

***State of Maryland,***

*City of Baltimore, to wit:*

**IN THE CIRCUIT COURT FOR BALTIMORE CITY**

The State of Maryland

-v-

**Zachary James Small**

**Defendant:**

**INDICTMENT**

The Grand Jury of the State of Maryland for the body of the City of Baltimore, State of Maryland, do on their oath present that the aforesaid Defendant, late of said City, heretofore on or about **September 27, 2023** in the **400 block of N. Washington Street, Baltimore, Maryland 21227**, did commit an assault in the first degree, assault in the second degree, reckless endangerment, excessive force and misconduct in office in violation of the Common Law, Criminal Law, and Public Safety Code of Maryland; 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 acts of Assault in the First Degree, Assault in the Second Degree, Reckless Endangerment, Excessive Force and Misconduct in Office are as follows:

1. On September 27, 2023, at all relevant times, Corporal Zachary Small (hereinafter Cpl. Small) was on duty, in uniform, and working as a sworn law enforcement officer for the Baltimore County Police Department (hereinafter “BCPD”).

2. That at approximately 7:12 p.m., Cpl. Small along with approximately nine Baltimore County police officers, seven Baltimore City Police Officers, and two Johns Hopkins Hospital Security Guards were in the 400 block of N. Washington Street exchanging a suspect, Mr. Justin Russell (hereinafter Mr. Russell) who had escaped police custody at Johns Hopkins Hospital.

3. That officers cuffed Mr. Russell’s hands behind his back and placed leg shackles around his legs. Mr. Russell was placed into the back of a marked patrol vehicle with a partition in front of the back seat and Cpl. Small secured his seatbelt. All of the windows were rolled up.

4. Shortly after being placed into the patrol car, Mr. Russell began to hit his head on the back window and stated, “I can’t breathe back here, yo.” Hearing this, Cpl. Small opened the back

door. Mr. Russell again stated, "I can't breathe back here, yo!" Cpl. Small responded, "You break that fucking window you're gonna get the whole can of pepper spray!" Mr. Russell repeated, "I can't breathe." To which Cpl. Small replied, "I don't care." Cpl. Small attempted to slam the car door but Mr. Russell's knee was in the way. Cpl. Small then stated, "You want to get sprayed? I will fucking spray you!" Mr. Russell stated, "I cannot breathe. You got all the windows rolled up." Cpl. Small stated, "Yes, you can." Mr. Russell advised that the air conditioning was not on and pleaded with Cpl. Small stating, "Please don't kill me like this."

5. That while still in handcuffs, leg shackles, and seat belted Cpl. Small sprayed nine shots of O/C Pepper Spray directly into Mr. Russell's face then closed the patrol car door and stated, "Not doing it."

6. That Mr. Russell began to gasp, choke and call out for the assistance of the officers while doing so kicking against the car door to get the attention of the officers.

7. That Cpl. Small returned to the back passenger door, opened it, pulled Mr. Russell out by his shirt, and threw him onto the ground. Once on the ground Cpl. Small took his right hand and gathered Mr. Russell's locks at the roots. Cpl. Small took his left hand and overlapped the top of his right hand and gripped Mr. Russell's hair, which was in a loc style. Mr. Russell was on his stomach as Cpl. Small grabbed Mr. Russell's hair and began to yank Mr. Russell's head and neck back and forth.

8. That Cpl. Small gripped Mr. Russell by his hair for approximately twenty-eight seconds while Mr. Russell repeatedly asked for help, stating that he could not breathe. That while yanking Mr. Russell's head back by his hair, Cpl. Small stated, "You asked for it. You asked for it. Just remember this. I warned you."

9. That as Mr. Russell lay face down on the concrete, an officer asked him, "Why can't you breathe." Cpl. Small answered, "Because he got sprayed." Mr. Russell stated that he could not breathe and asked that the officers not put him back into the vehicle.

10. That in response, Cpl. Small grabbed Mr. Russell shirt collar and used force to lift Mr. Russell's torso from the ground while yelling at him. After maneuvering Mr. Russell by his collar for approximately thirty seconds, Cpl. Small directed Mr. Russell to get up and lifted him from the ground by his shirt collar. Mr. Russell was then forced back into the patrol car where O/C Pepper Spray had been deployed. Mr. Russell begged not to be placed back into the vehicle stating, "It's so hot in here, y'all don't, y'all don't do this to y'all dogs, yo. Why are you doing this to me?" Cpl. Small closed the door once again.

11. That Cpl. Small did not call for medical assistance for Mr. Russell nor did Cpl. Small attempt to render aid to Mr. Russell. Instead, Cpl. Small ordered Mr. Russell transported to Woodlawn Police Precinct in Baltimore County, Maryland.

12. That in doing so, Cpl. Small violated multiple Criminal Laws as well as BCPD policies and procedures.

13. Throughout his time as a police officer, Cpl. Small received training on all facets of the BCPD's policies and procedures, including but not limited to: Article 5 – Prisoners and Article 12 – Use of Force / Weapon Systems.

On the date in question, BCPD's Article 5 stated in pertinent part:

**Article 5 – Prisoners:**

***5-6.1 Pepper Aerosol Restraint Spray (ARS)***

**General**

- *Prisoner transport wagons will be equipped with spray water bottles and clean paper towels to help overcome the effects of Pepper Aerosol Restraint Spray (ARS).*
- *When a prisoner is recovering from the Effects of ARS:*
  1. *Advise the prisoner that air and water are the only treatment for ARS.*
  2. *Offer the prisoner a container of water and towels as soon as possible.*
  3. *Verbally assure the prisoners of the temporary nature of their discomfort.*
  4. *Monitor and remain with the prisoner continuously until the effects subside.*
- *If the prisoner displays an unexpected reaction to ARS, summon medical assistance immediately.*

On the date in question, BCPD's Article 12 stated in pertinent part: Article 12 – Use of Force

**SWORN MEMBERS**

- *Shall take reasonable steps to gain compliance and de-escalate conflict without using physical force, when time, circumstances, and safety allow.*

**NOTES:**

1. *Reasonable alternatives are those that are able to achieve the same ends safely and effectively.*
  2. *This does not require the member to jeopardize their own safety by pursuing alternatives that are not reasonable under the totality of the circumstances (e.g., the amount of time the member has to make a decision, the immediacy of the threat facing the officer, etc.)*
  3. *Members should consider whether a lack of compliance is a deliberate attempt to resist or is caused by an inability to comply.*
- *Utilize de-escalation techniques along with their training (e.g. Integrating Communications, Assessment, and Tactics (ICAT), etc.), when safe and practical to do so, to ensure they:*
    1. *Are communicating, re-assessing the situation, and using the best tactics to defuse or stabilize a situation safely so that more time, options, and resources may be*

- available to gain voluntary compliance and/or reduce or eliminate the need to use force; and
    - 2. Use the least amount of force necessary and proportional to safely control a situation.
  - May not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to:
    1. Prevent an imminent threat of physical injury to a person; or
    2. Effectuate a legitimate law enforcement objective (i.e., carry out the duties and responsibilities of a law enforcement officer).

**NOTES:**

1. Force is not necessary unless there is no reasonable alternative to using force that, under the totality of the circumstances, would safely and effectively achieve the same legitimate ends.
  2. When determining whether to use force or continue using force, officers shall take into consideration all information known regarding the subject and circumstances, including the severity of the crime, the threat posed by the individual to the safety of the officer or other people, and whether the subject is trying to flee or resist arrest.
- Must evaluate the immediate circumstances and use only the force necessary and proportional to the situation.

**SWORN MEMBERS USING FORCE**

- Shall cease the use of force as soon as:
  1. The person on whom the force is used:
    - a. Is under the sworn member's control; or
    - b. No longer poses an imminent threat of physical injury or death to the sworn member or to another person;
- Shall render basic first aid to persons injured as a result of police action and promptly request appropriate medical assistance.

**NOTE: Aid:**

1. Shall be consistent with the member's training and rendered when safe and feasible to do so.
2. Will include a request for emergency medical assistance for any person in police custody with obvious injury or complaint of injury.

**PEPPER AEROSOL RESTRAINT SPRAY (ARS)**

**SWORN MEMBERS**

- Summon medical assistance immediately if a subject or arrestee displays an unexpected reaction to ARS.

Members shall 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.

Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.

**12-2.0 HANDCUFFING PROCEDURES**  
**OFFICERS**

- *Who use ARS will monitor the individual's physical condition for adverse effects.*
- *Will monitor all restrained individuals to ensure respiratory function.*

14. All paragraphs herein are incorporated and affirmed as to the following additional counts:

**CHARGE(S)**

The Grand Jurors, having received evidence supporting paragraphs 1-14 herein, affirming and incorporating said paragraphs, do allege and charge the Defendant, Zachary James Small:

**COUNT 1**

The Grand Jurors of the State of Maryland for the body of the City of Baltimore, do present that the aforesaid Defendant, Zachary James Small, a sworn police officer in the County of Baltimore, State of Maryland, on or about **September 27, 2023** in the **400 block of N. Washington Street, Baltimore, Maryland 21227** did assault **Justin Russell** in the first degree, in violation of Criminal Law Article, Section 3-202 of the Annotated Code of Maryland; against the peace, government and dignity of the State.

Assault 1st Degree, CR 3-202, 1-1420

**COUNT 2**

The Grand Jurors of the State of Maryland for the body of the City of Baltimore, do present that the aforesaid Defendant, Zachary James Small, a sworn police officer in the County of Baltimore, State of Maryland, on or about **September 27, 2023** in the **400 block of N. Washington Street, Baltimore, Maryland 21227** did assault **Justin Russell** in the second degree, in violation of Criminal Law Article, Section 3-203 of the Annotated Code of Maryland; against the peace, government and dignity of the State.

Assault 2nd Degree, CR 3-203, 1-1415

**COUNT 3**

The Grand Jurors of the State of Maryland for the body of the City of Baltimore, do present that the aforesaid Defendant, Zachary James Small, a sworn police officer in the County of Baltimore, State of Maryland, on or about **September 27, 2023** in the **400 block of N. Washington Street, Baltimore, Maryland 21227** did recklessly engage in conduct to wit: causing loss or impairment of Justin Russell's ability to breathe, that created a substantial risk of death or serious physical injury to **Justin Russell**, in violation of Criminal Law Article, Section 3-204 of the Annotated Code of Maryland; against the peace, government and dignity of the State.

Reckless Endangerment, CR § 3-204, 1\_1425

**COUNT 4**

The Grand Jurors of the State of Maryland for the body of the City of Baltimore, do present that the aforesaid Defendant, Zachary James Small, a sworn police officer in the County of Baltimore, State of Maryland, on or about **September 27, 2023** in the **400 block of N. Washington Street, Baltimore, Maryland 21227** did use excessive force upon **Justin Russell**, in violation of Public Safety Article 3, Section 3-524(d) of the Annotated Code of Maryland; against the peace, government and dignity of the State.

Maryland Use of Force Statute, PS § 3-524

**COUNT 5**

The Grand Jurors of the State of Maryland for the body of the City of Baltimore, do present that the aforesaid Defendant, Zachary James Small, a sworn police officer in the County of Baltimore, State of Maryland, on or about **September 27, 2023** in the **400 block of N. Washington Street, Baltimore, Maryland 21227**, acting under color of authority did knowingly, intentionally, and unlawfully commit the crime Misconduct in Office against the peace, government, and dignity of the State.

Misconduct in Office [Common Law] 9X 0042

Respectfully submitted,

Ivan J. Bates  
State's Attorney for Baltimore City



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The State's Attorney for the City of Baltimore