

REPORT BY OFFICE OF THE BALTIMORE CITY STATE'S ATTORNEY ON INCIDENT
AT BALTIMORE AND GAY STREETS ON MAY 29, 2020



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INTRODUCTION

The Baltimore City State's Attorney's Office (BCSAO) completed its review of incident that occurred in the intersection of Baltimore and Gay Streets at approximately 10:30 pm. on May 29, 2020.

In summary, the Involved Citizen, uses her hand to thrust it in Officer #1's face, strikes Officer #1 twice in the face after the officer attempts to arrest her. In defense of Officer #1, the Involved Officer, who had unsuccessfully attempted to restrain the Involved Citizen, strikes the Involved Citizen in the face with a closed fist, knocking her to the ground.

Under Maryland's "Defense of Others" law, an individual can act in defense of another person, under certain circumstances, and the SAO believes that such a defense applies to this incident.

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

Nonetheless, we encourage the Baltimore City Police Department (BPD) to undertake a thorough review of the Officer's actions in this case, and seriously consider the department's training and policy regarding when its officers' may use a closed fist strike to the face. While the BCSAO does not find that the actions of the Involved Officer violated law, and may have been within BPD regulations, we believe that there were other measures that could have, and arguably should have, been taken, rather than striking the Involved Citizen with a closed fist in the face.

OVERVIEW OF THE INCIDENT

Several Baltimore Police Officers were in the intersection of Baltimore and Gay Streets at 10:29 p.m. on May 29, 2020, limiting eastbound traffic, when a vehicle pulled up to the intersection and began to head northbound through the intersection. Officer #1 put his hands up in an attempt to get the vehicle to stop because the light was red. At that time, the vehicle accelerated towards Officer #1, who moved out of the way to prevent being hit. The vehicle then proceeded through the intersection, made a u-turn, and then proceeded towards Officer #1 again. Two officers (Officer #1, and the Involved Officer) then drew their weapons and pointed them at the vehicle, ordering the driver to get out.

The driver (the Involved Citizen) got out of the car and stated “shoot me” and then she sat on the ground. While on the ground, Officer #1 closed the driver side door to prevent the Involved Citizen from returning to her vehicle. At that time, the Involved Citizen spat at Officer #1. Additional officers were called to assist. While awaiting other officers, the Involved Citizen stood up and walked towards Officer #1. After thrusting her hands towards Officer #1, he grabbed her arm in attempt to place her under arrest.

Once Officer #1 grabbed her arm, the Involved Citizen struck Officer #1 in the face. The Involved Officer then attempted to restraint the Involved Citizen, but she broke free and struck Officer #1 in the face again. At which time, the Involved Officer struck the Involved Citizen in the face, with a closed fist, causing her to fall to the ground.

The Involved Citizen was subsequently taken into custody with the assistance of several other officers.

The facts cited to herein are drawn from the Application for Statement of Charges against the Involved Citizen as well as a thorough review of available BWC footage.

SUMMARY OF THE EVIDENCE

BWC VIDEO

Video Evidence

CCTV

Video Evidence

LEGAL ANALYSIS

In Graham v. Connor, 490 U.S. 386 (1989), the Supreme Court set the standard for when a police officer’s use of force is justified. If the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting the officer, without regard to their underlying intent or motivation, the force is justified. See Graham v. Connor. Graham requires consideration of what the officer reasonably believed at the moment he struck the Involved Citizen.

Additionally, under Maryland law (MPJI-Cr 5:01), jurors are required to consider the “defense of others” defense, and “are required to find the defendant not guilty if all of the following four factors are present:

- (1) the defendant actually believed that the person he was defending was in immediate or imminent danger of bodily harm;
- (2) the defendant's belief was reasonable;
- (3) the defendant used no more force than was reasonably necessary in light of the threatened or actual force; and
- (4) the defendant's purpose in using force was to aid the person he was defending.”

In this case, the Involved Officer was aware of the following facts:

- The Involved Citizen had driven her car towards Officer #1.
- The Involved Citizen had spat at Officer #1.
- The Involved Citizen thrust her hand in Officer #1's face
- That Officer #1 attempted to take the Involved Citizen into custody.
- That after Officer #1 grabbed the Involved Citizen's arm, the Involved Citizen struck Officer #1 in the face.
- That the Involved Officer, attempted to restrain the Involved Citizen by holding her arms behind her.
- That despite the restraint by the Involved Officer, the Involved Citizen broke free and struck Officer #1 in the face again.

CONCLUSION

Given the following: (1) Officers were on duty and in uniform, attempting to conduct traffic control when a vehicle entered an intersection against a red signal and against the officers' hand commands; and (2) in light of the Involved Citizen's actions when she got out of her vehicle, including but not limited to spitting at Officer #1 and thrusting her hand in his face; and, (3) that upon attempting to place the Involved Citizen under arrest, she struck Officer #1 in the head, and despite being restrained by the Involved Officer after the first strike, she struck Officer #1 in the head a second time, it would be objectively reasonable for the Involved Officer to conclude that the safety of Officer #1 was at risk. The decision to use force was justified under the Maryland law of self-defense (or defense of others) and the standard put forth by the Supreme Court in Graham v. Connor.

Because the Involved Officer's conduct was not criminal does not mean that it was exemplary. The Involved Officer could have used alternatives involving less force to accomplish the lawful end of restraining the involved citizen. Deciding not to charge because the conduct was within what the law allows does not mean that we endorse the Involved Officer's

conduct. BPD should train officers to exercise restraint in every situation, even those where Maryland law allows less restraint than we would prefer to see.