

REPORT BY OFFICE OF THE BALTIMORE CITY STATE'S
ATTORNEY ON THE CITIZEN FATALITY LOCATED IN THE
5500 BLOCK OF HIGHGATE DRIVE



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CITY

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INTRODUCTION

The Baltimore City State's Attorney's Office (BCSAO) completed its review of the civilian fatality in the 500 block of Highgate Drive. The BCSAO review was conducted by the office's Public Trust and Police Integrity Unit and focused exclusively on determining whether criminal charges relating to the officer's conduct were warranted. PTPIU's review did not examine issues such as the officer's compliance with internal policies and procedures, their training or tactics, or any issues related to civil liability; however, internal policies and procedures and training are factors that were considered in evaluating the officer's conduct. This report should not be interpreted as expressing any opinions on non-criminal matters.

In brief, on January 6, 2019, a Baltimore County Police Officer (hereinafter referred to as the Involved Officer) joined other Baltimore County Police Officers in a chase of an alleged carjacked vehicle with several suspects in the vehicle. Baltimore County Police Officers attempted a traffic stop but the suspects refused to comply. The suspect's vehicle accelerated and fled into Baltimore City. At the intersection of W. Northern Parkway and Highgate Drive, the operator of the stolen vehicle pulled over, leaving the car in gear (or possibly in "neutral") while attempting to flee on foot from the car. A front seat passenger also opened his door in an effort to flee on foot. A Baltimore County Police Officer's vehicle, which was immediately behind the stolen car, was unable to stop in time. The vehicle rear-ended the stolen car, causing significant body damage to both vehicles and deploying the airbag system in the police car.

As the two front seat occupants fled on foot, the stolen car was drifting forward, unmanned. The back seat (driver's side) passenger, the Involved Citizen, attempted unsuccessfully to exit the vehicle one time, then tried again and fell to the ground. At the same time, the Involved Officer drove around the lead police car that had just crashed in an effort to start pursuing the fleeing occupants of the stolen vehicle. The two front seat occupants had fled north on Highgate—and the same direction that the Involved Officer drove his cruiser.

Soon after the Involved Officer turned onto Highgate, the Involved Citizen, who was on the ground when the Involved Officer started to accelerate onto Highgate, suddenly popped up in front of the Involved Officer's cruiser, fleeing north away from the officer. Within 2 seconds of his appearance, the Involved Officer, who was driving 13-16 mph, struck the Involved Citizen, knocked him down, and ran over him. The Involved Officer stopped his vehicle, and found the Involved Citizen trapped under the front-center portion of his cruiser's undercarriage.

As detailed below, when all available evidence is considered, the Involved Officer's actions did not rise to the level of being criminal. The Baltimore City State's Attorney, therefore, declines to pursue criminal charges in this matter.

OVERVIEW OF THE INCIDENT

(Fatality)

On January 6, 2019, at approximately 1542 hours, two Baltimore County Police Department (hereinafter "BCPD") officers, Officer #1 and Officer #2, were dispatched to the Woodlawn District of Baltimore County for an armed carjacking that had just occurred. They met with a victim, who indicated that while he was delivering a pizza, he was carjacked by at least two black males. One of the suspects brandished and pointed a handgun at him.

The vehicle was identified as a Ford Fiesta bearing Maryland registration, 5CW9785. Within minutes, Officers #3 and #4 located the vehicle matching the description and bearing the license plate number traveling east on Liberty Road, not far from where the carjacking took place. The two officers got behind the Fiesta and waited to attempt a traffic stop until more officers were near them.

As additional officers backed-up Officers #3 and #4, Officer #3 and Involved Officer attempted to initiate a traffic stop of the vehicle. The operator refused to pull over, and a motor vehicle pursuit ensued. Through most of the chase, Officer #3 was the lead, while Officer #5 and the Involved Officer traded off being 2nd and 3rd behind Officer #3. The Involved Officer was handling all radio communications.

As the fleeing stolen vehicle crossed the city/county line, Officer #3 saw someone throw a gun from the stolen vehicle into the woods that lined the roadway. That gun, a .40 caliber Glock 22, was found by Officer #6 in the area of Liberty Road near Northern Parkway, just inside the city limits.

The chase continued at high rates of speed, far exceeding posted speed limits. As the chase continued onto West Northern Parkway, Officer #3 used his vehicle to stop traffic in an intersection as other chasing police cars safely passed through. This, in turn, led to Officer #5 becoming the primary vehicle, and the Involved Officer becoming the 2nd vehicle.

At the intersection of W. Northern Parkway and Highgate Drive, the operator of the stolen vehicle pulled over, leaving the car in gear (or possibly in "neutral") while attempting to flee on foot from the car. A front seat passenger also opened his door in an effort to flee on foot. Officer #5, who was immediately behind the stolen car, was unable to stop his police car in time. He rear-ended the stolen car, causing significant body damage to both vehicles and deploying the airbag system in the police car.

As the two front seat occupants fled on foot, the stolen car was drifting forward, unmanned. The back seat (driver’s side) passenger, the Involved Citizen, attempted unsuccessfully to exit the vehicle one time, then tried again and fell to the ground. At the same time, the Involved Officer drove around the lead car (the one driven by Officer #5 that had just crashed) in an effort to start pursuing the fleeing occupants of the stolen vehicle. The two front seat occupants had fled north on Highgate—the same direction that the Involved Officer drove his cruiser.

Soon after the Involved Officer turned onto Highgate, the Involved Citizen, who was on the ground when the Involved Officer started to accelerate onto Highgate, suddenly popped up in front of the Involved Officer’s cruiser, fleeing north away from the officer. Within 2 seconds of his appearance, the Involved Officer, who was driving 13-16 mph, struck the Involved Citizen, knocked him down, and ran over him. The Involved Officer stopped his vehicle, and found the Involved Citizen trapped under the front-center portion of his cruiser’s undercarriage.

Several other officers on scene gave chase to the other two suspects, capturing one.

At the scene with the Involved Officer and the Involved Citizen, there was significant debate amongst the on-scene officers as to what to do—the biggest debate being whether to move the car or wait for medics. The decision was made to wait for medics. Baltimore Fire Department (BFD) personnel arrived 9 minutes later, and after a moment or two of discussion about the situation, BFD staff started working diligently to get the Involved Citizen out from under the car. Medics pronounced the Involved Citizen deceased prior to getting him out from under the car.

SUMMARY OF THE EVIDENCE

TIMELINE OF THE INCIDENT

1542 hours	The carjacking occurs at 3408 Merle Drive in Baltimore County
1550 hours	Officers indicate they’ve located the stolen vehicle
*	Officer arrives at carjacking scene, gets information and broadcasts
*	Officers #3 and the Involved Officer first attempt a traffic stop
*	Chase announced
*	Chase crosses city/county line, gun thrown out of car within city limits
1554 hours	Stolen vehicle pulls over at Highgate Drive (gear shifter either left in “drive” or put into “neutral”)
1554 hours	Officer #5 strikes stolen vehicle
1554 hours	First suspect gets out and takes flight on foot
1554 hours	Second suspect gets out and takes flight on foot
1554 hours	IC stumbles out of car
1554 hours	Involved Officer, who is now past Officer #5 car, begins to accelerate onto Highgate Drive, in the direction of the fleeing suspects
1554 hours	IC first pops up
1554 hours	Officer #5’s car strikes IC
1554 hours	IC falls to ground as police cruiser drives over top of him
1556 hours	2 nd suspect is located and apprehended
1603 hours	Fire/EMS first arrive on scene

1619 hours	EMS report: <i>“Pronounced patient deceased at 1619 hours. It took an additional 20 minutes to extricate the patient from underneath the police car.”</i>
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BODY WORN CAMERA (“BWC”) VIDEO

1. The Involved Officer—

The Involved Officer activated his Body Worn Camera (BWC) as he located and approached a vehicle that he believed was involved in a carjacking less than 15 minutes prior. The following is a timeline of what his BWC illustrates— noting that there is no time stamp, the left hand column will identify how much time had elapsed from when he first turned on his BWC:

1550 hours	Involved Officer is on Liberty Road, he turns on his BWC as he approaches what he (correctly) believed was a stolen vehicle from a recent carjacking
+ 8 seconds	Involved Officer pulls right up to the stolen vehicle
+ 25 seconds	Another officer (believed to be #3) approaches from the oncoming traffic lane and attempts to block the stolen vehicle—the stolen vehicle evades and takes flight
+ 30 seconds	The stolen vehicle goes through a red light
+ 51 seconds	Involved Officer keys up his radio and announces that he will call the chase as car #2—Officer #3’s squad car overtakes him at this time
+ 1m 28s	Pursuit turns onto Northern Parkway, crossing into Baltimore City
+ 1m 40s	One of the suspects throws a gun out of the fleeing car
+ 3m 18s	Pursuit crosses Park Heights, last major intersection before end of chase
+ 3m 37s	Stolen vehicle pulls over, lead squad car rear-ends stolen vehicle. Driver can be seen exiting stolen vehicle.
+ 3m 38s	The Involved Citizen can be seen attempting to get out of the stolen vehicle, rear driver’s side door—he falls to the ground
+ 3m 39s	The Involved Citizen is completely out of view—laying on the ground. The other two occupants of the stolen vehicle are on foot, fleeing the area
+ 3m 40s	The Involved Citizen first rises from the ground, directly in front of Involved Officer’s car
+ 3m 41s	The Involved Citizen is struck by Involved Officer’s car
+ 3m 42s	The Involved Citizen goes underneath Involved Officer’s car
+ 3m 44s	Involved Officer has stopped his vehicle

2. Additional Officers

Additional BWC footage from thirteen other officers was obtained and reviewed (some officers have multiple records from different phases of the incident). Most of the footage is of back up officers at the tail end of the pursuit—which offers nothing more than the Involved

Officer's BWC does.¹ Remaining footage is that of officers that responded to the original carjacking scene, which is of little to no value.

AUTOPSY OF THE INVOLVED CITIZEN

“[Involved Citizen] died of Multiple Injuries including blunt force, thermal and compressional traumatic asphyxial injuries sustained as a pedestrian struck by a police vehicle. Per investigation after being struck, the deceased was positioned under the vehicle. The florid petechiae noted at autopsy indicate the additional component of traumatic asphyxia. A carboxyhemoglobin saturation test was performed and was within normal limits. The manner of death is ACCIDENT. Postmortem testing for ethanol and comprehensive drug screening were negative.” (verbatim but the name of the citizen has been redacted)

CADS/KGA

The 911 communications (Baltimore County does not use the terms CAD or KGA) document the following:

- (1) the carjacking and robbery of the victim along with a description of the vehicle and the suspects;
- (2) that a pistol was used during the robbery and carjacking;
- (3) the route of the pursuit;
- (4) the various speeds during the pursuit;
- (5) the location where the weapon was discarded from the vehicle
- (6) the bail out; and
- (7) the pinning of The Involved Citizen under the vehicle

WITNESSES STATEMENT SUMMARIES

LAW ENFORCEMENT WITNESSES

1. Officer #4, BCoPD, on 1/6/19:

Written question: “What happened?”

Written answer: “We are on Liberty Road. We got a call for a blue Ford Fiesta that was involved in a carjacking. We spotted the car. We lit up the Ford. We pursued the vehicle. It wouldn't stop. The vehicle increased in speed. (suspect) He made a left onto Northern Parkway, where the passenger threw a gun. We continued to chase the vehicle. All three suspects bailed out of the vehicle. I ran after one suspect that was wearing a gray hoodie and

¹ There is a lot of footage of officers chasing, and catching, one of the other two suspects.

red pants. African American male. He ran up Highgate. After hopping two fences, I lost him.”

2. Officer #7, BCoPD, given on 1/6/19

Written question: “What happened?”

Written answer: “We were coming down Northern Parkway.”

Written question: “You were in pursuit of the suspect vehicle, correct?”

Written answer: “Yes.”

Written question: “Did you have lights + siren on?”

Written answer: “Yes.”

Written question: Which lane were you in?”

Written answer: “Far right lane.”

Written question: “You were coming up and tried to stop at which time you hit the suspect vehicle?”

Written answer: “Yes.”

Written question: “Before you hit the suspect car is that when the suspects were bailing out of the car?”

Written answer: “The front two had already bailed out and were gone. The rear passenger tripped getting out of the car.”

Written question: “He ran up Highgate?”

Written answer: “Yes.”

Written question: “Is that when you got out?”

Written answer: “I jumped out of my car. Other responding officers had already gone up Highgate. By the time I got to Highgate, I noticed a foot sticking out from under the car. At that time, I stopped chasing, I told the officer (Involved Officer) not to move the car.”

3. Officer #8, BCoPD, given on 1/6/19

Written question: “What happened?”

Written answer: “The pursuit started at Liberty Road. I heard someone on the radio call out a blue Ford Fiesta. I saw the Fiesta in Lane #2 on Liberty Road. Someone confirmed the tag. That when the Involved Officer and myself located the vehicle. We activated our lights and siren at Essex and Liberty Road. They kept going. They crossed over Liberty Road. We came up on Northern Parkway. They turned left onto Northern Parkway. At that time a gun was thrown from the right front passenger window. The pursuit continued. We came up on

Wabash, then Reisterstown Road, then Park Heights, and then Highgate. I came around car 298, and turned up Highgate. I followed the Involved Officer. The Involved Officer came to a sudden stop. I put my car in park. I pushed my rookie out of the car to continue the chase. I went around car #226, then I saw a foot under the car, sticking out from the right front tire. I laid on the ground, but I couldn't see much. He had on black clothing. I got back up and continued the foot chase. I caught up with the suspect at the convenience store on Winner Avenue and placed him under arrest. I came back to the scene. Suspect is at the Woodlawn Precinct.”

CIVILIAN WITNESSES

There are no civilian witness statements. Of the two young men that fled the vehicle along with The Involved Citizen, one was caught and arrested—no statement from him. The other was not caught.

BALTIMORE CITY ACCIDENT INVESTIGATION REPORT

Because The Involved Citizen's death occurred in Baltimore City, the Baltimore Police Department Accident Investigation Unit (AIU) was contacted to complete the investigation into The Involved Citizen's death. The team issued a report which is found at the end of this memorandum. The AIU concluded that the exact cause of the fatality cannot be determined, noting that the Involved Officer declined to provide a statement to them.

LEGAL ANALYSIS

If not legally justified, the Involved Officer's actions could constitute the crimes of *First or Second Degree Assault, Manslaughter by Motor Vehicle*, and/or *Misconduct in Office*.

First Degree Assault – In order to convict a defendant of *First Degree Assault* the State must prove all of the elements of *Second Degree Assault*, and prove that the defendant intended to cause serious physical injury in the commission of the assault. See CR § 3-202; MPJI-Cr 4:01.1.

Second Degree Assault (Battery) – The elements of second degree assault, under the battery theory of criminal liability, are as follows:

- (1) that the defendant caused offensive physical contact with or physical harm to the victim;
- (2) that the contact was the result of an intentional or reckless act of the defendant and was not accidental; and
- (3) that the contact was not consented to by the victim or legally justified.

CR § 3-203; MPJI-Cr 4:01.

Manslaughter – Manslaughter by motor vehicle is a crime under the Criminal Law Article, §§ 2-209 and 2-210. The two statutes criminalize the causing of the death of another by motor vehicle as a result of “grossly negligent” or “criminally negligent” driving.

Misconduct in Office – “In Maryland, misconduct in office is a common law misdemeanor. It is corrupt behavior by a public officer in the exercise of the duties of his office or while acting under color of his office.” *Duncan v. State*, 282 Md. 385 (1978) (footnote omitted).

Maryland courts have further defined the elements of this offense as follows:
The corrupt behavior may be: (1) the doing of an act which is wrongful in itself, or “malfeasance;” (2) the doing of an act otherwise lawful in a wrongful manner, or “misfeasance;” or (3) the omitting to do an act which is required by the duties of the office, or “nonfeasance.”

Leopold v. State, 216 Md. App. 586, 605 (2014); *see also Riley v. State*, 227 Md. App. 249, 264 n.7 (2016) (holding that a police officer’s use of unjustified force can constitute an assault, which in turn can, “constitute [] an ‘oppressive and willful abuse of authority’” that is “not simply a mere error in judgment;” as such, it can be sufficient evidence to convict the officer of misconduct in office.) (Citations omitted).

Law: Use of Force – Consequently, at issue is whether the Involved Officer’s use of deadly force against the Involved Citizen was a lawful use of force. More specifically, the question is whether the force here was used intentionally or accidentally: and if used accidentally, whether such use was grossly (criminally) negligent. The U.S. Supreme Court has held that “all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the *Fourth Amendment* and its ‘reasonableness’ standard.” *Graham v. Connor*, 490 U.S. 386, 395 (1989) (emphasis in the original).

The Court has further pointed out that it’s “*Fourth Amendment* jurisprudence law has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Id.* at 396 (citing *Terry v. Ohio*, 392 U.S. 1, 22-17 (1968)).

The reasonableness of a particular use of force by a police officer is judged from the perspective of a reasonable officer on the scene. The “reasonableness” inquiry in a use of force case is an objective one. The question is whether the police officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting the police officer, without regard to the officer’s underlying intent or motivation. *Id.* at 397.

In *Graham v. Conner*, the U.S. Supreme Court explained that the proper application of a reasonableness test under the Fourth Amendment, “requires careful attention to the facts and

circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985) (the question is “whether the totality of the circumstances justify[es] a particular sort of . . . seizure”)).

Discussion –

Part I – Baltimore County Police Departmental Policy²

Baltimore County Police Department has issued two policies which serve as guides to officers who engage in vehicle pursuits: 9-5.1 Motor Vehicle Pursuit Guideline Matrix/Risk Factors and 9-5.1.1 Motor Vehicle Pursuit Guideline Matrix. The first, the Matrix/Risk Factor, classifies eight factors into three risk categories: Low Risk, Medium Risk and High Risk. The eight factors are: (1) weather, (2) road conditions, (3) traffic conditions (4) daylight/dark (5) driving infractions of the person being chased (6) location of pursuit inside or outside of Baltimore County (7) the likeness the area is populated and (8) the type of roadway.

Each of the eight factors are categorized into the three risk factors depending on the facts the officer is presented with during the pursuit. For example, the first factor, which is weather, classifies clear weather as low risk, light precipitation as medium risk and heavy precipitation as high risk. The second factor, road conditions, classifies dry roads as low risk, wet roads as medium risk and ice/snow covered roads as high risk. Risk factors can change during a pursuit depending on how the facts change. The matrix is found at the end of the memorandum and defines what the risk level is for each of the eight factors by giving examples of what facts make the risk low, medium and high.

The second policy, the guideline matrix, outlines the risk based on the seriousness of the crime. Again, the guideline matrix is a guideline to be used by an officer when choosing to engage and/or continue a pursuit. The matrix outlines five types of offenses ranging from felony to traffic/civil charges. The matrix incorporates the risk factors from the first policy but adds the seriousness of the offense for the person being pursued as another factor for the officer to consider. For example, if the crime is a felony where an officer has knowledge “that serious harm or death has been or will be inflicted if an apprehension is not made,” AND the risk factors are low or medium, the officer may pursue. However if the risk factors are high instead of low to medium, the officer may still pursue but has the option to discontinue when the risks exceed the known threat to public safety. Alternatively, if the infraction is a traffic or civil violation where the identity of the alleged violator is known, a police officer does not have the authority to pursue even if the risk is low. The entire matrix is at the end of this memorandum.

The risk factors are to be weighed against the safety concerns of the community, the alleged violator and the police officers. The factors may change at given moment and the officer must continue to evaluate whether to continue a pursuit. The changing of a risk factor to high does not mean that the pursuit was high risk. It does mean that an officer must be aware that the risk has changed. The officer should consider the change when deciding whether to continue the

² Md. Annotated Code 2-102(b)(3)(4) authorizes BCP to pursue into another jurisdiction

pursuit. As discussed in Baltimore County Pursuit Policy, “the decision to pursue a motor vehicle is a process of weighing risk factors of the pursuit against the primary responsibility of preserving life.” The secondary concern is the apprehension/identification of the violator.

Part II: Discussion of the facts to the policy:

Taking into account that when an officer is in pursuit, he/she has to make a decision about whether to continue the pursuit within seconds, the BCSAO has concerns about the risks undertaken by the Involved Officer and other BCP (Baltimore County Police) officers during the pursuit. During the pursuit, three low risk factors remained constant and stayed low risk throughout the pursuit, namely (1) the weather was clear, (2) the roads were dry, and (3) there was daylight. However, several of the risk factors changed during the pursuit demonstrating that during parts of the pursuit “apprehension of the violator” became more important than the safety of the community and preserving life. The factors that are of concern are (1) the traffic density, (2) the driving violations of the alleged violator, (3) the jurisdiction, and (4) the roadway conditions.

BWC footage shows that at the beginning of the pursuit, the traffic density was medium; however, there were instances particularly when approaching intersections where the traffic appears to be heavy and vehicles are crossing the intersection in front of the pursuit. When continuing a pursuit in heavy traffic the risk factor is high. The pursuit into heavy traffic at intersections places both the occupants of the pursuit vehicle, the other vehicles and the police vehicles at risk.

When the officers entered into another jurisdiction, the risk may change from medium to high, depending on how familiar the officer is with the new location. The BCSAO was unable to determine the officer’s knowledge of the area in city where the pursuit occurred because the Involved Officer did not give a statement.

Another factor, the traffic infractions committed by the alleged violator, changed during the pursuit. At times, the alleged violator was driving in the wrong direction on Northern Parkway, weaving between vehicle, speeding through red lights at intersections and accelerating at high speeds. As noted above, the reckless driving of the pursued vehicle created a risk to other innocent drivers. According to the risk matrix, when a vehicle leaves the roadway and/or is traveling at a high speed, the risk factor is high. The police vehicles followed the pursued vehicle traveling in the wrong direction on Northern Parkway at high rates of speed. The chances of injuring or killing an innocent person increases when the police continued the pursuit.

For purpose of discussion, two factors, whether an area is populated and the type of roadway are combined. The Involved Officer’s BWC video showed the pursuit traveling through residential areas on Northern Parkway. The pursuit continued until the pursued vehicle stopped at Northern Parkway and Highgate Road. Highgate Road is one way, narrow road with residential houses on each side. The day of the incident was Sunday and it was a warm winter day. According to the matrix, when a road is narrow and in a residential area in peak hours, the risk factor is high. Adding to the risk to continue the pursuit, the Involved Officer turned into

Highgate Road proceeding the wrong way on a one-way road. The BCSAO questions why the Involved Officer continued his pursuit in his vehicle when the risk of harm was high, the occupants of the pursued vehicle had exited their vehicle and other officers had begun a foot pursuit of the vehicles occupants.

When applying all of the facts to the Guideline Matrix/Risk Factors, and recognizing that only three factors remained a constant low risk while four factors developed into the high risk category, the BCSAO has concluded there was a high risk of harm to the community, the police and the violator when Baltimore County police officers chose to continue the pursuit and specifically when the Involved Officer chose to continue the pursuit after the occupants of the vehicle had fled on foot. However, the BCSAO concedes that this behavior alone may not rise to the level of criminal behavior. Moreover, none of these risk factors caused the death of the Involved Citizen.

The second matrix, referred to as the Guideline Matrix advises an officer when he may or may not begin a pursuit based on the offense committed by the alleged violator and the risk factors on the other matrix. The BSAO has determined that the risk factor was high for continuing the vehicle pursuit. Therefore, when a felony is or has been committed and the officer has knowledge that serious harm or death has been or will be inflicted if an apprehension is not made, the officer may continue the pursuit but should discontinue when the risks exceed the known threat to public safety. The BCSAO agrees with the Involved Officer that “serious harm to others” is supported by the facts that the individuals in the pursued vehicle had a gun or guns, which were allegedly used during the carjacking; however, when the risk factors as outlined above, indicated that there was high risk to the public, to the officers and to the passengers in the pursued vehicle, the pursuit should have been terminated.

Additionally, officers are restricted from following a suspect into oncoming traffic lanes of travel. The three officers clearly avoided it where possible, but at other times, usually for mere seconds, they followed the stolen vehicle into oncoming traffic lanes of travel when they had no other option(s).

While the matrix’s were not favorable to giving chase due to the high risk of harm to the public, the commanding officer at the time sanctioned the chase while knowing the circumstances of the chase. Therefore, the officers had either actual or apparent authority to conduct the chase in substantially the manner that they did. Our conclusion does not mean that the officers committed criminal acts by continuing the pursuit. The BCSAO recognizes that the violation of police policies is a factor to consider when evaluating the reasonableness of the officer’s use of force. The BCSAO has to apply the objective reasonable standard in order to determine whether the vehicular chase including after the occupants of the vehicle bailed out was reasonable. As the Supreme Court said in *Graham*, “the calculus of reasonableness must make allowances for the need of police officers to make split second judgments in circumstances that are tense, uncertain and rapidly evolving.” The Involved Officer and the other BCP officers knew that at least one occupant of the pursued vehicle had a weapon and had used the weapon to carjack the victim. Once the officers identified and pulled behind the carjacked vehicle, they attempted to pull the vehicle over. Instead of pulling over, the vehicle refused to stop and fled off at a high rate of speed. Given how quickly the pursuit developed and knowing that at least one occupant of the vehicle had a weapon, the BCSAO cannot conclude that the officers’ conduct

was unreasonable. Again, none of the apparent violations of chase guidelines caused the death of the Involved Citizen.

III. The Fatality

When attempting to flee on foot, the Involved Citizen unfortunately fell out of the moving car, stumbled and while stumbling ran to the middle of Highgate Road while the Involved Officer was turning onto Highgate Rd. Because the Involved Citizen was below hood level— rendering him difficult if not impossible to be seen by the Involved Officer, the Involved Officer struck the Involved Citizen. As the Involved Officer drove forward at 13-16 mph, The Involved Citizen suddenly appeared in front of the police car. Two seconds later he was under the car. There is no evidence that the Involved Officer was driving in any erratic or otherwise negligent manner.

There were several facts and reasonable inferences available to the Involved Officer at the moment that he struck the Involved Citizen:

- A high speed chase had just ended after 3+ minutes;
- The underlying crime was an armed carjacking;
- Nobody knew if the fleeing men were still armed or not;
- The stolen vehicle was still drifting to the Involved Officer's left;
- Officer #3's car, to the Involved Officer's right, was badly damaged and was steaming/smoking up, having just rear-ended the stolen car;
- The Involved Officer didn't know if Officer #3 was injured or not;
- The driver of the stolen car was fleeing on foot – to the left;
- The front seat passenger of the stolen car was fleeing on foot – from the right, running to the left
- At least one uniformed officer who had just arrived was chasing one of the suspects in the middle of the road;
- The area in which the Involved Officer had to drive through to continue the chase was very narrow and one way; and
- The position of the Involved Officer's BWC is on his shoulder allowing the Involved Officer to turn his head and observe facts that are not captured by the BWC.

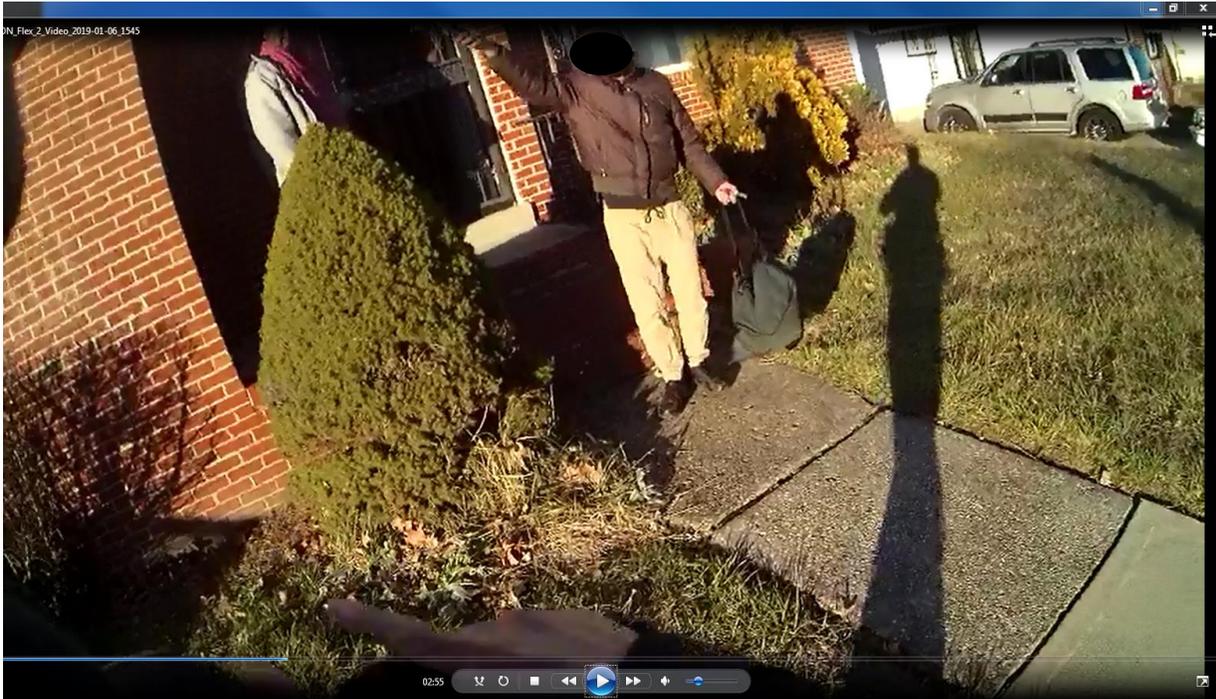
Based on the above facts and inferences, it is reasonable to conclude that: (1) the Involved Officer found himself in the middle of a chaotic scene; and (2) when the Involved Citizen suddenly appeared in front of him, the Involved Officer's attention was likely drawn to one of many other stimuli, causing him to not recognize the danger right in front of him.

CONCLUSION

When considering all of the evidence, the BCSAO reasonably concludes: 1) that the Involved Officer had probable cause at all times to take the actions that he took; 2) that the Involved Officer did not intend to cause harm to the Involved Citizen; 3) that the Involved Officer did not drive his vehicle in either a “grossly negligent” or “criminally negligent” manner; and 4) that in this case, violations of departmental policy did not rise to the level of being criminal.

The BCSAO does not have sufficient evidence to charge the Involved Officer and therefore declines to prosecute him.

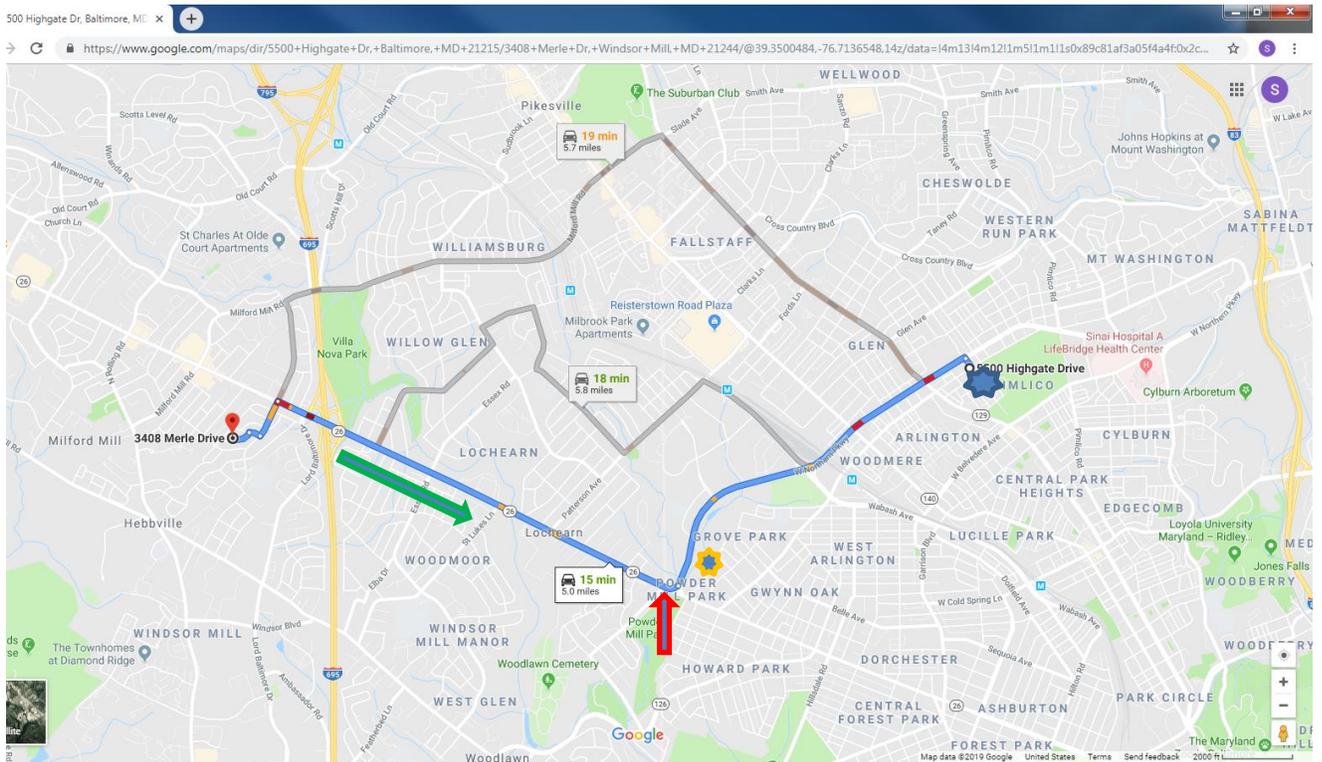
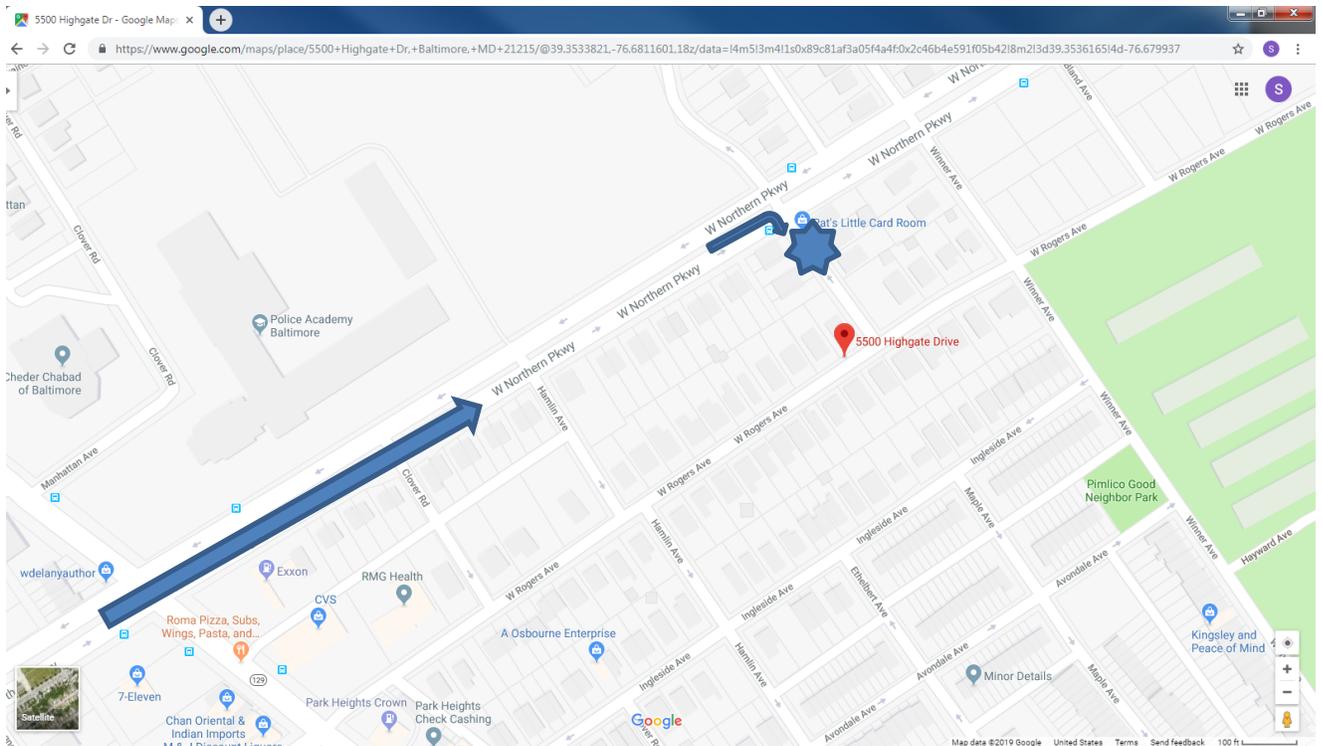
OVERVIEW OF THE VIDEO/PHOTO EVIDENCE OF THE INCIDENT



This is when officers first met with the victim of the carjacking, a food delivery driver. He is describing the vehicle and the direction it fled; however, just a moment before this officer arrived, another officer had already spotted the stolen vehicle (they knew what they were looking for because information was given at the time of the initial 911 call).



This picture is of the location where the carjacking took place, and is only intended to show the residential neighborhood.



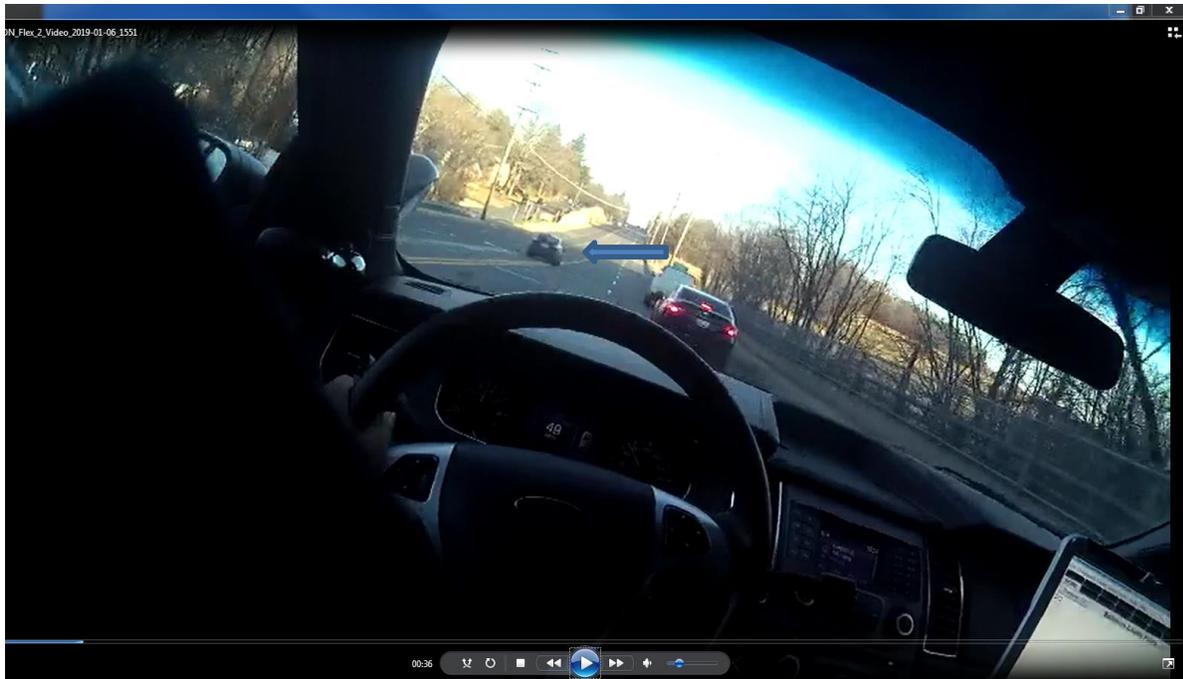
3408 Merle Drive in Woodlawn/Milford Mill is where the carjacking occurred. Police first spotted the stolen vehicle somewhere in the area of the green arrow and this is where the chase began. The chase crossed the county/city line at the red arrow. The gun was thrown out of the car where the orange burst is (inside city limits). The chase ended on Northern Parkway at the intersection of Highgate Drive. The fatality happened in the 5500 block of Highgate Drive, identified by the blue burst.



This is the Involved Officer's BWC (on his shoulder). He has located the stolen car from the carjacking, but is awaiting a 2nd squad car before attempting the traffic stop.



A 2nd squad car (believed to be Officer #3) approaches from opposite direction. That 2nd car attempts to squeeze the suspect car, but it manages to squeeze by. This is when the Involved Officer, Involved Officer, turns on his emergency lights and attempts the traffic stop, and is also when the driver of the stolen vehicle begins to take flight.



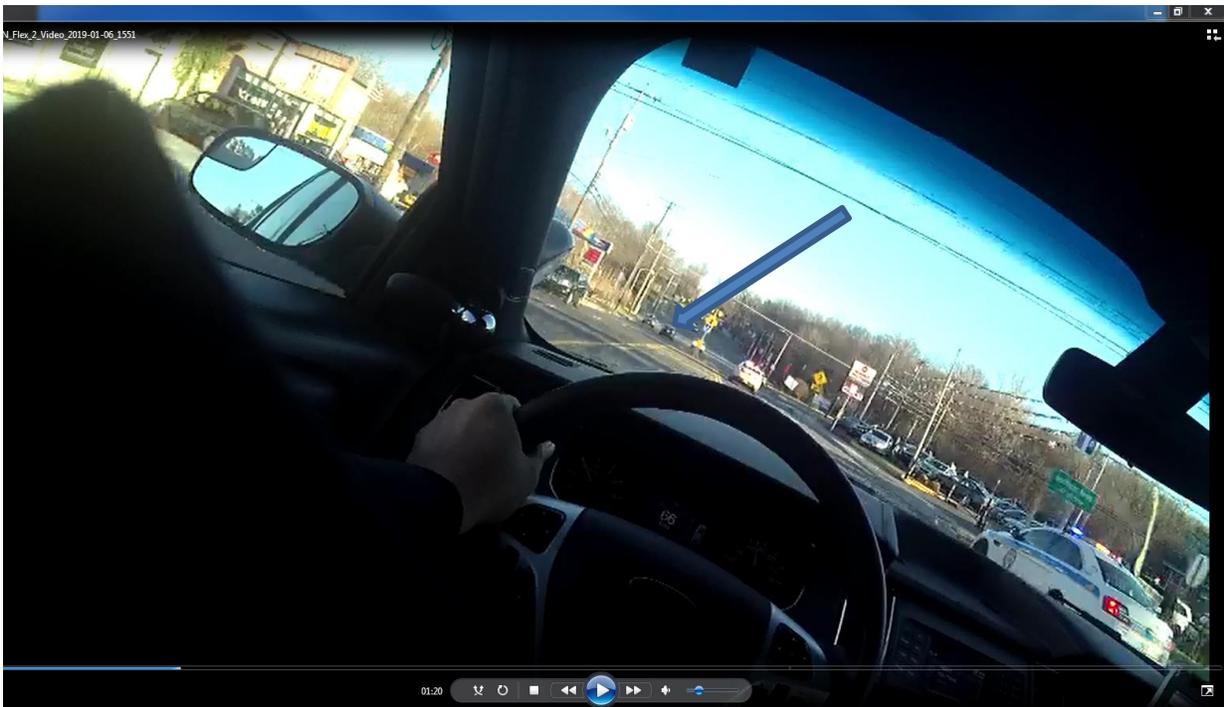
The Involved Officer starts as the lead chaser. The suspect vehicle has nearly doubled its speed and is crossing into on-coming traffic's lane of travel. Within 5 seconds, another cruiser will take the lead, and this officer will drop into 2nd position and call out the chase over the radio (standard protocol—the 2nd car in a chase is the only one using the radio).



Speeds reached 80 mph very quickly. This is a predominately residential area.



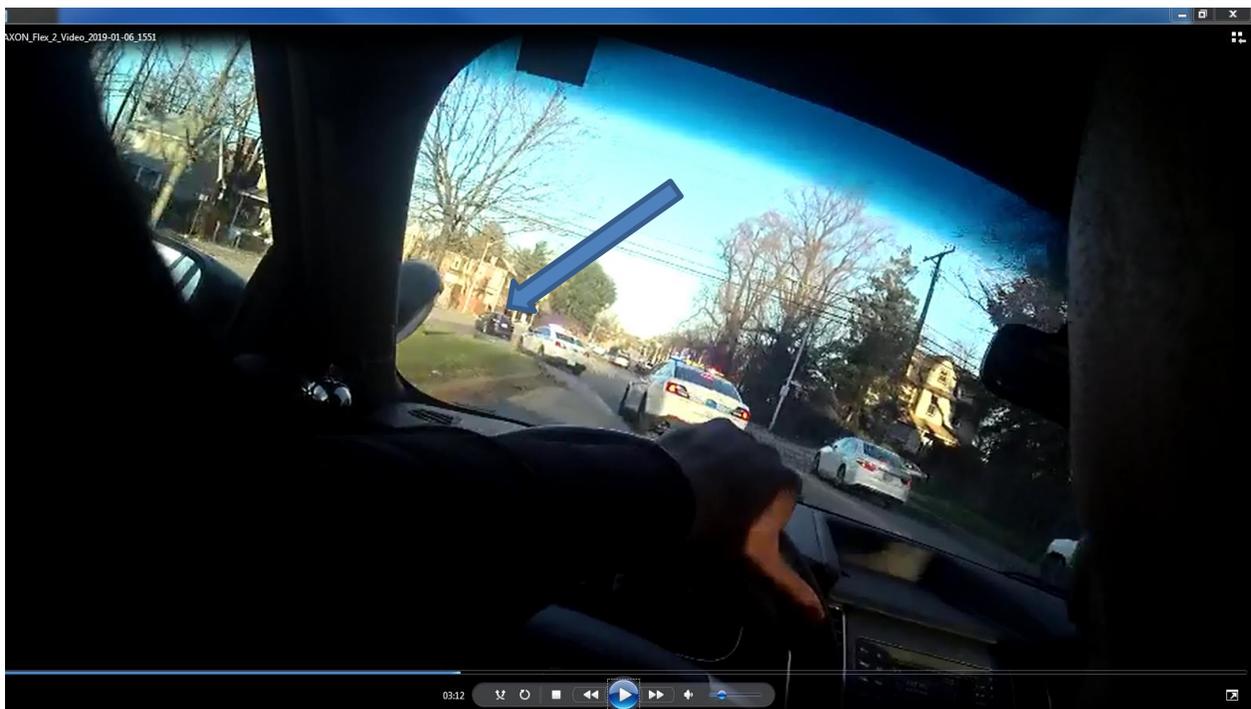
The suspect vehicle is fully in the oncoming traffic travel lane, passing cars in the center turn lane. Speeds at this time are between 65-75 mph. Cars are swerving to avoid the



The suspect vehicle is now driving around a median strip, still in the travel lane of oncoming traffic. A 3rd cruiser has joined the chase.



The chase is nearing the county/city line on Northern Parkway. The Involved Officer is now driving 85 mph to keep up with the suspects, alternating as 2nd/3rd vehicle in the pursuit.



On Northern Parkway, well within city limits, less than 30 seconds before the end of the chase. Suspect vehicle again attempts to evade by crossing into oncoming traffic.



At the intersection of Park Heights and Northern Parkway, the lead cruiser opts to block traffic, as he now has several cruisers behind him. The suspect vehicle has returned to his correct lane of travel. Speeds are varying between 40-60 mph.



The suspect vehicle comes to a stop—though the driver doesn't put the gear in "park." Suspect driver can be seen bailing and taking flight.



The lead chasing cruiser couldn't stop in time and rear-ended the suspect vehicle, rendering his cruiser undriveable (airbags deployed). The driver of the suspect vehicle is in the red pants, and he is having difficulty running in front of the car he just abandoned, as it's still drifting forward.

The Involved Citizen, The Involved Citizen, is the back-seat driver's side passenger, and can be seen here attempting to get out of the moving vehicle. The front-seat passenger is already out of the vehicle and is running from it, but can't be seen in this picture.



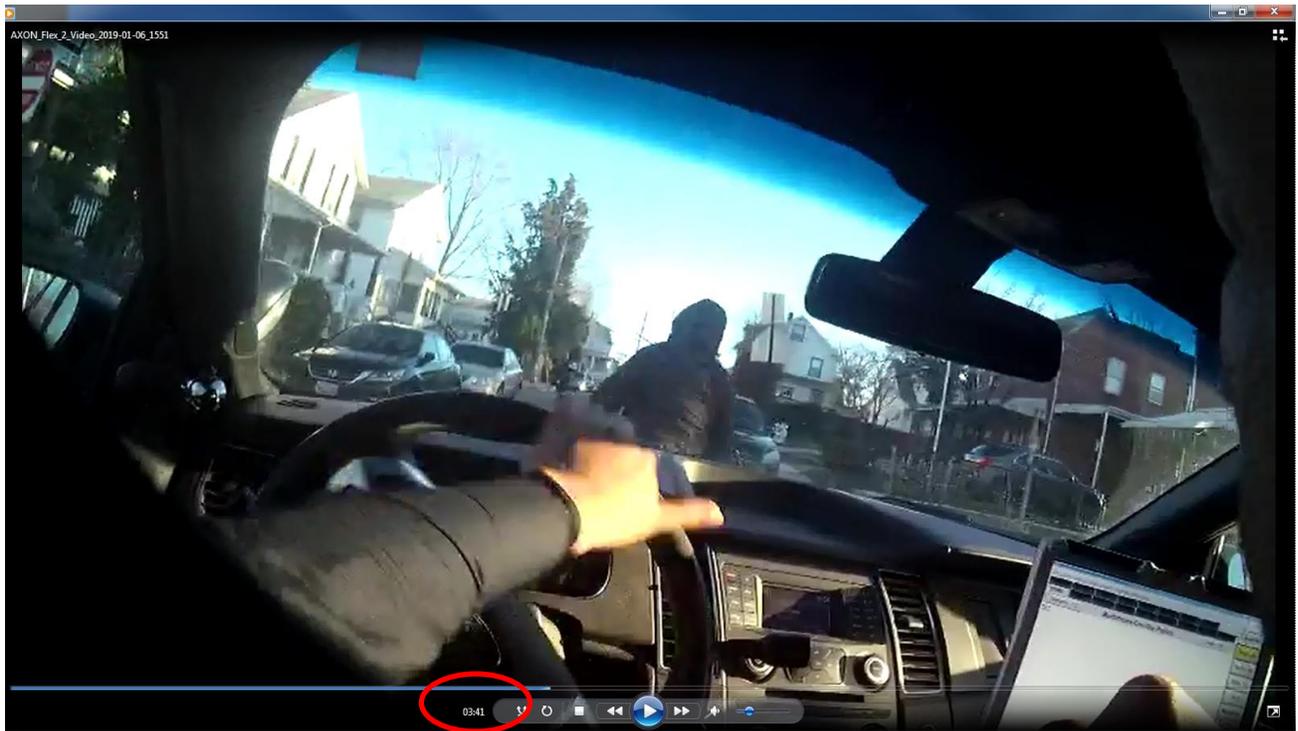
The Involved Citizen has f#3 out of the (moving) suspect vehicle. He is lying flat on the ground as the officer over-takes the now disabled lead cruiser. This is where the officer begins his right hand turn towards



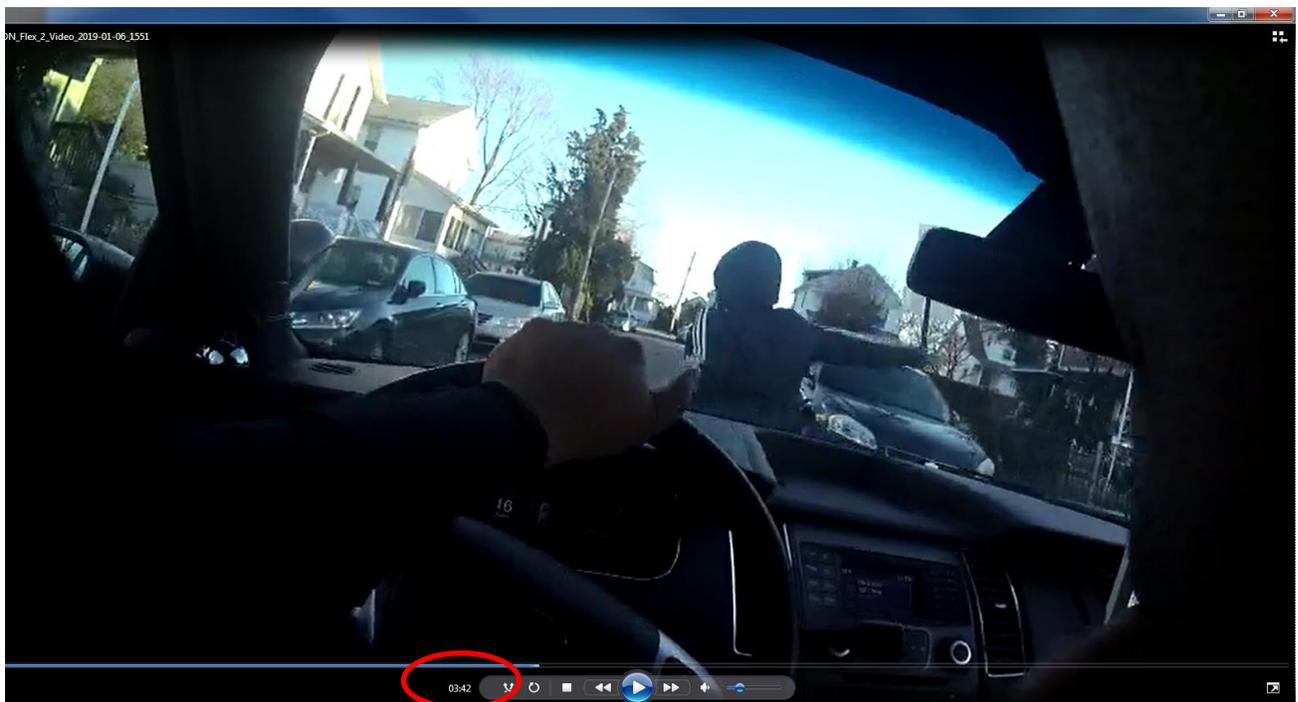
All 3 suspects can be seen running from the suspect vehicle—which is itself drifting away. The officer's vehicle is now turned towards the fleeing suspects, and he is driving between his co-worker's disabled vehicle (to the right—not seen in this photo) and the suspect vehicle (to his left, and still drifting).

The **blue arrow** is the driver. The **red arrow** is the front seat passenger.

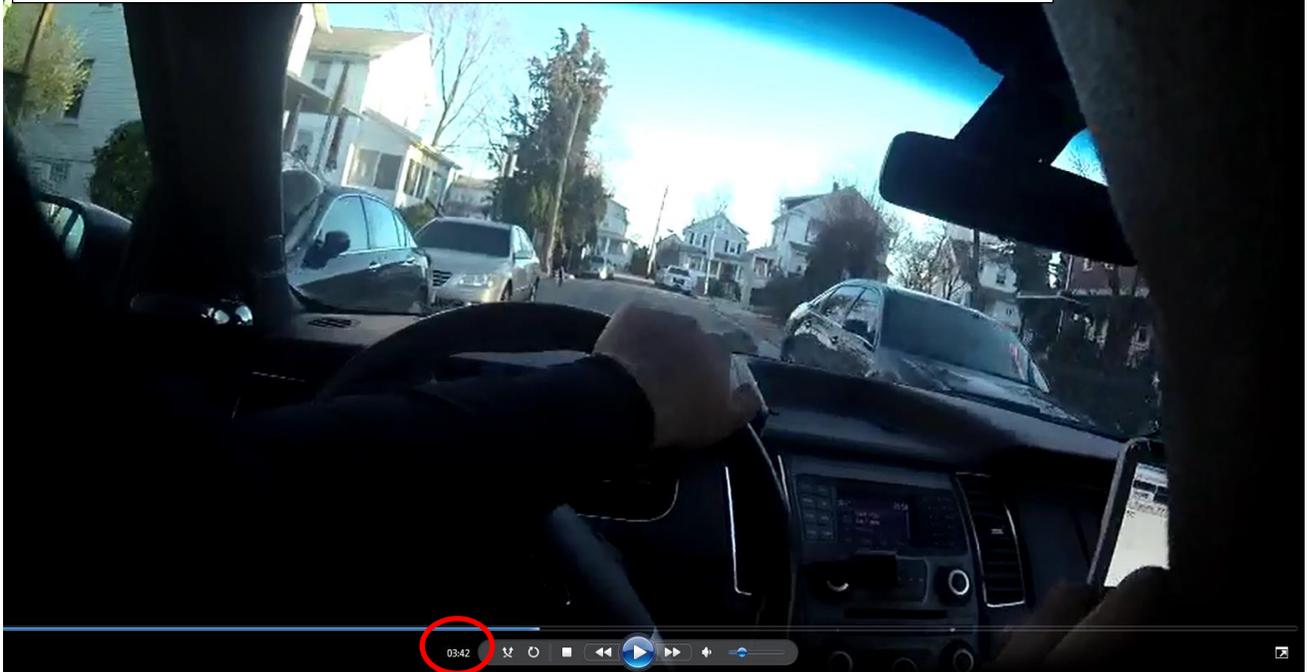
The **yellow arrow** is the elbow of the back-seat passenger, The Involved Citizen, as he is trying to regain his footing while trying to run from the vehicle that he fell out of. This is the instant that he first appears in front of the Involved Officer's cruiser—he is an estimate 2-3 feet in front of the cruiser. The cruiser's speedometer shows that it was moving 13-16 mph.



Take note of the video footage time. This is one second after the last picture. The Involved Citizen is fully upright in front of Officer Involved Officer's cruiser. He's still doing 13-16 mph.



Officer Involved Officer has already struck The Involved Citizen, and The Involved Citizen has lost his balance. Though he appears upright, he is at this instant on his way to the ground. This is one second after the last picture.



Note the time—not a full second has passed, and the vehicle is now rolling over The Involved Citizen's body. From the time he was first fully visible to the point in which he is being run-over, approximately 1 ½ - 2 ½ seconds elapse. The police vehicle is fully stopped 2 seconds later.

Baltimore Police Department Accident Investigation Unit
Report: *parts of the report have been redacted and names
have been omitted

Baltimore Police Department

CC#: Number: 6-19-01-02208

AIU #: 19-0008

Detective Assigned: J. Smith

Date/Time of Crash: 1/6/19 1557 hours

Location: 5500 block Highgate Drive Baltimore, Maryland 21215

Notification

On 6 Jan 19 at approximately 1557 hours, Citywide Dispatcher notified the Crash Team to switch over to the Northwest District channel and speak with 6B09 (Lt. Owens). After speaking with Lt. Owens, Paul Detective Jeannette Smith and Sgt. McMillian, members of the Baltimore responded to the Police Department's Crash Team, 5500 block Highgate Drive involving a Baltimore County Police Officer.

Upon our arrival on scene, it was found that the scene had been secured and Baltimore City and Baltimore County Officers were standing by.

Since this met the criteria of the Accident Investigation Unit, Detective Smith assumed responsibility for the investigation.

Photographs

Photographs of the scene were taken by Sgt. Paul McMillian and Baltimore County Crime Scene Technicians.

Scene Examination

The 5500 block of Highgate Drive is a single lane one way street that facilitates northbound traffic. The 3300 block W. Northern Parkway is a two way roadway consisting of three lanes of traffic for eastbound traffic and three lanes of westbound traffic. There is a concrete median that divides east and westbound traffic.

To perform a thorough reconstruction, scene measurements were taken manually, using a roll a tape and a reference point (the apex of the southeast curb of the 5500 block Highgate Dr) was established.

Vehicle Information

Vehicle One

The striking vehicle is described as a white marked Baltimore County Police Ford Interceptor bearing Maryland license plate BA2085 with an assigned vehicle identification number: 1FAHP2MK0GG 150686.

According to Maryland's Department of Transportation Motor Vehicle Administration, Vehicle One is registered to Baltimore County Government of 11112 Gilroy Rd STE 102 Hunt Valley, Maryland 21031.

Pedestrian

Redacted for purposes of the posting

Driver's Information

The driver of Vehicle One was identified as a Baltimore County Police Officer. According to Maryland's Department of Transportation Motor Vehicle Administration, he possessed a valid Maryland driver's license at the time of the collision.

On the day of the collision, the Involved Officer was removed from the scene by his command, prior to my arrival on scene, so I was unable to speak with him at that time. On 1/6/19 at approximately 2020 hours, I responded to the Woodlawn Precinct to speak the Involved Officer. I was unable to speak with the Involved Officer at the Woodlawn Precinct because he was sent home.

Fatality Information

Redacted for purposes of the posting

. The Involved Citizen was transported to the Office of the Chief Medical Examiner, where an autopsy was conducted.

According to the autopsy, The Involved Citizen sustained multiple injuries to

1. Abrasion of cheek
2. Contusions and lacerations of lips
3. Subgaleal hemorrhages
4. Abrasions and contusions of torso Left
5. clavicular dislocation
6. Left side rib fractures Mediastinal
7. hematoma Contusion of Imigs
8. Laceration of the liver
- 9.
10. Avulsion pocket/ crush injury of buttocks
11. Abrasions of the right upper extremity
12. Abrasions of the lower extremities
13. Soft tissue hemorrhages of right knee
14. Charring of the forehead and fingers of the left hand
15. Skin slippage with underlying erythema of skin of face, right forearm, and right thigh
16. Desiccation and erythema of the fingers of the right hand
17. Full thickness burns involving skin of buttocks and right upper extremity
18. Florid facial skin, conjunctiva! and gingival petechial hemorrhages
19. Coarse scleral hemorrhages

It is the opinion of Dr. X that the Involved Citizen died of multiple injuries including blunt force, thermal and compressional / traumatic asphyxia injuries sustained as a pedestrian struck by a police vehicle. Per investigation after being struck, the deceased was positioned under the vehicle. The florid petechiae noted at autopsy indicated the addition component of traumatic asphyxia.

Witness Excerpts

Baltimore County Officer #4:

What happened?

We are on Liberty Rd. We got a call for a blue Ford Fiesta that was involved in a carjacking. We spotted the car. We lit up the Ford. We pursued the vehicle. It wouldn't stop. The vehicle increased in speed (suspect). We made a left on Northern Pkwy, where the passenger threw a gun. We continued to chase the vehicle. All three suspects bailed out of the vehicle. I ran after one suspect that was wearing a gray hoodie and red pants, African-American male. He ran up Highgate. After hopping two fences, I lost him.

Baltimore County Officer #7

We were coming eastbound on Northern Parkway in pursuit of a vehicle. We were in the far right lane. The front passengers had already bailed out and were gone. I hit the car. The rear passenger tripped getting out of the car. He ran up Highgate. I jumped out of my car. Other responding officer had already gone up Highgate. By the time I got to Highgate, I noticed a foot sticking out from under the car. I stopped chasing and told the Involved Officer not to move the car.

Baltimore County Officer #8:

What happened?

This pursuit started at Liberty Rd. I heard someone on the radio call out a blue Ford Fiesta. I saw the Fiesta in lane# 2 on Liberty Rd. Someone confirmed the tag. That's when the Involved Officer and I located the vehicle. We activated our lights and siren at Essex and Liberty Rd. They kept going. They crossed over Liberty Rd. We came up on Northern Pkwy. They turned left onto Northern Pkwy. At that time, a gun was thrown from the right front passenger window. The pursuit continued. We came up on Wabash, then Reisterstown Rd, then Park Heights, and then Highgate. I came around car 298 and turned up Highgate. I followed the Involved Officer. The Involved Officer came to a sudden stop. I put my car in park. I pushed my rookie out- of the car to continue the chase. I went around car # 226. Then I saw a foot under the car, sticking out from the right front tire. I laid on the ground, but I couldn't see much.

He had on black clothing. I got back up and continued the foot chase. I caught up with the suspect at the convenience store on Winner Ave and placed him under arrest. I came back to the scene. The suspect is at the Woodlawn Precinct.

Pre-Crash Scenario

An investigation revealed that on 6 January 2019, between 1500 to 1541 hours, Baltimore County Officer R. Officer #1 and J. Officer #2 responded to 3408 Merle Drive in reference to an armed carjacking. During the armed carjacking a blue Ford Fiesta bearing Maryland tag 5CW9785 with an assigned vehicle identification number: 3FADP4BJ7GM175868 was taken. At approximately 1550 hours, Baltimore County Officers #3 and #4 located the blue Ford Fiesta traveling eastbound on Liberty Rd near Fairview Rd. Other Baltimore County Officers responded to the area. At that time, Baltimore County Officer #3 and #4 attempted to initiate a car stop on the Ford. The driver of the Ford refused to stop. A vehicle pursuit ensued. The Involved Officer responded to the area and became the second car in the pursuit and began to calmly call out the pursuit over the police radio. The pursuit continued on Liberty Road toward W. Northern Parkway. As the Ford turned onto W. Northern Parkway, Baltimore County Officer #3 observed one of the three suspects in the vehicle throw a handgun out of the passenger side of the Ford. The pursuit continued eastbound on W. Northern Parkway.

Crash Scenario

As the pursuit approached the 3300 block of W. Northern Parkway, the Ford slowed down and the unknown driver who was wearing red pants and a gray shirt and the right front passenger, later identified as Involved Citizen #2 in Baltimore, Maryland 21206, bailed out of the vehicle. A marked Baltimore County police car (car # 228) struck the rear of the Ford. The Ford, which was not in park, was pushed forward, eastbound on W. Northern Parkway. As the Ford drifted forward, the left rear passenger, later identified as the Involved Citizen, attempted to get out of the left rear door. As The Involved Citizen attempted to get out, The Involved Citizen tripped and fell to the ground, below the line of sight of Officer Involved Officer's body worn camera, which was affixed to the left epaulet on his left shoulder. As the Ford drifted eastbound on W. Northern Parkway, he

was still on the ground below the line of sight of the Involved Officer's body worn camera. The Involved Officer began to make a right turn into the 5500 block Highgate Drive, which is a one way roadway for northbound traffic and continued southbound. At that time, the Involved Citizen was still below the line of sight of the Involved Officer's body worn camera. As the Involved Officer made the right turn onto Highgate Drive, the Involved Citizen jumped into view, running southbound on Highgate Drive, in front of the Involved Officer. The Involved Officer then bumped the Involved Citizen with the front bumper. The Involved Citizen then fell to the ground and the Involved Officer drove over the Involved Citizen. The Involved Citizen was trapped underneath of the vehicle.

Post-Crash Scenario

The Involved Officer got out of his car and called for a medic to respond to the scene.

Additional Baltimore County Officers responded to the scene along with the Baltimore City Fire Department and Baltimore City Police Officers.

The scene was secured by Baltimore City and Baltimore County officers. After firefighters and medics arrived on scene, they assessed the Involved Citizen's condition. The Involved Citizen was found to be unconscious and unresponsive. The Involved Citizen was pronounced dead at 1619 hours by Paramedic S. Brinkley from Medic# 19. Firefighters freed The Involved Citizen from underneath of the marked patrol car. He was placed in the back of Medic # 19.

A decision was made by ranking officials to remove the Involved Citizen from the scene to the Northwestern District station, in order to keep the scene from becoming hostile.

A Forensic Medical Investigator from the Office of the Chief Medical Examiner responded to the Northwestern District station and took control of The Involved Citizen's body. The Involved Citizen was transported to the Office of the Chief Medical Examiner.

Towing

The Ford Interceptor was towed Baltimore County Police Headquarters, which is located at 11112 Gilroy Rd STE 102 Hunt Valley, Maryland 21031.

The Ford Focus was towed to the Baltimore County's Woodlawn Precinct for processing.

Next of Kin Notification

The mother of the Involved Citizen, was notified of his death on 1/6/19 at approximately 1930 hours.

Command Notifications

The following individuals were notified of the fatality:

Lt. Kenneth Butler - Commander - Traffic Section

Major Milton Corbett- Commander-Traffic Section

Crash Reconstruction

A reconstruction was not conducted in this collision. There was no evidence present at the scene to support any mathematical calculations. The Involved Officer's body worn camera shows that at the time of the collision, The Involved Officer was traveling at 14 miles per hour. The Involved Officer's body worn camera shows that he was dragged and not thrown from the area of impact.

Event Data Recorder Download

An EDR image was conducted on the Ford Interceptor Sedan. The EDR showed that the event was not captured.

Evidentiary Tests

Toxicology testing was conducted during the Involved Citizen's autopsy. Toxicology testing revealed that the Involved Citizen was negative for any drugs or alcohol at the time of the collision. No further testing was conducted.

Mechanical Defects

There were no mechanical failures noted or reported in this collision.

Roadway Defects

There were no roadway defects at the time of this collision.

Conclusions

After careful review of all the available facts and circumstances contained in this investigation, the exact cause of this crash is not able to be determined. We do know that the Involved Officer was engaged in a vehicle pursuit with a carjacked vehicle that ended on W. Northern Parkway at the intersection with Highgate Drive in Baltimore City when the three occupants bailed out of the suspect vehicle and proceeded to run on foot. The Involved Officer made a right turn from eastbound W. Northern Parkway onto Highgate Drive and continued traveling southbound. The Involved Citizen, is out of sight of the Involved Officer's body worn camera until coming into view shortly before being struck. The Involved Officer declined to provide our office with a statement which limited our ability to take into account his perspective leading up to the crash.