

FALSE STATEMENT, MISCONDUCT IN OFFICE

State of Maryland,

City of Baltimore, to wit:

IN THE CIRCUIT COURT FOR BALTIMORE CITY

THE STATE OF MARYLAND

-VS-

Brendan O’Leary

Defendant:

Date of Offense: **On/About April 27, 2020**

Location : **BALTIMORE CITY, MARYLAND**

INDICTMENT

The Jurors of the State of Maryland for the body of the City of Baltimore, do on their oath present that, on or about April 27, 2020 in the City of Baltimore, State of Maryland, the Defendant, Brendan O’Leary, a sworn police officer sergeant did knowingly, intentionally, and unlawfully misrepresent facts regarding an encounter that occurred on April 27, 2020 against the peace, government, and dignity of the State.

MANNER AND MEANS

Among the manner and means by which the defendant conducted and participated in the crimes of False Statement and Misconduct in Office are as follows:

1. On April 27, 2020, Officer Maxwell Dundore (hereinafter “Officer Dundore”) was on duty, in uniform, and working as a sworn law enforcement officer for the Baltimore Police Department (hereinafter “BPD”).
2. That on April 27, 2020, at approximately 09:00 hours, Officer Dundore responded to the 2800 block of Mayfield Avenue with another BPD member to investigate the report of a stolen automobile.
3. That when Officer Dundore arrived at the Mayfield Avenue location, Mr. Bobby Adams, a 17 year old juvenile at the time, was exiting the driver’s door of the reported stolen automobile.

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4. That when Mr. Adams attempted to flee on foot, Officer Dundore grabbed him at the rear of the reported stolen automobile and both fell to the ground. Mr. Adams got to his feet. Officer Dundore then grabbed Mr. Adams around the waist, lifted him off the ground, and slammed him face-down onto the concrete. Officer Dundore landed on top of Mr. Adams' back.

5. That after slamming Mr. Adams face-down onto the concrete, Officer Dundore wrapped his legs around Mr. Adams and wrapped his left arm around Mr. Adams' neck. When Mr. Adams struggled to free himself, Officer Dundore increased the force of his hold and stated, "I swear to God, I'll choke you out if you don't stop" as another BPD officer attempted to secure Mr. Adams' legs.

6. That after Officer Dundore threatened to choke Mr. Adams for his resistance, Mr. Adams began to kick toward the other BPD officer in an attempt to break free. Officer Dundore then held Mr. Adams under his chin near the throat, pulling Mr. Adams' head backward with both hands.

7. That as Officer Dundore maintained his hold on Mr. Adams' chin and throat area, Mr. Adams struggled for air. Officer Dundore then stated to Mr. Adams, "I will choke you. I will kill you," before releasing his hands from Mr. Adams' throat area. By that time multiple officers had arrived and assisted in securing Mr. Adams in handcuffs as he laid on the ground.

8. That after releasing Mr. Adams' head and neck area, and while Mr. Adams presented no threat to him because he was handcuffed, Officer Dundore pushed Mr. Adams on the right side of his face. Officer Dundore then stood up, stepped over Mr. Adams, and back-kicked him in the head.

9. That after kicking Mr. Adams in the head, Officer Dundore called Mr. Adams "stupid ass" and told him to "shut up" when Mr. Adams complained that Officer Dundore had kicked him in the face.

10. That when Mr. Adams continued to state that Officer Dundore had kicked him in the face, Officer Dundore stated, "Yep. Yep. Bobby, you're mine today."

11. That Officer Dundore spoke to another BPD officer on scene and stated, "I did slam him."

12. That when Officer Dundore encountered Mr. Adams, Officer Dundore made harmful, offensive and unwanted contact with Mr. Adams, without legal justification, when he slammed Mr. Adams face-down onto the concrete, held his head and neck area with enough force

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to pull Mr. Adams' head back, threatened to choke and kill him while holding his head and neck area, pushed Mr. Adams' face, and kicked Mr. Adams' head.

13. That BPD Policy 1115 provides guidance on police use-of-force practices. Under Policy 1115, officers are instructed that they "shall use only the force reasonable, necessary, and proportional to respond to the threat or resistance to effectively and safely resolve an incident." Policy 1115 also mandates that an officer "use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible."

14. That Policy 1115 specifically states that application of chokeholds/neck holds are prohibited unless the use of deadly force/lethal force is authorized and no reasonable alternative exists.

15. That at no time did Mr. Adams' resistance rise to the level of aggravated aggression which would have permitted the use of lethal force.

16. That while Officer Dundore attempted to take Mr. Adams into custody and throughout the encounter, Officer Dundore both ignored and violated BPD policies regarding arrests and use of force.

17. At all times relevant, Officer Dundore was a sworn public officer, acting under color of his office. The assault was not accidental, consented to, nor legally justified.

18. Sergeant Brendan O'Leary. (hereinafter "Sergeant O'Leary") was hired as a police officer by the Baltimore City Police Department on July 12, 2011. Sergeant O'Leary rose through the agency and attained the rank of sergeant. On April 27, 2020 (hereinafter the "date of the incident") Sergeant O'Leary was a permanent rank supervisor in the Northeast district within Baltimore City, responsible for the supervision of Officer Dundore.

19. Prior to becoming a sergeant, Sergeant O'Leary was trained on all facets of the Baltimore Police Department's (hereinafter "BPD") policies and procedures, including but not limited to: Policy 104, "Incident Reporting;" Policy 301, "Code of Ethics;" Policy 302, "Rules and Regulations;" Policy 305, "Department Values, Vision and Mission;" Policy 317, "Fair and Impartial Policing;" Policy 725, "Use of Force Reporting, Review, and Assessment;" Policy 804, "Policy 1107, "De-escalation;" Policy 1115, "Use of Force". O'Leary was also duly trained on the Constitution and what it allows, and prohibits, when interacting with the citizenry. Sergeant O'Leary continued to receive training after becoming a sergeant.

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On the date in question, BPD's policy 302 specifically stated:

Any breach of the peace, neglect of duty, misconduct or any conduct or omission on the part of any member of the Department, either within or outside the City of Baltimore, and whether on or off duty, which tends to undermine the good order, efficiency or discipline of the Department, or which reflects discredit upon the Department or any member thereof, or which is prejudicial to the efficiency and discipline of the Department, even though these offenses may not be specifically enumerated or laid down, shall be considered conduct unbecoming a member of the BPD, and subject to disciplinary action by the Police Commissioner, unless such conduct is protected by the Constitution of the United States, the Maryland Declaration of Rights, or any other federal, state or local law.

- *Members shall be professional, civil, and orderly at all times, and shall refrain from coarse, profane, or insolent language.*
- *Members will meet the public with courtesy and consideration. Questions must be answered civilly and courteously. Members will not use facetious expressions while talking to the public.*
- *Members will not make, orally or in writing, any false statement, or misrepresentation of any material fact, or make any material omission of fact, including but not limited to statements or omissions made with the intent to mislead any person or tribunal.*

On the date in question, BPD's policy 725 specifically stated:

Involved Members shall submit a Force Report, Form 96 by the end of their tour of duty. The Force Report shall include:

- 2.1. *The reason for the initial police presence,*
- 2.2. *A specific description of the acts that led to the Use of Force,*
- 2.3. *The level of resistance encountered,*

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2.4. *A description of every type of Use of Force, and*

2.5. *Other items included in the Totality of the Circumstances as appropriate.*

2.6. *The name and sequence number of the notified supervisor.*

20. On the day of the incident, Sergeant O’Leary, having been duly sworn, and properly trained on the policies of the BPD and on Constitutional restraints on power, acting under color of authority, did knowingly, intentionally and unlawfully disregarded BPD and Constitutional policies and restraints, and instead authored false statements and representations in a Baltimore Police Department Use of Force Investigation.

21. That on April 27, 2020 Officer Dundore , a sworn law enforcement officer for the Baltimore Police Department responded to the 2800 block of Mayfield Avenue with another BPD member to investigate the report of a stolen automobile.

22. Officer Dundore approached a Mr. Bobby Adams (hereinafter “Adams”), a 17 year old juvenile at the date of the incident, exiting the driver’s door of the reported stolen automobile.

23. As described in paragraph 12, that during the encounter with Mr. Adams, Officer Dundore made harmful, offensive and unwanted contact with Mr. Adams, without legal justification.

24 According to Baltimore Police Department Policy 1115, “Any member with knowledge that another member used force must also immediately report that Use of Force to a permanent-rank supervisor. In all instances, the permanent-rank supervisor will conduct a thorough review of the Use of Force, and document this review by completing a Blue Team entry before the conclusion of the supervisor’s tour of duty.”

25. BPD Policy 1115 states the responsibilities of supervisors in conducting a use of force review. It requires that that “Supervisors will ensure that all Involved Members and members who observed the Use of Force incident accurately, thoroughly, and in a timely fashion, report the Use of Force. All Use of Force or Threat of Force incidents shall be documented and reviewed by a permanent-rank supervisor who is not an Involved Member in the incident.”

26. On the date and time of the incident, Sergeant O’Leary was the supervising officer required to conduct and document the use of force incident involving Officer Dundore and Adams. Sergeant O’Leary did respond to the scene and conducted a use of force incident investigation.

27. BPD Policy 725 requires that “all levels of supervision shall thoroughly document,

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investigate, review, and assess the actions taken to determine if the Use of Force was consistent with BPD policy and training.” Specifically as it relates to permanent rank supervisors, Policy 725 mandates that, “Deliberate material omissions, false statements, or inaccuracies made with the intent to mislead will result in discipline for failure to report, up to and including termination.”

28. BPD Policy 302, Rules and Regulations, states, “Members will not make, orally or in writing, any false statement, or misrepresentation of any material fact, or make any material omission of fact, including but not limited to statements or omissions made with the intent to mislead any person or tribunal.”

29. Pursuant to BPD policy, Sergeant O’Leary was required to submit a true and accurate Use of Force Review. On April 27, 2020 at 16:33 hours O’Leary submitted a use of force review that contained several material omissions, misrepresentations of material fact and inaccurate statements.

30. Sergeant O’Leary asserted in his report that he had viewed all BWC footage prior to submitting this report. The BWC footage does not support the statements, observations and conclusions made by Sergeant O’Leary in his report.

31. Officer Dundore body-slammed Adams to the ground face-first. Sergeant O’Leary described this action in his report stating, “Officer Dundore wrapped his arms securely around Adams’ waist, lifted his feet off the ground to prevent any further attempts to flee and put him on the ground on his back, falling on top of him to gain control.”

32. Officer Dundore placing his hands around the throat of Adams while pulling Adams’ head backwards. Sergeant O’Leary described the action as “Officer Dundore was laying on the ground with his legs wrapped around Adams’ waist and a secure grip on Adams’ chin so he could not move his upper body.”

33. Once Mr. Adams was handcuffed and securely in the custody of BPD officers, Officer Dundore pushed Adams in the face without legal justification. Sergeant O’Leary materially omitted this action by Officer Dundore in his report.

34. Officer Dundore deliberately kicked Adams in the head while he was handcuffed and securely in the custody of BPD officers without legal justification. Sergeant O’Leary falsely stated in his report that “While standing up, Adams grabbed Officer Dundore’s shoe laces causing him to trip. He was able to stand up but his foot inadvertently struck Adams in the left side of his face.”

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35. The report submitted by Sergeant O'Leary minimized the severity of Officer Dundore's actions, materially distorted the nature of the incident to justify unlawful police conduct, and mislead investigators into concluding that the actions of Officer Dundore were within BPD policy.

36. All paragraphs herein are reincorporated and reaffirmed as to the following counts:

CHARGES

The Grand Jurors, having received evidence supporting paragraphs 1-36 herein, reaffirming and incorporating said paragraphs, do allege and charge the defendant, Brendan O'Leary:

COUNT 1

The Grand Jury on their oath and affirmation alleges that the above named Defendant, on April 27, 2020, in the City of Baltimore, State of Maryland, did as a duly sworn police officer for the Baltimore City Police Department unlawfully, knowingly, and corruptly make false statements in the performance of and under color of authority of his official duties, in violation of the common law, against the peace, government and dignity of the State.

*False Statement, Report, or Complaint under the Law Enforcement Officer Bill of Rights, PS 3-113, CJIS ****

COUNT 2

The Grand Jurors further allege that the above named Defendant, on April 27, 2020, in the City of Baltimore, State of Maryland, did as a duly sworn police officer for the Baltimore City Police Department unlawfully, knowingly, and corruptly commit an unlawful act in the performance of and under color of authority of his official duties, in violation of the common law, against the peace, government and dignity of the State.

Misconduct in Office, Common Law; 9X 0042



The State's Attorney for the City of Baltimore

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