their intention was to encounter the males, identify them and see if there was any affiliation with gangs in the city.

Det. Brown exited the vehicle first as Det. Barnes was exiting he realized he had forgotten his radio in the car charger and went back to get it. By the time Det. Barnes exited the vehicle with his radio Det. Brown was already standing in front of the two males. Det. Barnes could hear Det. Brown say hey, hey, hey, let me see your hands, let me see your hands.

Before Det. Brown was able to reach the sidewalk he observed Gracia turn around and run to the grassy area. When Gracia saw Det. Fonseca and Det. Sylvia who had exited their vehicle and were walking north toward their location, he back pedaled a couple of steps and frantically tried to get something from his pocket or waistband. Det. Barnes heard one of the detectives say he's got something. Fearing he had a firearm Det. Barnes ran over to Gracia and grabbed him. Gracia had his left arm on Det. Barnes' trap area. Det. Barnes saw Gracia making a trusting motion with his right arm. At that time Det. Barnes didn't see or feel anything. When Gracia thrust at Det. Barnes a second time that's when he saw it was a cutting instrument. Det. Barnes put his hand up in a blocking motion to push the instrument down which caused an abrasion on his left forearm. Gracia then made a trusting motion toward Det. Barnes' chest. Det. Barnes tried to move away and fell back onto the sidewalk. At that time Det. Barnes still wasn't sure if he was injured, Det. Barnes remembered yelling out "he has knife, he has a knife". Once Det. Barnes realized what was going on he felt as though Gracia was trying to kill him.

While on the ground Det. Brown approached Det. Barnes to see if he was alright, even though when he hit the ground he was in a lot of pain Det. Barnes still didn't realized he was seriously injured. Det. Barnes told investigators that as he looked down at the hole in his shirt he heard verbal commands by Det. Fonseca and Det. Sylvia saying drop the knife, he heard a pop, the sound of a taser and then several more rounds go off at which point he covered his head for fear of a ricochet.

After the sound of the gun fire Det. Barnes looked over and observed Gracia get up, not to a full standing upright position, Detectives were still giving him commands to get down. Det. Barnes said that Gracia was still trying to move forward and engage the detectives. Det. Barnes' view was of Gracia's back, he was unable to see if he had anything in his hands. Det. Barnes heard several more rounds, he didn't know how many, he just covered his head again. Det. Barnes then observed Gracia lying on the sidewalk.

Trooper Mark Lavoie removed Det. Barnes' duty belt and its contents prior to him being placed in the ambulance. Det. Barnes did not recall what Trooper Lavoie did with his equipment. Det.

Barnes did receive his firearm back several days later from Sgt. Safioleas but had not received his taser back and did not know of its whereabouts.

On 9/12/12 Det. Lt. Joao Chaves of the New Bedford Police Department Violent Crimes Division provided me with a copy of Massachusetts State Police homicide investigation #20012-104-0240 prepared by Sergeant Christopher Dolan.

According to the ballistics report (6) 40 caliber spent shell casings were found at 69-73 Cedar St.. (2) Spent projectiles (bullets) were located at the scene and (1) spent projectile was removed from the victim. (3) bullets were fired from each firearm the (3) projectiles located appear to be from guns but they're unable to be classified.

CONCLUSION

One of the primary functions of the New Bedford Police Department Gang Unit is to gather intelligence on gang members or people of interest. Surveillance through City cameras and face to face encounters or "meet and greets" are two methods commonly used by that division.

The fact that Malcolm Gracia and [redacted] were in a high crime area frequented by gang members, they had not previously been identified or encountered by the gang unit and the fact that Gracia was observed engaging in an elaborate handshake used as a group identifier by gangs justified the reason for the encounter. Their location and activities as described my detectives in their testimony was confirmed through video.

When Det. Barnes and Det. Brown arrived on Cedar St. they used the Gang Unit's developed system of "meet and greets", which has been in existence for 2 ½ years, where they pull ahead of the subjects, walk towards them so they're readily identified as police officers and engage them in non-aggressive questioning. Although through video representation it appears as though Det. Brown was seen putting on a black hooded sweatshirt in the police headquarters parking lot prior to responding to Magnett Park witness [redacted] indicated that he was wearing a badge and a shirt that said police. Det. Brown asked Gracia and [redacted] what was going on that night and informed them that he wanted to talk to them, it was not an order just a mere inquiry.

While engaging [redacted] and Gracia Det. Brown made visual observations of both subjects which raised his threat perception. Both [redacted] and Gracia wouldn't remove their hands from their pockets even after being asked to by Det. Brown. Both Det. Barnes and independent witness [redacted] heard a variation of that request. In addition Gracia would not make eye contact with Det. Brown. Based on his training, experience and previous encounters Det. Brown developed concerns that [redacted] and Gracia were armed at that point. For safety reasons he made the decision to move them to an area where he could conduct a pat frisk.

Det. Brown began guiding [redacted] and Gracia toward a nearby vehicle with the intention of having them place their hands on the vehicle while he conducted a pat frisk. When they got closer to the vehicle Gracia tensed up, turned and ran. As Gracia was running he was fumbling for something in his pockets which at least two detectives feared was a firearm.

As Det. Barnes went to grab Gracia, Gracia turned and a struggle ensued resulting in Gracia stabbing Det. Barnes. When Det. Barnes fell backward Gracia started running toward Det. Sylvia with the knife in his hand at chest/shoulder level. Fearing for Det. Sylvia's safety Det. Fonseca removed his department issued taser, commanded Gracia to drop the knife, when he did not comply Det. Fonseca deployed this taser on Gracia which had no impact. Gracia continued his assault on Det. Sylvia despite verbal commands by detectives to drop his knife. The issuance of those verbal commands were confirmed by independent witness [redacted]. Fearing for his life Det. Sylvia fired his weapon once at Gracia when that did not stop Gracia's assault Det. Fonseca and Det. Sylvia simultaneously fired their service weapons at Gracia. Gracia went down momentarily which was met by verbal commands from the detectives to stay down. Gracia again disregarded the detectives' orders and proceeded to get up with the knife in his hands. Fearing Gracia was going to kill him Det. Sylvia fired his weapon a third time which stopped the assault.

Once the threat had stopped Detectives were justifiably unable to provide immediate medical attention to Gracia or Barnes due to the advance on them by a hostile crowd.

The events as described were in compliance with New Bedford Police Department General Order 12-01(Use of Deadly Force) and 12-03 (Electronic Control Weapons) as well as the Massachusetts Police Training Council Use of Force continuum.

All the evidence currently available points to this shooting as being completely justified. There is no question that given the totality of the circumstances surrounding this incident that Det. Paul Fonseca's, Det. Trevor Sylvia's, Det. David Brown's and Det. Tyson Barnes' actions complied with the appropriate Federal and State law as well as the rules and regulations, policies and procedures and directives of the New Bedford Police Department and that they should be ***EXONERATED*** of any misconduct as it applies to this case.

Respectfully Submitted,

Sergeant Pamela Melo #3795
Division of Professional Standards

Reviewed / Approved: _____ Date: _____

Chief of Police: _____ Date: _____