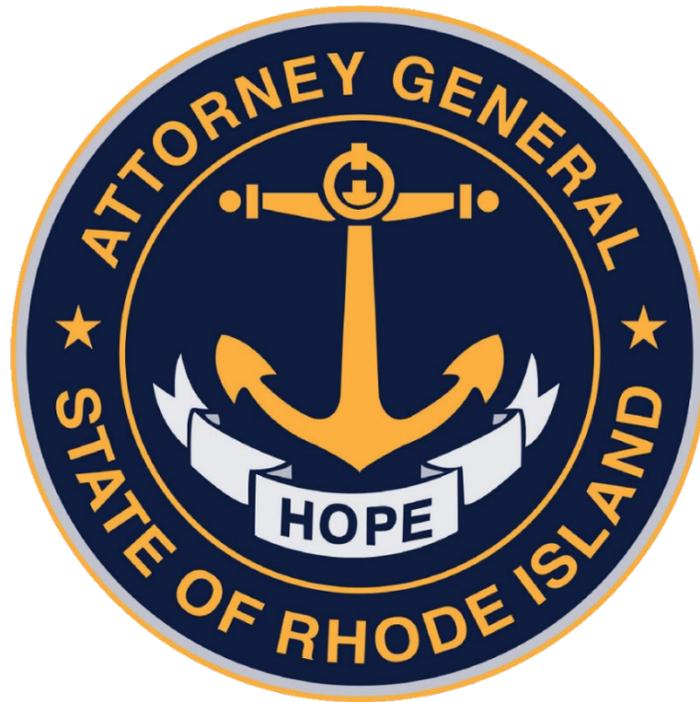


**STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL**

*Peter F. Neronha  
Attorney General*



**INVESTIGATIVE REPORT  
June 21, 2021**

<b>Incident Type:</b>	<b>Firearm Discharge</b>
<b>Incident Location:</b>	<b>Big River Management Area</b>
<b>Incident Date:</b>	<b>November 9, 2019</b>
<b>Police Department:</b>	<b>Environmental Management</b>
<b>Officer Involved:</b>	<b>Adam Hill</b>

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## **I. SUMMARY OF FINDINGS**

This report details an investigation into an incident of the discharge of a firearm by a police officer at the Big River Management Area in West Greenwich. Officer Adam D. Hill of the Rhode Island Department of Environmental Management's Division of Law Enforcement discharged his firearm into the ground at Big River on Saturday, November 9, 2019, at approximately 12:30 p.m. No one was injured by the gunfire. The Rhode Island State Police, the Department of Environmental Management, and the Office of Attorney General jointly investigated the incident.

The primary investigative team was comprised of the following: Detective Corporal Heather Palumbo and Detective Jared Andrews of the Rhode Island State Police, Lieutenant Joseph Poccia and Sergeant Frances Ethier of the Department of Environmental Management, and Special Assistant Attorney General John Malloy of the Office of Attorney General. The Attorney General's Office was notified at about 4 p.m. on November 9, 2020, and Mr. Malloy responded to the call. By 5 p.m., the investigative team had assembled at Kent County Hospital and conducted an initial interview of Officer Hill.

The purpose of this Office's review was to determine whether Officer Hill committed a criminal act. After a review of all of the available evidence and a legal analysis, which is set forth in this report, we conclude that Officer Hill's discharge of a single round of ammunition into the ground violated no criminal law.

## **II. SUMMARY OF EVIDENCE REVIEWED**

- (1) Summary Report of Rhode Island State Police by Detective Jared J. Andrews
- (2) Rhode Island Department of Environmental Management's Division of Law Enforcement Arrest Reports for Civilian #1, Civilian #2 and Civilian #3, all dated 11/21/2019 and which included:
  - (A) Narrative for Environmental Police Officer Anthony C. Esposito
  - (B) Narrative for Environmental Police Officer Michael P. Morrissey
  - (C) Narrative for EPO Sergeant Michael M. Schipritt
  - (D) Narrative for Environmental Police Officer Adam D. Hill
  - (E) Narrative for Environmental Police Officer Robert G. Murtha
  - (F) Narrative for EPO Lieutenant Joseph C. Poccia
  - (G) Narrative for EPO Sergeant Frances X. Ethier
  - (H) Narrative for Environmental Police Officer Scott Bergemann
- (3) Rhode Island Department of Environmental Management's Division of Law Enforcement Investigative Report, dated 2/13/2020, and containing the previously referenced narratives of Officer Hill, Officer Esposito, Officer Murtha, Lieutenant Poccia, Sergeant Ethier, Sergeant Schipritt, and adding:
  - (A) Narrative for Deputy Chief Kurt D. Blanchard
  - (B) Narrative for Lieutenant Daniel K. White
  - (C) Narrative for Lieutenant Steven P. Criscione

- (4) Rhode Island DEM Division of Law Enforcement Incident Overview
- (5) Rhode Island DEM Division of Law Enforcement Dispatch Log/Call Sheet for 11/9/2019
- (6) Interview of EPO Adam D. Hill by Rhode Island State Police, dated 11/9/2019
- (7) Interview with Walk-Through of Scene of EPO Adam D. Hill by Rhode Island State Police, dated 11/10/2019
- (8) Interview (Supplemental) of EPO Adam D. Hill by Rhode Island State Police, dated 11/22/2019
- (9) Interview of Civilian #3 by Rhode Island State Police, dated 11/9/2019
- (10) Interview of Civilian #2 by Rhode Island State Police, dated 11/9/2019
- (11) Interview of Civilian #4 by Rhode Island State Police, dated 11/29/2019
- (12) Interview of Civilian #5 by Rhode Island State Police, dated 11/26/2019
- (13) Interview of EPO Sgt. Frances X. Ethier by Rhode Island State Police, dated 11/2019
- (14) Interview of EPO Lt. Joseph Poccia by Rhode Island State Police, dated 11/27/2019
- (15) Rhode Island DEM Division of Law Enforcement Handwritten Statement of Civilian #3, dated 11/9/2019
- (16) Rhode Island DEM Division of Law Enforcement Handwritten Statement of Civilian #2, dated 11/9/2019
- (17) Rhode Island State Police Scene Documentation Report by Detective Amanda King, dated 12/7/2019
- (18) West Greenwich Police Department Incident Report with Narrative of Officer Biagio Longo, dated 11/9/2019
- (19) West Greenwich Police Department Dispatch Log, dated 11/9/2019
- (20) Lake Mishnock Fire Department Patient Care Report for Officer Adam D. Hill, dated 11/9/2019
- (21) Kent County Memorial Hospital Medical Record for Adam D. Hill, dated 11/9/2019
- (22) Rhode Island Department of Environmental Management Division of Law Enforcement Use of Force Policy, effective date 9/25/2018

- (23) Rhode Island Department of Environmental Management Division of Law Enforcement Use of Force Report by Officer Adam D. Hill, dated 11/9/2019
- (24) Rhode Island Department of Environmental Management Division of Law Enforcement Firearms Qualification History of Officer Adam D. Hill
- (25) Rhode Island Department of Environmental Management Division of Law Enforcement 2019 Annual Firearms Qualification Lesson Plans
- (26) Rhode Island State Crime Laboratory Report, dated 1/22/2020
- (27) Dispatch Audio from Department of Environmental Management's Division of Law Enforcement, West Greenwich Police and Lake Mishnock Fire Department, November 9, 2019

### **III. FINDINGS OF FACTS**

On Saturday, November 9, 2019, at approximately 12:30 p.m., in a portion of the Big River Management Area situated in the Town of West Greenwich, Environmental Police Officer Adam Hill discharged his assigned Sig Sauer P226 .357 caliber semi-automatic pistol (S/N: 55B072019). On that day, Officer Hill began his patrol shift at 6:00 a.m. and engaged in some routine duties until approximately 11:15 a.m. He was attired in the green uniform of an Environmental Police Officer. With time left in his shift (until 2:00 p.m.), he went to the Big River Management Area, arriving approximately at noon. He entered by the gate at Hopkins Hill Road and Division Street. His intention was to check on hunters, to see if they were abiding by regulations such as wearing safety orange. He encountered several people, reminding them about wearing the fluorescent orange. He admonished another man walking his dog that he had to wear orange.

Officer Hill then noticed three dirt bikes on a particular mound. His intention was to intercept them and instruct them that they are not supposed to ride on the property. He had with him his department-issued Chevrolet Silverado patrol vehicle, emblazoned with a reflective yellow stripe and the words "Environmental Police" along its side. In his patrol vehicle, Officer Hill headed over some dunes to see if he could find the dirt bike riders. He could sense the presence of at least one with his hearing, from the sound of the bike idling. He exited his truck and ordered the dirt bike rider to stop.

Officer Hill started walking up a slope. He stated that he had his baton out just to fend off any dirt bikers who might come at him. As he walked up the slope, he could hear the dirt bikers start their engines. They then started coming down the hill. The first one, Officer Hill explained, was "angling to my left, and I was stepping aside, you know. And then I kinda like, pushed off him to get out of the way." This is the first of two dirt bike riders Officer Hill reported encountering at Big River that day. Very shortly after the first biker passed, Officer Hill could hear a second one coming his way. Officer Hill described the encounter as follows: "here comes the second one, which is the one that hit me. So, it was like one of those things, like, you

know, which way are you gonna go, I should have zigged when . . . I zagged? And he wasn't slowing down. It didn't appear to me he was slowing down at all. So, . . . I just stepped off to the side, and he went to that same side and [], plowed right over me. And then, I, you know, tumbled down the hill. I don't know how far, maybe 10 or 15 feet.”

After this dirt biker came into contact with Officer Hill, the biker got up onto his bike, engaged the throttle and left. Officer Hill was not aware initially that he had been injured in the collision with the dirt bike. He later realized that he had suffered a puncture wound to his upper right arm. This injury was treated at Kent Hospital, and Officer Hill was discharged that same day. The specific causal mechanism of the injury, as explained by Officer Hill, was the right handbrake handle of the bike coming into contact with his right arm, and that contact also knocked him to the ground. Officer Hill explained that, after the collision caused him to tumble down the slope, he was concerned that the third dirt biker, who had yet to make an appearance, was coming next. As a result of his tumble, Officer Hill was no longer facing up the slope. Rather, he was facing the side of the slope. Officer Hill stated that due to his concern over what could come next, he arose and drew his gun from its holster. Officer Hill's holster was secured to his right side, and he drew his weapon with his right hand. When holding the gun, he realized that his arm was injured. He was in pain, and he was concerned about his ability to keep a grip on the gun: “it was pretty painful in my arm, and [I] realized that that was just not going to be a safe way to handle it. Because if I fell again or if something happened, my firearm would be unsecured. So, . . . while I was trying to regain grip and reholster, a round went off, squeezed off a round . . .” According to Officer Hill, when the gunshot went off, the second dirt bike rider was departing the area, and the third dirt bike rider never materialized.



*Officer Hill, second from left, pointing with left outstretched arm to the area where he believes the bullet struck, while on November 10, 2019, walkthrough of scene.*

With his firearm re-holstered, Officer Hill walked down the slope he was on, and, looking down at his arm, noticed the blood on his shirt. He sent a radio message indicating that he had been injured and continued walking back to his police truck. He had lost his keys in the

fall on the slope, but he had an additional set of keys on his person. At the truck, he asked for a rescue over the radio.

By late afternoon, word had reached the Rhode Island State Police and the Office of Attorney General that there had been an officer-involved shooting at Big River. The State Police dispatched Detectives Heather Palumbo and Jared Andrews; Special Assistant Attorney General John Malloy joined in the investigation at that time. Officer Hill was interviewed at Kent Hospital at 5:15 p.m., and his statement was audio recorded. There was another interview in the context of a “walk-through” of the location of the firearm discharge at Big River the next day, November 10, 2019. Officer Hill was interviewed again on November 22, 2019 at Rhode Island State Police Headquarters. The facts set forth here are drawn from those interviews. Additionally, Officer Hill completed a one-page “Use of Force Report” form on November 9, 2019. On that form, Officer Hill indicated the type of incident as a “violation” (as distinguished from a felony, misdemeanor or traffic stop). The name of the subject involved was listed on the form as “[Civilian #2],” but it should be noted that the person discovered to be operating the dirt bike that struck and injured Officer Hill was Civilian #1. In the “Subject’s action” section, Officer Hill indicated: “Drove dirt bike at me and hit me on my right side causing me to tumbled [sic] down the hill.” In the “Officer’s use of force” section, he indicated: “Unholstered firearm and accidentally discharged firearm while reholstering.” Finally, he indicated in the “Injuries and treatment section”: “Puncture to right bicep resulting in stitches. Right side of head bruised/left leg bruised.”

As part of the investigative effort, the dirt bike riders were identified, located and interviewed. Civilian #2 was the first rider to encounter Officer Hill and pass by him on the slope. Civilian #2 stated that he went to the Big River area to ride with other friends and acquaintances. He estimated, in terms of experience, that he has been riding dirt bikes for “maybe two or three years.” While at Big River, he encountered Officer Hill in the middle of a trail. Civilian #2 described Officer Hill as wearing green and having a baton in one hand. Civilian #2 did not intend on stopping for Officer Hill because he feared getting caught and having his new bike (valued at \$6,500) taken, plus he “was already coming up way too fast to be doing any kind of stopping.” Instead, Civilian #2 drove to his right and “had to cut just to even get around him or else I could have been [] plowing right into him.” Civilian #2 kept going in order to find his friend, Civilian #3, for whom he was looking before encountering Officer Hill.

Civilian #1, the dirt bike rider whose bike came into physical contact with and injured Officer Hill, was interviewed by State Police. He also explained how he and friends were riding dirt bikes at Big River. Civilian #1 was the most experienced dirt bike rider in the identified group he was with, having nearly twenty years of riding experience. Civilian #1 and Civilian #2 had been trying to find Civilian #3, who had become stuck or left behind. That is when Civilian #1 and Civilian #2 came into contact with Officer Hill: “So, I was turning around to go find him, and I was making my way down the hill, and a I saw a DEM officer swinging at [Civilian #2] with a baton. And as I could not stop because I was going too fast on sand, I had to try to squeeze between the DEM officer and a tree. The DEM officer jumped out in front of my path, not out of the way, and made me fall off my bike while also hitting a tree to my side. And at that point, I tried to [] get away as quick as I could, and – and he shot off a round at me. And I tried leaving.” Civilian #1 did not have an intention to stop for Officer Hill: “because I honestly know

that they impound your bikes, and that was the last thing I wanted to happen to me. But obviously, this turned into a much bigger deal.” According to Civilian #1, Officer Hill pushed him over to Civilian #1’s left side. Civilian #1 was able to get up, and, with his bike still running, he kept going. That is when he heard a shot fired. Civilian #1 looked back during his departure and saw that Officer Hill was putting his gun back into his holster. During the course of the State Police interview on the night of November 9, 2019, Civilian #1 stated his belief that Officer Hill was shooting *at* him. Civilian #1 came into the Attorney General’s Kent County Office on February 26, 2020, with his attorney, for some follow-up questions regarding our investigation. When the question was put directly to Civilian #1 whether he could perceive having been shot *at*, as opposed to perceiving only that a firearm had discharged, he said no.

On November 26, 2019, the State Police interviewed Civilian #5 at Kent Hospital. Civilian #5 treated Officer Hill in the Emergency Department on the day of the firearm discharge. Civilian #5 related that, while taking a history from Officer Hill, “we got a story about what was happening while I was doing my assessment, and he mentioned that he had to have – he discharged his firearm in the middle of all this pursuing of the dirt bike riders. He said that he discharged the firearm into the ground in order to try to scare the – the dirt bike rider into stopping.” In Officer Hill’s medical records from Kent Hospital, the history taken by Civilian #5 says the following: “To note patient states that he had the [sic] discharge his firearm to the ground to try to scare the assailants [sic].”

During the course of the investigation, Officer Hill had been interviewed formally three separate times. Throughout all three interviews, he maintained that the discharge of his firearm was accidental and either due to pain he was experiencing from the injury he received from the dirt bike or due to a squeeze of the trigger while re-holstering at a time when he did not realize his finger was actually on the trigger. We invited Officer Hill to come to our Office to go through the events of November 9, 2020 and to reenact those events with the use of a polyurethane training gun (of the same dimensions as his service weapon) in an effort to get a better understanding of the dynamics of the situation in which Officer Hill found himself and why the weapon discharged. This took place on February 14, 2020. In a reenactment of the event in question, Officer Hill made it to the standing position and demonstrated how he attempted to replace his firearm in its holster and that, as he drew it closer to his waist and pointed downward, he squeezed the trigger not realizing that his finger was on the trigger as opposed to the trigger guard, releasing a round into the ground near his right foot and causing dirt and dust to be displaced in the immediate vicinity of where the round lodged into the ground. Officer Hill was asked about the statement related by Civilian #5 with respect to the discharge being attributable to an intentional act to scare and stop the dirt bike rider. Officer Hill explained that, if he said such a statement, it was to avoid embarrassment at having discharged the firearm accidentally.

On November 10, 2019, the day after the firearm discharge, the Rhode Island State Police Forensic Services Unit (FSU) documented the location where the incident occurred. The scene location was measured and photographed. No casing or projectile was found on that survey. The FSU documented the Yamaha GYTR 250 dirt bike operated by Civilian #1 in this incident, and nothing unusual was found. Officer Hill’s Sig Sauer P229 unloaded pistol was examined, and the evidence package it came in had a twelve round capacity magazine with eleven

cartridges; one additional loose cartridge was with it. The weapon was test fired and found to be safe and in working order. The additional cartridge left at the scene accounts for the ability for Officer Hill to have a full magazine and one additional round loaded into the chamber.

On December 23, 2019, DEM Lieutenant Daniel White returned to the site of the incident with Captain Steven Criscione and Deputy Chief Kurt Blanchard and conducted a further search of the area with the aid of a metal detector. A cartridge case was found in the soft sand, approximately two inches below the surface. Several feet up from the location where the casing was found, they located a deformed copper jacket of a bullet and a lead core. These items were turned over to the Rhode Island State Police. Subsequent analysis by the Rhode Island State Crime Laboratory concluded that the discharged cartridge case had characteristics that matched all discernable class characteristics of the test fired cartridge case from Officer Hill's weapon. The deformed projectile fragment was in such condition that it was not amenable to identification or comparison.



*A green arrow points to where a projectile was found, and a blue arrow points to where the cartridge case was found during DEM's search on December 23, 2019.*

#### **A. WITNESS ACCOUNTS**

This section summarizes the accounts given by the witnesses formally interviewed during the investigation and whose interviews were recorded and transcribed.

## **1. Officer Adam Hill**

Officer Adam D. Hill, 41-years old, an Environmental Police Officer for the Department of Environmental Management's Division of Law Enforcement, was formally interviewed three times during the course of the investigation. He has been an officer with DEM for 13 years.

Officer Hill's first interview took place at Kent County Memorial Hospital on November 9, 2019, at approximately 5:15 p.m. It was conducted by Rhode Island State Police Detective Corporal Heather Palumbo and Detective Jared Andrews. Present for the interview were DEM Sergeant Frances Ethier, Environmental Police Officer Kevin Snow, and Special Assistant Attorney General John Malloy. Officer Hill was asked to describe his day from when his shift started. Officer Hill was attired that day in the green uniform of an Environmental Police Officer. He explained that he came on at 6:00 a.m., went to headquarters and printed some pictures. He was going to get in touch with a hunter for a possible violation. He met that hunter in Tiverton with another officer. He left Tiverton at approximately 9:15 a.m. and then went to North Kingstown. He responded to a call in Narragansett and then to another call in North Kingstown. He was completed with those tasks at approximately 11:15 a.m. He had almost three hours left in his patrol shift, which ended at 2:00 p.m. He had planned to work a detail assignment from 2:00 p.m. to 6:00 p.m. at Point Judith that day.

For the remainder of his shift, Officer Hill decided to check on hunters at the Big River Management Area. Officer Hill was operating a Chevrolet Silverado with a reflective yellow stripe down the side and lettering that reads "Environmental Police" along the side and back of the truck. He arrived at the gate at Hopkins Hill Road and Division Street at approximately noon and noticed that there were some people there without the prescribed fluorescent orange. After passing the gate, he talked to a couple of people, reminded them about the fluorescent orange. He recalled someone mentioning that there were prohibited vehicles being operated in the area. He saw fresh tracks, but he did not hear any vehicles at that time. He drove around the gravel area and did not see or hear anything. He drove back towards the gate and encountered another person, walking a dog, without the safety orange. Officer Hill warned that person. As Officer Hill was finishing his engagement with that person, he saw three dirt bikes on a particular mound in the middle of the big, sandy area where he was.

Officer Hill saw the dirt bikers go down the hill. He then went over the dunes there to head them off. Officer Hill said that if such bikers do stop, it is his practice to give them warnings and educate them about not riding in the area. In his experience, he described the chances of a biker stopping are 50-50. Officer Hill was going to head over the dunes. His window was down, and he could hear the bikes off to the left. On the trail he was following, however, he did not see or hear them. He started heading back the way he came, and he could sense a dirt bike approximately 70 to 80 feet away from him, idling. Officer Hill got out of his truck, and heard, but did not see, the dirt bike take off. He yelled out "stop," but the bike rider just took off. Officer Hill returned to his truck and drove to a larger mound in the middle of the area and saw fresh tracks going up the trail. He could not hear any bike at that point. He spotted fresh tracks and could smell the exhaust fumes. He got out of his truck again and started walking up the hill. He had his baton out to fend off bikers. As the officer walked up the hill, he heard

one bike start. That bike started coming down the hill. Officer Hill described the travel of that bike as angling to his left, and Officer Hill stepped aside and “pushed off” him to get out of the way.

Officer Hill could hear a second dirt bike coming his way. He took out his phone to activate its camera. While trying to work his phone, Officer Hill described the sequence: “and here comes the second one, which is the one that hit me. So it was like one of those things, like you know, which way are you gonna go, I should have zigged when I sh—you know, when I – when I zagged? And it wasn’t slowing down. It didn’t appear to me he was slowing down at all. So, I—I was like, I just stepped off to the side, and he went to that same side and uh, plowed right over me. And then, I, you know, tumbled down the hill.” Officer Hill managed to get himself up. He believed a third dirt bike was coming his way. He drew his firearm, but his arm was in a good deal of pain. He did not realize that he was injured. Because the gun was not going to be stable with it in his right hand, he was not going to try it with his left hand. He decided to put the gun back in the holster. When he was bringing his arm to put his gun back, that is when there was an accidental discharge. The trajectory of the discharged round was downward, and Officer Hill distinctly remembered the sand flying up from the ground as a result. When the discharge occurred, Officer Hill estimated that the dirt biker was 20 to 25 feet away from him and still engaging the throttle. He used his radio to transmit that he had been hit with a motorcycle. He looked at his arm and saw blood and added that he would need a rescue. In the tumble, Officer Hill lost the keys to his police vehicle and dropped his phone. He was able to retrieve his phone and make use of a spare set of keys he keeps in his pocket. Officer Hill never saw the third bike, but he believed that he heard it go down a different trail. Officer Hill drove away from that scene in his truck.

In assessing the collision with the dirt bike, Officer Hill explained that the bike hit the right side of his body, which knocked him over. He believed that it was the brake lever that went into his arm—his right biceps.

On November 10, 2019, Officer Hill participated in a walkthrough of the scene at the Big River Management Area, which entailed the taking of another recorded statement. The interview was conducted by Detective Corporal Heather Palumbo and Detective Jared Andrews of the Rhode Island State Police. Sergeant Frances Ethier and Sergeant Michael Schipritt of DEM were present, as was Special Assistant Attorney General John Malloy.

Officer Hill again explained that he was on patrol in the area and observed three dirt bikes riding there. He went in their direction in an attempt to make contact and advise them that no dirt bikes are allowed on the property. He followed them based on where their tracks were, where he heard them, and where he could smell the exhaust. Those clues brought him to the base of a large mound in what Officer Hill refers to as the gravel area. When he determined that they were most likely on top of the hill, he parked his vehicle at the base of the slope, got out and walked up the trail. Officer Hill pointed out this area on the walkthrough, making note of his tire tracks from the day before. He explained that his typical practice is to make it known that he is present.

When Officer Hill parked, it was quiet. He reasoned that because there were fresh tracks and the smell of exhaust was present, the riders were up the hill. He walked up in order to make contact with the riders. As he was walking up, he reached near the crest of the slope and heard dirt bike engines start. He took out his baton to fend off a bike in case one came at him. One bike started coming, and Officer Hill reported that he had his phone out to have the camera ready. The first bike came his way, and Officer Hill stepped to his right and pushed off of the biker to get away from him. As this biker passed, Officer Hill reported watching him and described that the biker “went off a little but, and – but he maintained control and kept going.” Officer Hill estimated that this bike was traveling between 10 and 15 miles per hour as he passed on Officer Hill’s left. Officer Hill described using both of his hands to push off of the dirt bike rider. Officer Hill turned back around because he heard another dirt bike coming. When that bike came, Officer Hill stepped back and yelled, “Stop. Stop. Stop.” He recalled having no time to react. He heard the biker to say “something like, oh shit.” He remembers seeing the handlebars in his process of trying to step to his left. That is when he got hit by the bike, and after that he recalled the sand and pine needles. He was hit on his right side, in his arm, with the handlebar of the bike. Officer Hill tumbled down. The dirt biker had to get back up too after the collision. Officer Hill saw the rider scrambling to get back on his bike and swearing. The rider did get back up and on the bike, and the engine was roaring.

Officer Hill believed that there was a third dirt bike yet to come and did not know what to expect next. He drew his gun and realized that his arm was injured. He believed that the situation was such that it was not going to be safe for him to handle his firearm. He explained trying to regain his grip of the gun to re-holster and a round went off. He indicated for the walkthrough that he was facing up the slope when the round went off. The dirt biker who collided with him was down-slope when the firearm discharged, between Officer Hill and his truck. He described the trajectory of the round that fired as “definitely downward,” and he distinctly remembered sand flying up in front of him. Officer Hill did re-holster his gun and walked down the hill. He looked at his arm and saw blood on his shirt. He called out that he was hit by a dirt bike. He saw his phone lying in the trail and went back uphill to retrieve it. He used his left hand to pull his spare keys out of his right pocket. When Officer Hill gets into his truck, he put out on the radio a better description and direction of travel for the dirt biker. He requested a rescue.

A third interview of Officer Hill was conducted by Detective Corporal Heather Palumbo and Detective Jared Andrews at Rhode Island State Police Headquarters on November 22, 2019, with Captain Daniel White of the Department of Environmental Management, Alexis Santoro of Council 94, and Special Assistant Attorney General John Malloy. The stated purpose of this interview was to clarify some key points of the account of what happened after Officer Hill exited his patrol vehicle and began walking up the trail where he encountered the dirt bikers.

Officer Hill stated that when he reached the top of the hill where the trail levels off, there was something of a depression in the terrain because of erosion and frequent All-Terrain Vehicle use. Within a second or two of reaching the top, he heard the dirt bikes start. So, he was “a little on guard.” On either side of the trail, there is dense wooding with saplings, and Officer Hill realized that he would have to crash through branches and trees to get off the trail. Upon hearing the bikes, Officer Hill drew his baton, not for the purpose of swinging at the dirt bikers but to

deflect an oncoming bike if it so happens. He heard the bikes getting closer. One rider who came at him had a blue and white riding shirt and reddish-orange helmet. This dirt bike was essentially in the center of the trail and “more or less” on the left side of Officer Hill. Hill sidestepped right and pushed off the rider’s thigh. Officer Hill remembers this rider standing while riding at the time. As the rider went by Officer Hill, he turned to his left and watched him continue on. As he turned back around, he could still hear the second one. Hill took out his phone in order to document and take pictures of the rider. Hill’s efforts to get the camera to open on his phone occupied another second or two after the first bike came.

The second bike came at an estimated 15 or 20 miles per hour from around a corner in the trail. This corner, Hill estimated was approximately 30 to 40 feet from where he was standing. As a result of his earlier sidestep to the right (his right), he was “on the right side, more or less on the right center of the trail. Or on my right, that is.” The second bike was coming too fast for Officer Hill to react or get out of the way. He turned around, looked up from his phone and saw the front of the bike and the right handlebar. Officer Hill did not see the rider attempt to brake—just the handlebar and the rider’s hand on the handlebar and not on the brake lever. Officer Hill was hit by the bike and tumbled down the hill. From the walkthrough, Officer Hill realized how far he had gone down the hill, possibly as much as 20 feet from where he had been standing when hit. While he was on the ground, he was looking at the side of the trail that was to his right initially. The biker was on the uphill side of Hill (i.e., to Hill’s left). The rider tries to reestablish control of the bike, gets on it and starts to go down the hill again.

After the impact with the bike, Officer Hill was afraid that a third bike was going to come along. He scanned uphill and drew his firearm. As he was looking up and drawing his firearm, his arm was in pain. He tried to reestablish a secure grip, because as he was drawing his weapon he did not feel his grip of the gun was secure enough to keep the firearm out. He was concerned that if he got hit again the gun would be unsecured. As he tried to re-holster and tried to get a better grip so as not to drop the gun in the sand, he accidentally squeezed off a round into the dirt facing the right side of the trail. As he was doing that, he saw the biker who hit him on his right side and downhill approximately 20 to 25 feet away. Officer Hill started heading back to his truck and to call out that he had been hit by a dirt bike. When he went to his truck, he realized that his keys were missing, which he usually keeps in his magazine pouch. He quickly looked up the hill. Figuring that his keys were somewhere on the ground, he did not really look for them. He did, however, spot his phone, face up in the sand. He picked it up, went back to his truck, called out a description and direction of travel for the dirt bikers and he used his spare keys to get into his truck. He was asked over the radio if he needed a rescue, and he responded in the affirmative. He drove to the access gate on Division Street and connected with Sergeant Ethier. He told her about the discharge. Officer Hill’s arm was wet with blood inside his shirt. He had sand on him. Sergeant Ethier ministered to him, taking his gear and removing his shirt. The rescue squad arrived, and Officer Hill received initial medical treatment in the ambulance.

Officer Hill was asked where his weapon was pointed when it discharged. He answered that it was “nearly at a 45-degree angle, downward, um, into the side of the trail, as I’m like, looking, you know, up and downslope.” Officer Hill recalled talking to medical staff at the hospital, including a doctor. He recalled saying, “I discharged a firearm, you know, whether I

had relayed it was accidental or not, I don't think I had made the distinguishing, you know, distinguished, which it was, you know, even after -- . . . It was certainly not intentional.”

## 2. Civilian #1

Civilian #1, of Coventry, is a 22-year-old male. He was interviewed by Detective Jared Andrews of the Rhode Island State Police on November 9, 2019, beginning at 10:38 p.m. Present for this interview were Sergeant Michael Schipritt of the Department of Environmental Management and Special Assistant Attorney General John Malloy. The interview occurred at a DEM Parks and Recreation facility, 1100 Tower Hill Road in North Kingstown.

Civilian #1 explained that he was riding dirt bikes with others in what he referred to as the “sand pit” at Big River at approximately noontime on November 9, 2019. One of these other riders was a friend of his, Civilian #2. A newer rider, Civilian #3, was also part of the group. He first explained that he met with the others around Route 3, right by the sand pits near the highway. Civilian #1 at first said he rode alone to meet up with the other two. He first described his relationship with Civilian #2 and Civilian #3 in terms of not knowing them well. Before Civilian #1 encountered Officer Hill, he explained that Civilian #2 left before Civilian #1 and went down a hill. Civilian #1 then followed Civilian #2. Civilian #1 then described coming around a blind corner and saw a DEM officer following through with a swing of a baton. Civilian #1 tried to pass him, and Civilian #1 reported that the officer jumped in front of Civilian #1 and pushed him into a tree. Civilian #1 then got up and tries to leave. When asked how long he has been riding dirt bikes, Civilian #1 told the detective that he had been riding since he was three-years-old.

When asked about what he saw of Civilian #2, riding in front of him, Civilian #1 said that Civilian #2 went to the right side of the trail and that the trail was not wide and estimated to be four feet wide. At that, Officer Hill and Civilian #2 were on the right side, and when Civilian #1 came down the hill on his dirt bike he saw that the officer was in the middle of the trail. Civilian #1 explained that he tried to go to the right side of the officer, attempting to squeeze between the officer and a dead tree on the trail. Civilian #1 said that the officer jumped in front of the bike he was on (which was operating, by Civilian #1's estimation at fifteen or twenty miles per hour). Civilian #1 reported trying to brake. He did not, however, have an intention to stop for the police officer. His stated reason was that he was aware that such bikes as his get impounded, and he did not want that to happen. In the interaction with Officer Hill, Civilian #1 was knocked down after the collision by Officer Hill putting his body weight into Civilian #1 on his bike and pushing him over to his left side. Civilian #1 fell off the bike completely. Civilian #1 got up, with his bike still running; he let the clutch out and kept going. When Civilian #1 departed, he heard a gunshot. Civilian #1 reports that that is when Civilian #2 and Civilian #3 left too. Civilian #1 attributed the declared question, “Was that a gunshot?” to both Civilian #2 and Civilian #3 at that time.

Civilian #1 attributed the gunshot to Officer Hill, explaining that he saw the officer's gun out of the holster. Civilian #1 did not see the gun discharge, but he looked back and saw Officer Hill putting the gun back into the holster. When asked to explain where Civilian #2 and Civilian #3 were at this point, Civilian #1 replied: “No idea. [Civilian #2] was in front of me, he saw this

whole ordeal go down. He went to the bottom of the sand pit and I just screwed. I did not care about anybody else, because I was—I got shot at, I was all set. It's not like it was my fault that I intentionally ran over a DEM officer, he literally jumped in front of me and knocked me off my bike. And then, like I tried getting away, and he tried shooting at me." From there, Civilian #1 made it home to Coventry, which took between ten to fifteen minutes. He then called Civilian #2 to tell him that he was home and to find out how he was doing.

Near the end of the interview, Civilian #1 changed some elements of his account. Instead of three dirt bike riders (Civilians #1, #2, and #3), he declared that there were five of them—the original three plus two individuals, Civilian #4 and Civilian #6. Civilian #1 did not elaborate further during the interview on the identities of Civilians #4 and #6. Instead of meeting at the sand pits, they all met at Civilian #1's house in Coventry. In this telling, dirt bike rider Civilian #3 was cut off by the DEM officer and got left behind while the rest are riding at the sand pit. Civilian #1 and Civilian #2 then tried to find what became of Civilian #3. That is when the ordeal with the officer happened. Civilian #1 reports that when the gunshot was heard, that is when everyone departed. Civilian #1 maintained that Officer Hill deliberately jumped in front of him and that within three to five seconds from the point of the collision with Officer Hill, Civilian #1 heard the gunshot.

### **3. Civilian #2**

Civilian #2 is a 23-year-old male from Warwick. He was interviewed by Detective Corporal Heather Palumbo and Detective Jared Andrews of the Rhode Island State Police on November 9, 2019, at DEM's Division of Parks and Recreation facility in North Kingstown, beginning at 6:57 p.m. Special Assistant Attorney General John Malloy was in attendance.

Civilian #2 explained that he was with his friend Civilian #3 on November 9<sup>th</sup> and had met up with a couple of other people for dirt bike riding. The plans to go riding that Saturday were made earlier in the week. Civilian #2 had been riding dirt bikes for two to three years. Civilian #2 had known Civilian #3 for five to six years, and Civilian #3 had only a year-and-a-half of riding experience. Civilian #2 estimated that they began riding around noon. There were five riders in the group, including Civilian #2. At Big River, when Civilian #2 noticed the police he was afraid of getting caught and getting his dirt bike taken away, as it was brand new and worth \$6,500.

When Civilian #2 saw the DEM police, he went up a hill to look for his friends. He turned back around because Civilian #3 was not behind him. As he was coming back down that same trail, Officer Hill was in the middle of the trail with a baton in his right hand. Civilian #2 explained that he was coming up way too fast to stop. Civilian #2 said that he had to cut around Hill or he would have plowed right into him. Civilian #2 drove to his right (the officer's left) to get around him. Civilian #2 explained that he did his best to swerve around Hill because he did not want to hit him. Civilian #2 could not definitively say whether his bike came into contact with Hill, but he believes that the reason he lost some control of the bike is because Officer Hill pushed him on his left side. Civilian #2 continued down the hill he was on, looking for Civilian #3. He did not look back at Officer Hill. Civilian #2 made it to the big, wide-open part of the sand pit and saw Officer Hill's police truck. He went straight across the sand pit and almost to

the spot where he had first seen the truck. Then one of the other riders came out and said, “let’s get outta here.” This rider was described as more experienced than Civilian #2 and took off. Civilian #2, now alone again, made it to a secluded area and shut off his bike. Civilian #3 happened along, and Civilian #2 started riding with him to the roadway. He saw a State Police officer and panicked. Civilian #2 admitted that he should have pulled over and stopped at that point. Instead, he moved swiftly down the road, and within two minutes he pulled over for a pursuing police officer. Civilian #2 estimated that the time lapse between his first sighting of a police officer at Big River until the time he was in custody was between one-half hour to 40 minutes.

Civilian #2 reported that he was able to reach Civilian #3 by cell phone, despite a potential dead battery on Civilian #3’s end, while at Big River and while trying to find him. Civilian #2 had told Civilian #3 not to move and disconnected the call. Civilian #2 then went down the trail and that is when he saw Officer Hill: “That’s right when it happened. I—After I saw—I mean, you guys said there was a gunshot. I—W-, was it at me? I mean, I have no idea.” When asked specifically what he heard or saw, Civilian #2 explained that he saw hunters out there and heard a couple of gunshots “prior.” He explained that he does not know the difference in sound between a pistol and a rifle when fired.

When asked specifically about hearing any gunshots in the 30 to 60 seconds after his encounter with Officer Hill, Civilian #2 said: “No. No, I – I – I didn’t. And – and if there was one afterwards, I was just – I was in such a panic mode that I didn’t even notice it, you know – what I mean.” During the interview, Civilian #2 was hesitant to identify Civilian #1 as the person whose bike actually struck Officer Hill. Civilian #2 also declared that he had only known Civilian #1 for two months at best, even indicating that he did not know Civilian #1’s last name.

#### **4. Civilian #3**

Civilian #3 is a 24-year-old male from Warwick. He was interviewed by Detective Corporal Heather Palumbo and Detective Jared Andrews of the Rhode Island State Police on November 9, 2019, at the DEM Division of Parks and Recreation in North Kingstown, beginning at 6:18 p.m.. Present for the interview were DEM Environmental Police Officer Anthony Esposito and Special Assistant Attorney General John Malloy.

When asked to tell of the events of the day, Civilian #3 explained that he and four others were out riding in the Coventry / West Greenwich area. Civilian #3 only personally knew Civilian #2. To Civilian #3, Civilian #2 knew someone who could bring them out to the sand pit, which was a good area for riding dirt bikes. He estimated that their start time was approximately 11:30 a.m. to noon. When they arrived at the riding location, three members of the group pulled ahead, and Civilian #2 stayed back with Civilian #3 because Civilian #3 was an inexperienced rider and in his first year of riding. Civilian #3 was not familiar with the area. As soon as Civilian #2 and Civilian #3 pulled into the open area, Civilian #2 pulled ahead and could see the DEM truck go to chase Civilian #2. At that point, Civilian #3 went in the opposite direction from the DEM truck, to the next clearing. He was essentially lost at that point—not knowing the area and alone.

Civilian #3 explained that his reason for going the other way upon seeing the DEM officer was his fear that his bike could be taken and destroyed (as he heard they do in Providence), so he found a clearing to wait for things to settle down and to avoid interaction with the police. Civilian #3 had his cell phone at the time. He called Civilian #2, who was desirous of locating Civilian #3. Civilian #3 did his best to describe his location. Something happened to his phone to make it turn off. He was near the road and started heading back for the first trail he saw that was not part of the open sand pit. He next met Civilian #2 on a connecting trail back the way they came. This was after a gunshot was heard. Civilian #3 thought it was a hunter. He could not remember exactly when he heard the gunshot—whether it was when he was alone or when he was back with Civilian #2, but he knew it was after his phone died and his decision to start heading in the “right direction.”

After getting back together with Civilian #2, they headed towards the roadway. On the road, Civilian #2 was stopped by the police. Civilian #3 stopped when he saw that Civilian #2 was being taken into custody. Civilian #3 was arrested as well.

## **5. Civilian #4**

Civilian #4 is a 23-year-old male. He was interviewed by Detective Jared Andrews of the Rhode Island State Police on November 29, 2019 at his lawyer’s office in Warwick. Special Assistant Attorney General John Malloy was also present.

Civilian #4 was asked to discuss the events of November 9, 2019, at the Big River Management Area. He explained that he started at the house of Civilian #1 and drove, eventually arriving at the sand pit. He identified the names of four other people present: Civilian #1, Civilian #2, Civilian #3, and Civilian #6. Civilian #4 described what happened first at the sand pit. Civilian #1 was leading, followed by Civilian #6 and then Civilian #4. Civilians #2 and #3 were not behind the group when they first got to the sand pit. They took a couple of laps around the sand pit. That is when Civilian #2 appeared and told the group that there was a DEM officer in the area. They all conferred for a second, and the plan was for Civilian #2 and Civilian #1 to go back to look for Civilian #3. Civilian #4 and Civilian #6 were going to sit and wait. While waiting, Civilian #6 and Civilian #4 heard dirt bikes off in the distance. Civilian #6 said that it was Civilian #1 and #2 going to the other sand pit and that Civilians #4 and #6 should meet them over there. They both went to the other sand pit, crossing Division Street, but they did not see Civilians #1 or #2. They turned off their bikes, and Civilian #3 called Civilian #2 to find out where he was. Civilian #2 told him that he was on the other side of the street and not with Civilian #1.

Civilian #4 explained that Civilian #2 was with Civilian #3 and not with Civilian #1. After disconnecting from the call, Civilian #4 reported hearing their bikes and a gunshot. He reported not seeing anything. He heard only one gunshot. Civilians #4 and #6 then headed back to Civilian #1’s house. When they arrived, Civilian #1 was already there. At Civilian #1’s house, Civilian #4 heard Civilian #1 say that he had struck the officer and the officer had shot at him while he drove away. It was shortly after that when Civilian #4 packed up his truck and left.

## **6. Civilian #5**

Civilian #5 is a physician at Kent County Memorial Hospital and was on duty on November 9, 2019. He was a treating physician for Officer Adam Hill in the emergency department that day. Detective Jared Andrews of the Rhode Island State Police interviewed Civilian #5 on November 26, 2019, at Kent Hospital with Special Assistant Attorney General John Malloy in attendance.

When asked to tell of his interaction with Officer Hill, Civilian #5 said that Hill ended up in the emergency department after being involved in a pursuit of some dirt bike riders and said that he was a pedestrian struck by one of the bikes. Hill believed that he was punctured on his right biceps area by either the clutch or brake lever of the dirt bike and was having a lot of pain in that area. Officer Hill wanted an evaluation to make sure he had no broken bones or lacerated blood vessels.

Civilian #5 engaged in his normal trauma protocol, assessing Officer Hill from head to toe. He got a story about what happened while he did his assessment. Civilian #5 reported that Officer Hill mentioned that he discharged his firearm in the middle of the pursuing of the dirt bike riders. Officer Hill said that he discharged the firearm into the ground in order to try to scare the dirt bike rider into stopping. Civilian #5 said that was pretty much all he asked him with respect to the incident. The doctor assessed Hill's wounds and, because Hill was the last patient the doctor saw, he signed Hill out to the next team because the time of a shift change had come. Civilian #5 contacted orthopedic surgery to evaluate Hill's arm, got Hill's pain under control while in the emergency department, dressed the wound, and cleaned it out. Civilian #5 did not recall what he administered for pain control (an NSAID or morphine).

When asked on follow-up, Civilian #5 said that Officer Hill reported firing into the ground and repeated that it was to scare the dirt biker into stopping.

## **7. Sergeant Frances Ethier**

Sergeant Frances Ethier of the Department of Environmental Management's Division of Law Enforcement was interviewed at a DEM facility in North Kingstown on November 26, 2019, by Detective Jared Andrews of the Rhode Island State Police with Special Assistant Attorney General John Malloy in attendance. She has been with DEM for 30 years. She was working the day shift on November 9, 2019, which runs from eight o'clock a.m. to four o'clock p.m. She heard over the DEM police radio that Officer Hill was struck by a dirt bike. In response, she headed in the direction of Officer Hill, unlocking the gate as she went. Sergeant Ethier described it as a big area, and she could not find him at first. He sent word to her over the radio that she had passed his location. She turned around and could see Officer Hill. She could see blood coming out of his right shoulder. She removed his gun belt and secured it in the vehicle. She further removed his vest and his shirt. The rescue squad from the Lake Mishnock Fire Department arrived, and Officer Hill was placed in that emergency vehicle. Sergeant Ethier entered the ambulance with Officer Hill in it, and at that point he told her that he accidentally discharged his duty gun. The ambulance took Officer Hill to Kent County Memorial Hospital.

Sergeant Ethier could hear DEM's Lieutenant Joseph Poccia in foot pursuit of the dirt bikes. She called for additional officers because Officer Hill said he lost his keys and his baton when he was struck by the dirt bike. Lieutenant Poccia declared that he had almost been hit by dirt bikes. Ethier then went to Poccia's location and told him that Officer Hill had discharged his firearm. Together, they went to track the dirt bikes. They heard that the dirt bikes had been located on Weaver Hill Road and stopped by officers, and they responded to that location. Lieutenant Poccia took custody of Officer Hill's firearm and duty belt, and Sergeant Ethier went to the gate to meet the canine officer.

After leaving the area, Sergeant Ethier went to Kent Hospital and there met with Officer Hill. Officer Hill's wife and small daughter were at the hospital, as was Officer Kevin Snow. According to Ethier, not much was said at the hospital about the discharge. The only time Hill spoke of the discharge was when he was with the rescue squad—he told Ethier that he thought another dirt bike rider was coming and was going to hit him and that is when he pulled out his duty weapon. His hand was all “messed up,” and he went to re-holster but it discharged.

### **8. Lieutenant Joseph Poccia**

On November 27, 2019, Rhode Island State Police Detective Jared Andrews interviewed Lieutenant Joseph Poccia of the Department of Environmental Management's Division of Law Enforcement. Lieutenant Poccia has been with DEM for 30 years. Poccia explained that he was informed of Officer Hill's firearm discharge by Sergeant Ethier after Hill had been removed from the area by rescue squad and after Ethier picked Poccia up at the intersection of Weaver Hill and Nooseneck Roads. Lieutenant Poccia recalled that Sergeant Ethier said, “Adam's firearm went off. He discharged his firearm.” Poccia asked how it happened, and Ethier elaborated that Hill was hit by the motorcycle, rolled down the hill, was concerned about a third motorcycle and drew his firearm. Because Hill's hand or arm was hurting and he did not have full control, Ehtier relayed, the weapon discharged as Hill tried to re-holster.

Lieutenant Poccia and Sergeant Ethier engaged in a search for the dirt bikers. They learned of Civilian #2 and Civilian #3 being taken into custody, and they proceeded to Weaver Hill Road where those two were with Sergeant Schipritt. Sergeant Schipritt was there, and Lt. Poccia told Schipritt that Officer Hill's firearm had discharged. Schipritt had given *Miranda* warnings to Civilian #2, who admitted to Schipritt that he had hit Officer Hill. Sergeant Schiritt transported Civilian #2 to the Wickford Marine Base, and Lt. Poccia transported Civilian #3 to the same location.

## **IV. USE OF FORCE POLICY AND OFFICER HILL'S FIREARMS QUALIFICATION**

The Department of Environmental Management's Division of Law Enforcement has a Use of Force Policy (Number 300.01) that defines the various aspects of force and how they are to be used. It also specifies the training officers are to receive in both lethal and less-than-lethal uses of force. Records kept by DEM's Division of Law Enforcement show that Officer Hill passed his 2019 annual firearms qualification and did so every year going back to 2007. The

training is designed to assure that officers meet the minimum statutory qualifications in the handling of the firearms issued by DEM's Division of Law Enforcement. Of particular note, Officer Hill completed both the annual qualification course and the "winter shoot" in 2019. The annual qualification lesson plan included a training segment focusing on "low light" and "stress shoot" scenarios.

## V. LEGAL ANALYSIS

Based on the evidence collected in this case, it is impossible to conclusively determine whether Officer Hill accidentally discharged his firearm or intentionally fired it into the ground. There is no bodyworn camera footage of the incident. None of the civilian witnesses actually observed the discharge of the firearm. Accordingly, the only account of the discharge is Officer Hill's and he provided an account that implied an intentional discharge to the emergency room physician, and an account of an accidental discharge to the first responding DEM officers and to the investigative team. The scene reconstruction does not assist with determining whether the shot was accidental or intentional.

If the discharge of Officer Hill's firearm was accidental, then his actions would not support any criminal charge. Simply put, an accidental discharge by definition lacks the requisite intent necessary to support an assault charge.

If, on the other hand, Officer Hill intentionally discharged his firearm there could *potentially* be criminal wrongdoing, to wit: Assault with a Dangerous Weapon. However, there is insufficient evidence to support a finding that the discharge was intentional, and no evidence to support a finding that Officer Hill aimed his firearm anywhere but the ground. Thus, even if the physician's account of what Officer Hill told him were to be accepted as to the actual, accurate version of events, and Officer Hill discharged his weapon into the ground intentionally, such a discharge would not constitute a criminal offense. Because the elemental burden of Assault with a Dangerous Weapon carries with it an "unlawful offer to do corporal injury to another," Officer Hill's firearm discharge, whether construed as accidental or a warning shot into the ground, does not rise to the level of assaultive conduct. See *State v. Jackson*, 752 A.2d 5 (R.I. 2000).

Officer Hill's actions – whether accidentally or intentionally firing into the ground – also do not violate constitutional standards for the use of deadly force (i.e., a firearm discharge). When there is a claim that a police officer has used excessive force to effect a seizure, any such use of force must be objectively reasonable in order to be constitutional: "We hold that such claims are properly analyzed under the Fourth Amendment's 'objective reasonableness' standard, rather than under a substantive due process standard." *Graham v. Connor*, 490 U.S. 386, 388 (1989). "The first step in reviewing an excessive force claim is to determine whether the plaintiff was subjected to the 'intentional acquisition of physical control' by a government actor—that is, whether there was a 'seizure' within the meaning of the Fourth Amendment." *Vaughan v. Cox*, 343 F.3d 1323, 1328 (11<sup>th</sup> Cir. 2003) (internal citations omitted). Because the suspect in *Vaughn* "was hit by a bullet that was meant to stop him, he was subjected to a Fourth Amendment seizure." *Id.* In Officer Hill's case, however, no seizure occurred.

There can be no doubt that Officer Hill's discharge of his firearm did not result in a seizure of Civilian #1. The fired projectile struck the ground and no person. Civilian #1 was able to evade capture by Officer Hill and he left the area unscathed—and therefore no person was seized. Even when we look at the situation in terms of a warning shot, which is prohibited by DEM policy (see below), we see that no constitutional violation would have resulted in this case: “Although it may be an unwise practice to fire gunshots into the air to quell an unruly crowd, there is no evidence that [the Officer] seized anyone—constitutionally or otherwise—when he fired warning shots at the dance hall.” *Otey v. Marshall*, 121 F.3d 1150, 1156 (8<sup>th</sup> Cir. 1997). As there was no seizure, there is no need to engage in a reasonableness analysis under the Fourth Amendment.

Our review does not address whether Officer Hill violated DEM's policy prohibiting the use of a warning shot; that is a matter for DEM to determine. See DEM's Division of Law Enforcement Policy Number 300.01 Section IV(A)(3)(b). The use of warning shots is a practice that is prohibited by all law enforcement agencies in the state due to the significant safety risk attendant with that practice. We note that Officer Hill is a veteran of the DEM police department, and he has not had any prior infractions involving use of force. We are troubled by the inconsistency between Officer Hill's statement to the emergency room physician (and we have no reason to doubt the physician's account or the content of that statement) which seemed to imply that he fired a warning shot, and his multiple statements to the investigative team in which he insisted that the discharge was accidental. We need not resolve that inconsistency for purposes of this Office's review, however, because regardless of which version of events is accurate, as we discussed above, neither version, if true, would support a criminal prosecution.

## **VI. CONCLUSION**

Based on the facts of the investigation, and the relevant body of law, we accordingly conclude that there is no further need to review this incident. This matter is therefore closed.