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\*\*\*\*\*This preliminary report is based on the limited access to records that T&M USA, LLC (“T&M”) investigators were provided with by the Albany Police Department (“APD”). APD has taken the position that a protective order issued in the matter of People v. Frazier, dated June 27, 2022, which bars defense counsel from disseminating discovery to third parties, prohibits APD from releasing records to CPRB investigators.\*\*\*\*\*

### **Community Complaint Report**

**Date Received:** February 9, 2023

**Assigned Investigator:** Patrick Keane, Senior Investigative Consultant

**Assigned Reviewer:** Julie Schwartz, Managing Director of Investigations

**Complaint received via:** Independent investigation of police involved shooting by Albany Community Police Review Board (“CPRB”)

**Subjects:** Police Officer Anthony Rogers, Police Officer Will Johnson, Police Officer Fabrizio Maioriello

**Complainant’s name:** Albany CPRB

**Type of Complaint:** Independent investigation of police involved shooting

**Location of Incident:** [REDACTED]

**Date and Time of Incident:** June 20, 2022, at about 12:19 pm

**Statute of Limitations:** June 19, 2023

**Synopsis of investigation:**

#### **Based on Review of Officer Worn Body Cameras**

On Monday June 20, 2022, at approximately 1120 am, a 911 call of a domestic dispute brought officers from the APD to [REDACTED]. Police Officer Anthony Rogers (“Rogers”), Police Officer Will Johnson (“Johnson”) and Police Officer Fabrizio Maioriello (“Maioriello”) responded to the location. The downstairs resident met the police officers at the door. The neighbor told the police officers that her upstairs neighbor texted her to call 911 because she was scared of her boyfriend who was in the apartment. The police officers went upstairs, and complainant [REDACTED]



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(██████████) met officers at the door and told them about a dispute that became physical with her boyfriend Eric Frazier (“Frazier”). She said the argument took place that morning inside the apartment. Rogers, Johnson and Maioriello then began an investigation of the incident.

The parties were separated, and Maioriello went outside to speak with ██████████. Rogers stayed inside with Johnson and spoke with Frazier. Rogers appeared to take the lead in the investigation. Frazier told Rogers that he was living at that location but also had a residence around the block. Frazier said that he and ██████████ got in an argument, but it wasn’t physical. Frazier told Rogers that he had done “state time in the past.” After speaking with Frazier, Rogers left Johnson with Frazier and went outside to confer with Maioriello.

Maioriello told Rogers that Frazier and ██████████ got in an argument because she wanted him to leave, and Frazier told her “The only way he was leaving was if he killed her.” Maioriello observed red marks and scratches on her neck and face. He asked her if Frazier caused them and she said yes. Maioriello also told Rogers that this was not the first time Frazier had assaulted ██████████.

Rogers then spoke with ██████████ outside of the location. He observed the marks on her neck and face. He asked her what happened, and she repeated what she told Maioriello. He asked her if she wanted him arrested or just wanted him to leave. She told him how afraid she was of Frazier. Rogers asked another time and maybe a third time “do you want him arrested or do you just want him to leave?” ██████████ said “okay, I am so afraid of him, please get him to leave.” She never clearly stated she didn’t want him arrested. Rogers told her that he could get Frazier to leave. Rogers asked ██████████ if Frazier had a gun and she said “no”. Rogers asked ██████████ “does he have any other weapons?” She said “knives, a lot of them.” Rogers said, “I am okay with that.”



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Rogers then met Maioriello outside of the location. Maioriello confirmed that they were arresting Frazier for assaulting [REDACTED], but Rogers said no, we are just getting him to leave the apartment.

Rogers had Frazier voluntarily agree to pack up his belongings and leave the residence. The police officers physically assisted Frazier in removing his belongings from the apartment to the street. The police officers allowed Frazier to leave the location and come back with friends to assist in moving his belongings. After the interviews and removing of the belongings to the street were completed, and Frazier was allowed to leave, a warrant query was carried out. The warrant query was conducted after the officers were at the location for approximately forty-five (45) minutes and were aware that Frazier had prior contact with the criminal justice system. The results showed that Frazier had an active arrest warrant and would now have to be arrested. When Frazier returned to the location, the officers informed him of the warrant and that he was under arrest. As the police officers attempted to place Frazier under arrest, he physically resisted being taken into custody, and during the struggle, Frazier slashed Johnson on his arm with a knife, causing a serious physical injury. During the struggle, Rogers shot Frazier. He was eventually subdued and placed under arrest. Johnson and Frazier were removed to the hospital for treatment. Both were later released from the hospital.

**Investigative Case Status:** \*\*\*\*Preliminary\*\*\*\* Due to a Protective order issued in the criminal case of Eric Frazier, limited information was shared with the Albany CPRB and T&M Investigators. This information was shared prior to APD learning of a Protective Order issued by the court. On March 2, 2023, T&M reviewed the body worn cameras of Rogers, Johnson and Maioriello and limited materials from the case file. After March 2, 2023, Albany CPRB and T&M were denied access to the Frazier APD case file and the Albany County District Attorney (“ACDA”) case file.



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## **Preliminary Findings:**

### Police involved shooting

Upon reviewing the facts and circumstances regarding this event from available evidence, Rogers may have been justified in the use of force pursuant to Article 35 of the New York State Penal Law. Additionally, Rogers's use of force appears to have been within APD Use of Force guidelines. Rogers discharged his weapon at an individual who had slashed another officer. Frazier committed a felony assault and was still in possession of the weapon after the felony assault. Deadly physical force is defined as "physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury." Penal Law § 10.00(11). A person may use deadly physical force if the person reasonably believes that deadly physical force is being used or is about to be used on himself, herself or a third person. See Penal Law § 35.15(2)(a). Moreover, in the course of making an arrest, a police officer may use deadly physical force if necessary to defend the police officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force. See Penal Law § 35.30(1)(c). Rogers also appears to be in compliance with APD guidelines specified under General Order 1.03.05, entitled "Use of Force-Lethal Weapons" (issued March 1998, updated August 2, 2019).

T&M cannot make a final finding until the complete case file is released by the APD and ACDA.

### Conduct Standards

**T&M is making this preliminary finding because the APD administrative Statute of Limitations is due to expire on June 19, 2023.**

T&M reviewed the video evidence that was obtained from the body worn cameras of Johnson, Rogers and Maioriello. It appears that Rogers improperly handled the domestic violence call that immediately led to this incident. Specifically, Rogers did not arrest Frazier for assaulting [REDACTED], although probable cause existed that an assault

had been committed. New York State Criminal Procedure Law § 140.10(4)(c) provides that:

a police officer shall arrest a person, and shall not attempt to reconcile the parties or mediate, where such officer has reasonable cause to believe that: . . . a misdemeanor constituting a family offense, as described in subdivision one of section 530.11 of this chapter and section eight hundred twelve of the family court act, has been committed by such person against [a] family or household member, unless the victim requests otherwise. The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention.

It appears that there was reasonable cause to believe that Frazier had committed a misdemeanor constituting a family offense against [REDACTED], and that Frazier and [REDACTED] were “members of the same family or household,” as defined. Under such circumstances, Rogers was obligated to arrest Frazier and not ask [REDACTED] whether she wanted Frazier arrested. This is also in direct violation of APD General Order 3.8.20 entitled “Domestic Violence” (effective date March 1998, revised on June 14, 2022). In addition, in his interview with [REDACTED] Rogers actively attempted to downplay the incident and repeatedly offered to send the victim, [REDACTED], to a Domestic Violence counselor as opposed to arresting the perpetrator, Frazier. Rogers appeared to also violate the APD Domestic Violence arrest policy section 4, in that Rogers did not arrest Frazier, although he had probable cause, and attempted to reconcile or mediate the parties involved, which the general order specifically prohibits. It should be noted that in a conversation recorded on the officers’ body worn cameras, Maioriello told Rogers that he believed Frazier should be arrested. Maioriello also informed Rogers that this is not the first time Frazier had assaulted [REDACTED].

Based upon the limited information that was provided to T&M by APD, it appears that Rogers was the senior officer at this assignment, and the other officers deferred to his judgment. It is the opinion of investigators that although Maioriello and Johnson





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participated in this investigation, Rogers made the decision not to arrest Frazier. Rogers was also told that Frazier may be armed and told [REDACTED] that he was not concerned about that. From the review of the available materials, it does not appear that Rogers conveyed that Frazier may be armed to the other officers. While T&M cannot say that the failure to arrest Frazier was connected to Johnson getting slashed without any further review, Rogers nonetheless should have arrested Frazier for the domestic assault.

While Rogers actions were equivalent to those of a supervisor, based on the available materials, no APD supervisor responded to the location nor inquired as to the status of the domestic incident, although it was active for over forty-five (45) minutes prior to the police involved shooting.

Additionally, without the ability to interview the police officers, T&M cannot ascertain why a warrant query was not done sooner. Rogers knew that Frazier had a criminal record and from his response that he did “state time,” he knew Frazier had a felony criminal record. Again, T&M cannot say that knowing he had a warrant would have meant that Johnson would not have been slashed, or that Frazier would not have been shot, but it does seem a warrant query was not done until they were about to release him without an arrest.

### **Recommendations**

At this time without the ability to do a full investigation, but to meet the APD disciplinary statute of limitations, T&M is recommending that the CPRB request that Police Officer Rogers face discipline for failing to make an assault arrest where there was probable cause the offense was committed by Frazier, and the parties were clearly in a domestic relationship, as defined by both New York State law and the APD general orders. Rogers failed to follow both New York State law and the APD general orders. Therefore, it is recommended that he receive a Loss of Leave Credit of three (3) vacation days and be retrained on New York State law and APD general orders involving crimes considered to be domestic violence.