

REPORT BY OFFICE OF THE BALTIMORE CITY STATE'S ATTORNEY ON THE POLICE-INVOLVED SHOOTING IN THE 1500 BLOCK OF W. NORTH AVENUE



MARILYN J. MOSBY, STATE'S ATTORNEY FOR BALTIMORE CITY

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INTRODUCTION

The Baltimore City States Attorney's Office ("BCSAO") completed its review of the civilian shooting in the 1500 block of West North Avenue. The BCSAO review was conducted by the office's Public Trust and Police Integrity Division ("PTPIU") 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, 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. The posting of the instant report is entirely within the sole discretion of the BCSAO and is not posted pursuant to any statutorily mandated obligation. The intended purpose of posting this report is to provide insight into the investigation and conclusion reached by the BCSAO regarding the police involved incident as described herein. The investigation and conclusion reached should not be interpreted as expressing any opinions on non-criminal matters. Rarely, there may be supplemental information or corrections needed requiring an update to the report.

On December 15, 2020 at approximately 11:52 am, Involved Officers #1 and #2 ("IO1", "IO2") were operating a marked patrol vehicle in the 1500 block of W. North Avenue at the intersection of Pennsylvania Avenue. The officers received a License Plate Reader ("LPR") hit on a stolen vehicle - black Toyota Camry with MD tags. They observed a car fitting that description on the west side of the intersection, parked in a metered parking lane in front of the Enoch Pratt Library at 1531 W. North Avenue. There were several spaces available in front of the vehicle. IO1 parked the patrol car in front of the suspect vehicle at an angle, partially blocking its path. IO1 did not activate the lights and sirens on the patrol car.

As IO2 exited the patrol vehicle, the driver of the suspect vehicle ("Involved Citizen") immediately began to reverse. IO2 ran up to the vehicle yelling, "Stop!" as he struck the front of the Camry with his left hand. With his right hand, the officer drew his service weapon and pointed it at the suspect vehicle as it backed up. The Involved Citizen initially drove to the right in an apparent attempt to mount the curb and drive around the vehicle, but a "Pay to Park" meter on the right-hand side obstructed his path. The vehicle quickly bounced off the curb and drove forward, striking the patrol car in the front and pushing the opened passenger door backwards.

As the Involved Citizen drove forward, IO2 fired four times at the driver's side window prior to its colliding with the patrol vehicle. The Involved Citizen fled the area and was subsequently apprehended. There were no reported injuries during this incident.

OVERVIEW OF THE INCIDENT

Statement of Probable Cause:

“On 15 December 2020, at approximately 1152hrs, [Involved Officer #1] was on routine patrol in a marked vehicle with his partner, [Involved Officer #2], both in modified uniform wearing vests with Police written on the front and back, around Pennsylvania Ave and W. North Ave. Detectives received a License Plate Reader (LPR) hit on a stolen vehicle bearing MD tag: [redacted], a black Toyota Camry. The vehicle was known to both Detectives as a stolen motor vehicle, which had eluded them on prior occasions. They located the vehicle in the 1500 blk of W. North Ave, parked in front of Enoch Pratt Library (1531 W. North Ave). IO1 pulled the marked patrol car next to the stolen vehicle. The vehicle was occupied by a white male, later identified as the Involved Citizen. IO2 exited his vehicle from the front passenger side and approached the Toyota’s driver’s side door. The Toyota attempted to back up but hit the curb. It then accelerated forward hitting the police vehicle’s open door, where IO2 had to move his body away from the Toyota to avoid being struck by the vehicle. The Toyota accelerated against the patrol vehicle damaged the police vehicle’s passenger door, front quarter panel and front bumper, disabling the vehicle. IO2 discharged his service weapon four times at the vehicle, striking the vehicle but not the driver. The vehicle then fled eastbound and away from the scene. A Citywide Broadcast was initiated with the description of the vehicle. The total damage to the patrol car is estimated at greater than \$1,000.

At approximately 1630 hours the vehicle was observed travelling in the Southwest District of Baltimore City. Patrol officers attempted to conduct a vehicle stop but the Toyota fled the area into Baltimore County where patrol units lost sight of it.

At approximately 1735 hours an LPR hit of the vehicle occurred at North Ave. and McCulloh St. Patrol units, with the assistance of air support (Baltimore Police Helicopter – Foxtrot) then attempted to conduct a vehicle stop. The Toyota fled from officers and crashed at 6 W. Lanvale St. The driver, [Involved Citizen], fled from the vehicle on foot but was apprehended by police in the area and placed under arrest.

A record check of the Toyota VIN [redacted] revealed the vehicle was stolen on 10/11/2020 from 10 Light St. Baltimore, MD reported under Baltimore Police Dept. CC# 1-201003301. A record check of the tag on the Toyota, MD tag [redacted] revealed the tag was also listed as stolen.

All events took place in the city of Baltimore, State of Maryland.”

SUMMARY OF THE EVIDENCE

Witness Interviews

Involved Officer #1:

Following this incident, IO1 was interviewed by Homicide and S.I.R.T. detectives. He reported that he was operating a marked patrol vehicle equipped with an LPR. He was accompanied by his partner, IO2, who was seated in the passenger seat. IO1 was about to make a right-hand turn onto Pennsylvania Avenue from North Avenue when he noticed a vehicle with a license plate that had come back from NCIC as stolen the day before. The officer advised that this vehicle had eluded him the day before as well as on another occasion the preceding week. He described the vehicle as a black 2014 Toyota Camry without tint. On the day before, he had observed a young white male driver, however on this occasion the vehicle was occupied by an older white male. IO1 ran the license plate and determined that it was the same tag that came back as stolen.

According to IO1, the Camry was parked in front of the Enoch Pratt Library. He pulled his patrol vehicle in front of the Camry at an angle. He and IO2 exited their vehicle. IO1 drew his weapon as IO2 walked towards the Camry to make contact with the driver. As IO1 walked around his vehicle, he looked across his patrol car and saw the Camry going in reverse. The Camry's progress was obstructed by a curb which the Camry was unable to drive on to. At that point, the driver put the car in drive and lurched forward. IO2 jumped out of the way to avoid being hit, and fired a few rounds into the vehicle. IO1 was on the driver's side of the patrol car near the trunk when he heard the shots fired.

After the shots were fired, IO1 stated that the driver of the Camry struck the police car and took off. He was unsure of where exactly IO2 was situated but did see him back out of the way which caused him to believe that IO2 was "in line to possibly get hit by that vehicle."

Civilian Witness #1:

Following this incident, Civilian Witness #1 sat down with S.I.R.T. and Homicide detectives to be interviewed. He reported that he was in a vehicle operated by Witness #2. He was stopped at a red light on W. North Avenue heading east when Witness #1 observed a patrol car pull up and "kinda" block a car against a curb. He then saw two officers get out of the patrol car. He testified that the driver of the stopped vehicle tried to "maneuver aggressively to get around the officers' car" and then the officers pulled their guns.

Witness #1 stated that the suspect vehicle tried to get away and that the officer was standing near the back door of the suspect vehicle when the car started moving at the patrol vehicle. When the car began to move, the officer stepped back. The officer fired his weapon when the suspect vehicle hit the patrol car passenger door. The driver of the patrol vehicle was on the other side of the car at the time. Witness #1 related that he was on the phone with a BPD detective at some point during this incident. He reported that he heard three or four gunshots.

Civilian Witness #2:

Following this incident, Witness #2 made a statement and reported that he was operating a company car accompanied by his supervisor, Witness #1, when he stopped at a red light on W. North Avenue and Pennsylvania Avenue, facing eastbound on W. North Avenue. Witness #2 saw a police car pull over to the side, blocking in a car. One of the officers exited the patrol car. Witness #2 stated that the other car tried to back over the curb but could not. The car then tried to go forward, striking the patrol car. The witness saw one officer fire four shots. The car pushed the patrol car out of the way and went down the street.

The witness stated that the officer was always on the side of the car. The officer “kinda followed” the path of the vehicle on foot when it backed up and drove forward. When the car struck the patrol vehicle, the officer was at the driver’s side back door. He could not see the other officer.

Body Worn Camera Footage

Involved Officer #1’s BWC:

A review of IO1’s BWC footage shows him operating the patrol car. At the T11:51:09 mark, he can be seen pointing at something. He then steers the car to the right. He drives through the intersection and parks, at the T11:51:33 mark. IO2 opens the passenger door at T11:51:34. IO1 exits the vehicle three seconds later. At 11:51:39, the vehicle occupied by Civilian Witnesses #1 and #2 can be seen as it drives by. At the 11:51:40 mark, gunshots ring out, pedestrians are observed running. IO1 puts his hand out towards the patrol car as it shakes and appears to look over its roof towards IO2 before pointing his gun in the direction of the fleeing car. He says: “Come on get in the, ah fuck! It’s broke.” At the T11:51:53 mark, he asks IO2, “Are you good? You good? Are you good?”

IO1 radios in the description of the suspect vehicle. Multiple officers respond within seconds of the incident. IO1 can be heard speaking to another officer at the T11:55:00 mark as he stated, “He almost hit him with the car, so.” A citizen confronts him and the following exchange took place (T11:55:35):

Citizen: Y’all shot at an unarmed car!

IO1 (to the crowd): He tried to hit him with a car. He tried to hit a cop with a car.

(Citizens disagreeing in general.)

Citizen: Shot at an unarmed car. Naw that shit ain’t right.

IO1: He tried to hit him with a car.

Citizen: Noooooo! He did not. He backed up! He backed up.

IO1: I was standing right here what are you talking about?!

Citizen: I’m standing right here.

IO1: Can you get behind the tape?

Citizen: I was standing right there! (Citizen points to the corner.)

IO1: Get behind the tape. Get behind the tape. Get behind the tape, please. Cause you don't even know what's going on. You sound stupid!

(T11:55:51 mark)

IO1: A guy that just tried to hit him with a car so...

Citizen: (Inaudible)

IO1: You wasn't here so don't worry about it.

(T11:56:02 mark)

IO1 (to another citizen): He almost got hit by a car!

Citizen: Everybody saw that.

(T11:57:57)

IO1 (to another officer): It happened so quick. It literally happened so quick we couldn't even, you know

what I'm saying?

Officer: Yeah.

IO1: I tried to block him in 'cause he tried to go in reverse.

(T11:58:11)

IO1: If they need like any specifics, we've been trying to get that car.

Officer: Yeah I know. (Inaudible) yesterday yeah, I know.

IO1: I been trying to get that car for 3 days, yeah. He was sitting right here so that's why I parked like that.

Officer: I got you.

IO1: And then he went, he went into reverse couldn't jump the curb, so he drove forward and [IO2] was trying to get to the window and he almost struck [him]. That's why he discharged his weapon. I never (inaudible).

Officer: You good?

IO1: Yeah, I'm straight, I'm just....I don't want no B.S.

(T12:00:37)

IO1: The car that was parked here is stolen, straight up stolen.

Officer: What kind of car was it?

IO1: It's a black Toyota Corolla. Cam-, uh, Corolla? Corolla.

Officer: New or old?

IO1: It's like a 14, should be 14. He was just parked here. On the phone.

Officer: So what? Y'all came out tried to-

IO1: Yeah. So we got out. He tried to go in reverse, couldn't, couldn't get it. Drove

Forward almost hit [IO2] and that's why he discharged and then hit the car. So...

Officer: I got you.

IO1: Now we down another car. Amazing.

(T12:13:53 mark)

IO1: [IO2] moved when the car moved forward.

Involved Officer #2's BWC:

A review of IO2's BWC footage reveals that the patrol car pulls up in front of the suspect vehicle at an angle, partially blocking the suspect vehicle's path. IO2 gets out of the passenger side at T11:51:35. The suspect vehicle begins to reverse, hitting the curb at T11:51:37 as IO2 is running up to the side of the vehicle. The driver immediately put the car into drive and moved forward. At the time, IO2 was on the side of the Camry's driver side door. He unholsters his weapon out of view of his body worn camera but one can see that he is holding his firearm at T11:51:38. He fires four shots into the driver's side window at the T11:51:40 mark. The driver hits and then pushes past the patrol vehicle as he flees eastbound on W. North Avenue. The patrol car passenger door was forced backwards causing its window to shatter. IO2 was out of the patrol vehicle for 8 seconds before he began shooting. The shots began prior to the suspect vehicle striking the patrol vehicle.

At least five civilians were on the side of the street where the shooting occurred. There was no indication that the Involved Citizen was armed and there were no injuries. IO2 states at the T11:52:17 mark, and again at 11:52:44, "He tried to run me over."

CCTV/Camera footage

Citi watch camera #731, located at North Avenue and Division Street recording at 11:15 mark, as the suspect vehicle collides with the patrol vehicle. The suspect vehicle continues to travel down the road.

Citi watch camera #728, located at the intersection of Pennsylvania Avenue and W. North Avenue recording at the 10:40 mark shows the Witness vehicle, a black pickup truck, sitting at a red light on W. North Avenue traveling eastbound. The patrol vehicle arrives and pulls in front of the witnesses' vehicle. The camera is on a rotation and loses sight of the patrol vehicle for a

moment as it disappears through the intersection. The patrol vehicle is seen again blocking the suspect vehicle. At 11:09 the witness vehicle can be seen driving by the scene while the suspect vehicle backed up.

When the suspect vehicle backs up and hits the curb, it caused a pedestrian to jump out of the way. IO2 can be seen standing next to the suspect vehicle with the patrol vehicle behind him. The footage shows IO1 exit the driver's side of the patrol vehicle at the 11:11 mark. At the 11:13 mark, the suspect vehicle drives off.

Citi watch camera #727 experienced a malfunction with either the camera or the storage of the video and could not be retrieved.

CAD

11:52:19 a call came in for a firearm discharge at the intersection of Pennsylvania Avenue and W. North Avenue.

11:52:25 front window damaged and possible shot

11:56:37 discharged his weapon...poss 3 round

11:56:46 Unit 755 DISCHARGED WEAPON

12:00:35 2014 Blk Toyo Corolla....FRT PASSENGER AND FRT WINDSHIELD//L/S

Foxtrot video

Foxtrot surveillance footage was reviewed in this incident. The footage captured the arrest of the suspect driver at approximately 6:30 pm on the evening of December 15, 2020. The footage did not capture any portion of the incident under review herein.

Weapon(s) Inspection

Involved Officer #1:

A weapon inspection of IO1's departmentally issued Glock .22 (Serial #KKZ588) was conducted at the Homicide Division. The weapon had one (1) round in the chamber and thirteen (13) rounds in the magazine. The officer's primary and secondary magazines contained 14 rounds each, indicating that he did not fire his weapon.

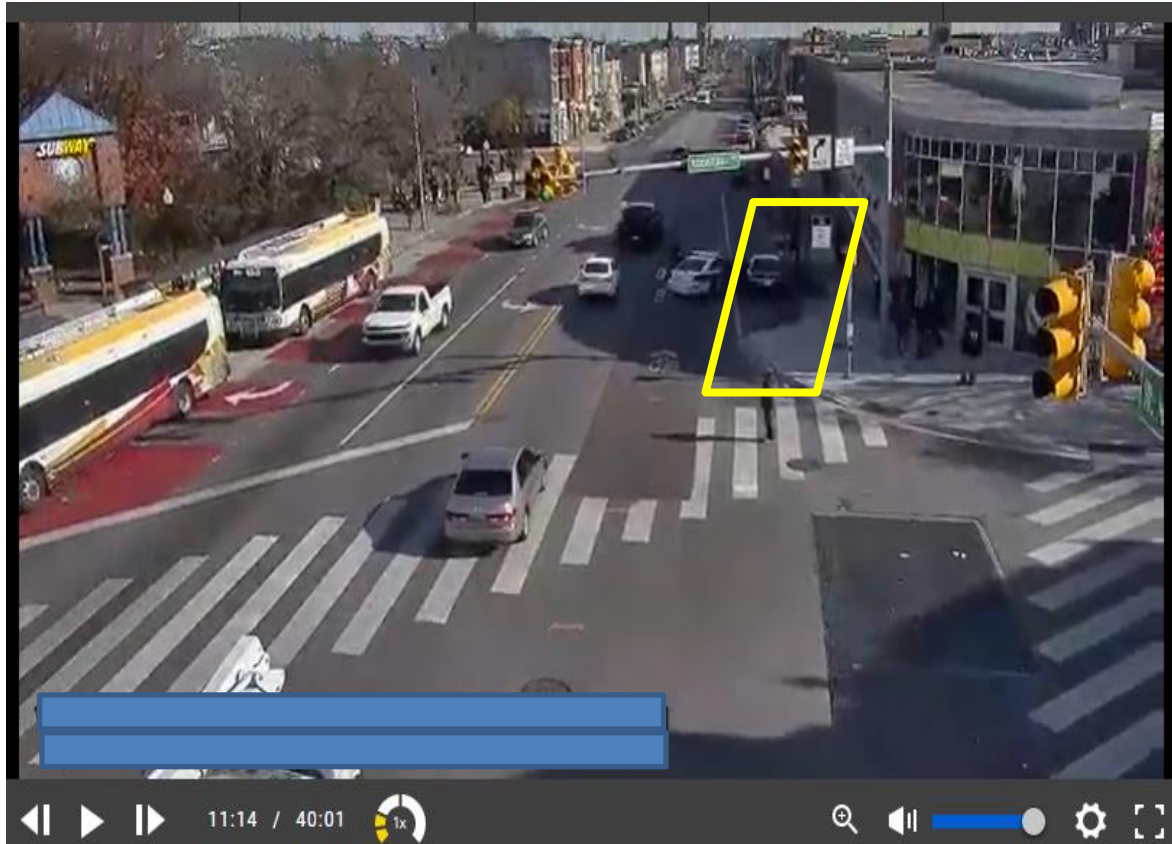
Involved Officer #2:

A weapon inspection of IO2's departmentally issued Glock .22 (Serial #HZT680) was conducted at the Homicide Division. The firearm contained one (1) round in the chamber and nine (9) rounds in the magazine. Primary and secondary magazines contained fourteen (14) rounds in each, indicating that IO2 fired four (4) shots.

Crime Scene

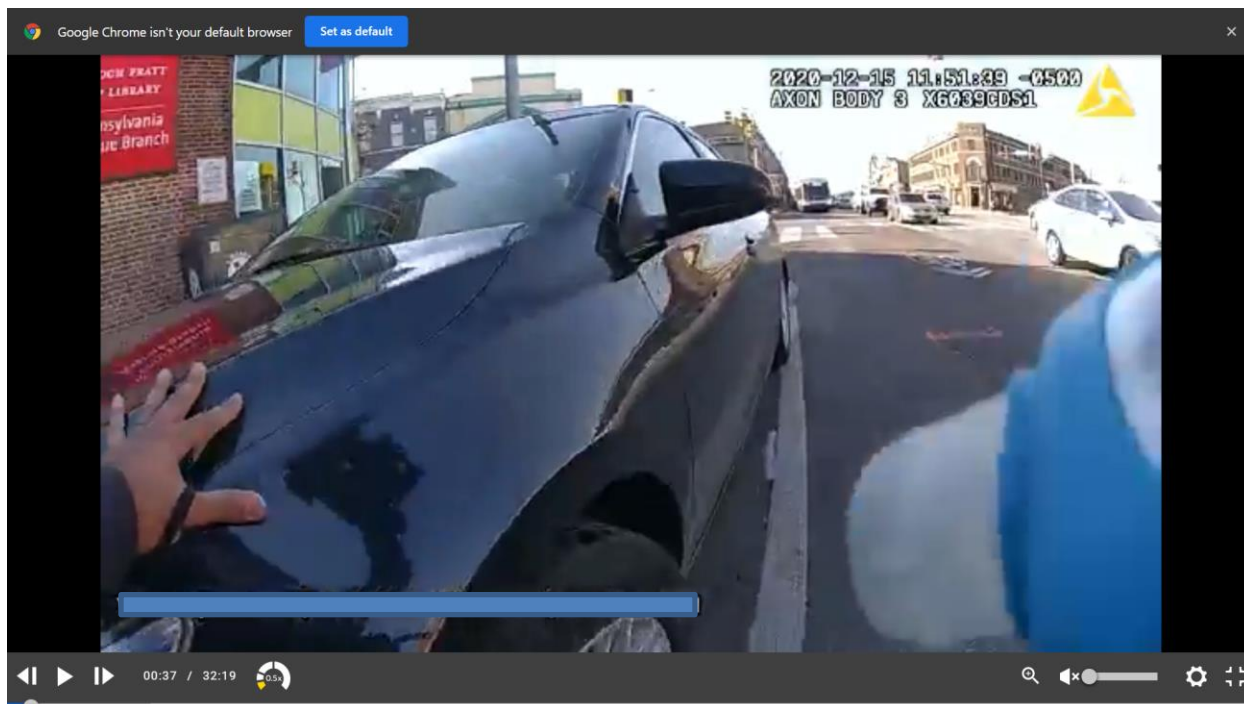
Findings: A marked patrol vehicle was parked in front of the Enoch Pratt Library located at 1531 W. North Avenue. The vehicle was parked on a slant facing eastbound on W. North

Avenue. This is a four-lane road, the front end of the patrol vehicle was in the right metered parking lane and damaged, while the rest of the vehicle was in the left lane. The patrol vehicle's passenger door was open and bent backwards, the window shattered. There was glass on the ground and along the road. Laboratory technicians recovered four .40 caliber Smith & Wesson casings and two glass samples.

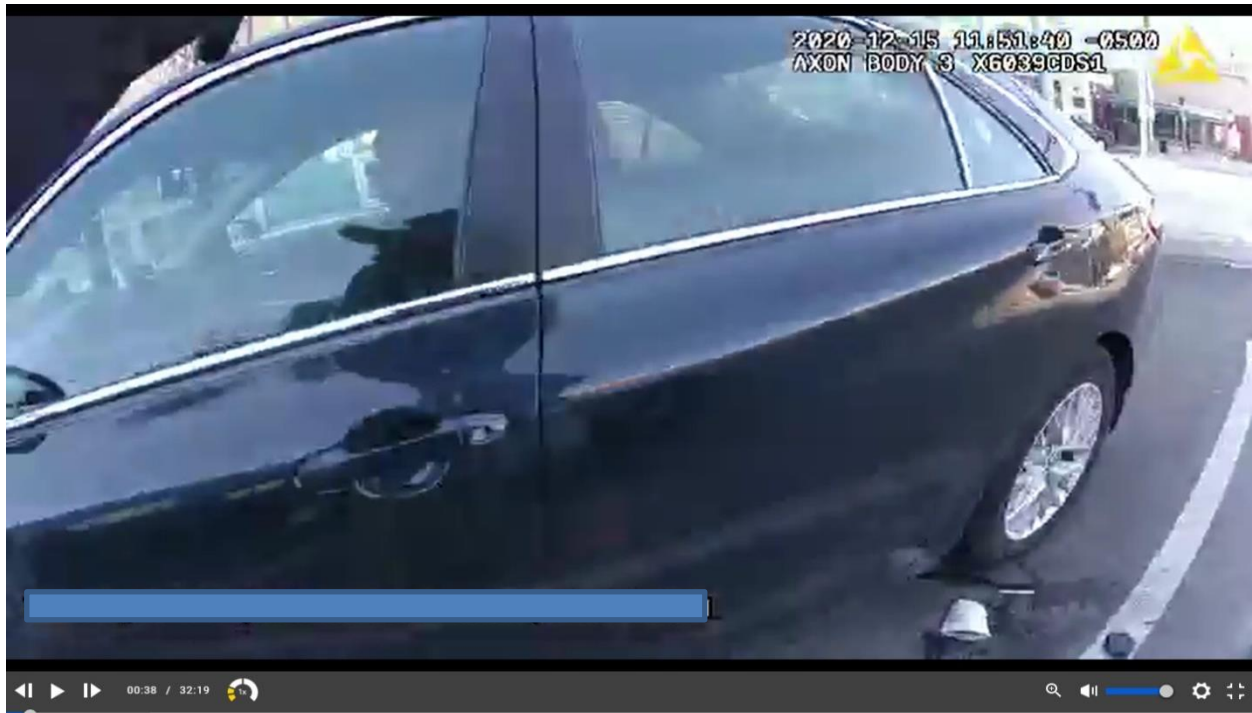


The patrol vehicle blocks the suspect vehicle.

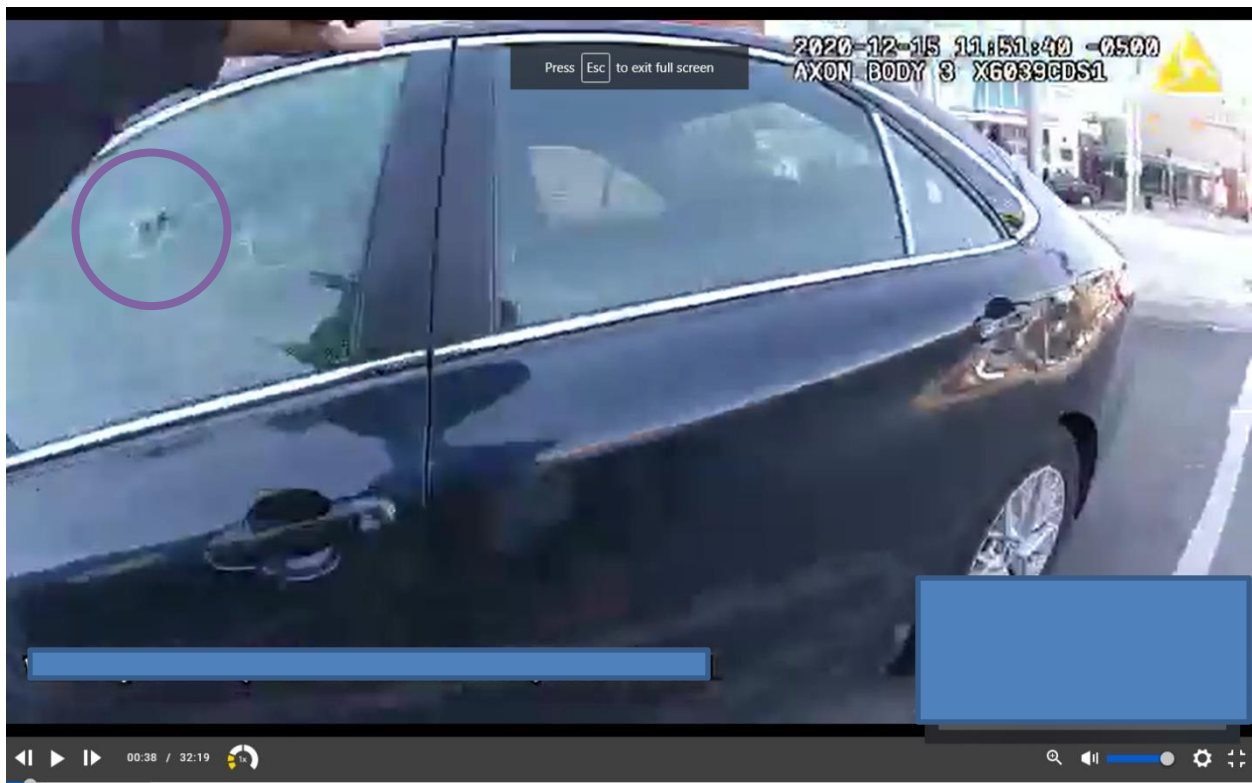
IO2's BWC while the car is in reverse



The vehicle is still in reverse, IO2's left hand is on the side panel. It is at this point that the suspect's vehicle is moving backwards towards a pedestrian.



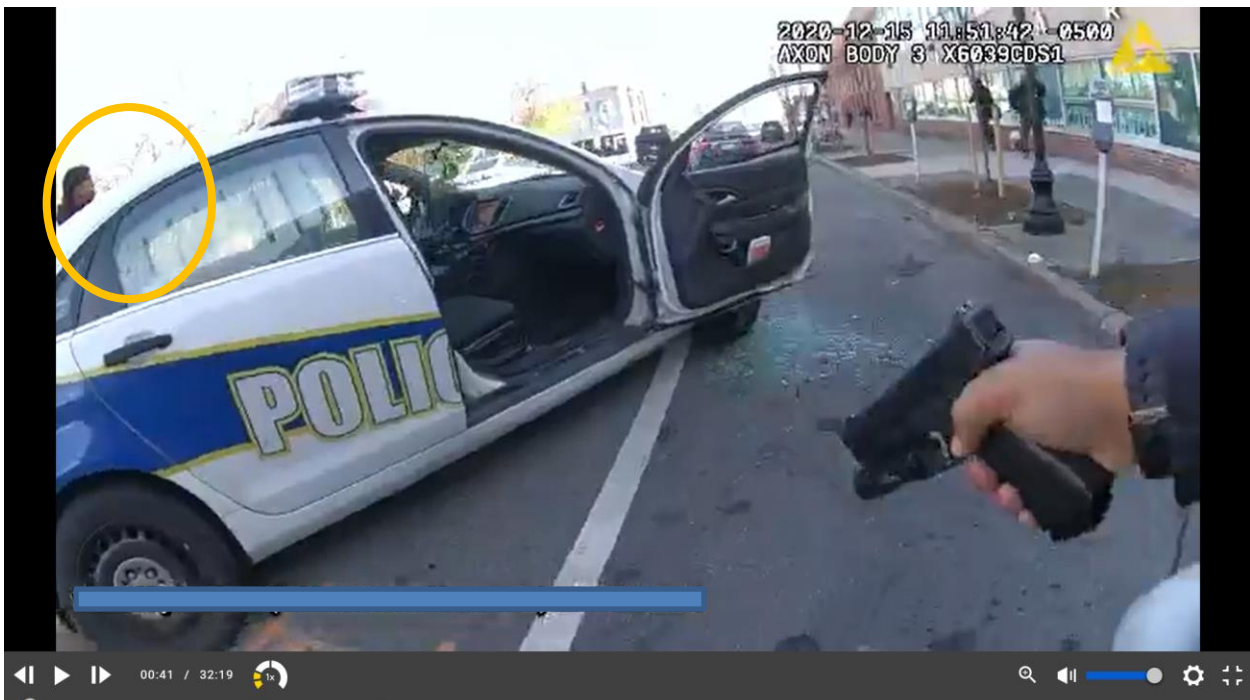
IO2 points his firearm at the driver's window.



IO2 fires the first shot.



IO2 fires additional shots.



The patrol vehicle's door and shattered glass. IO1 (circled in yellow) is on the left. Citizens that were in the path of the fleeing vehicle are on the right.

LEGAL ANALYSIS

At the time of the incident, both IO1 and IO2 were on duty and attired in full BPD uniform. They were operating a marked patrol car. In the process of partially blocking in the suspect car, the patrol car was clearly identifiable as a police vehicle by the Involved Citizen, both visually and by its action. When IO2 ran up to the car as it backed up, he was in full uniform, reasonably and obviously recognizable as a law enforcement officer, an impression audibly reinforced by IO2's loud order to "Stop!" as he struck the front of the vehicle with his hand. The reasonable conclusion is that the driver of the vehicle knew that they were police officers directing him to stop.

The deliberate act of ignoring the officer's lawful order and, in response, backing up the stolen vehicle over the curb not only allows for the inference that the driver did indeed recognize the officers as law enforcement, but it also provides sufficient probable cause for a misdemeanor charge of attempt to flee or elude the police. In backing over the curb, the driver placed a civilian passer-by in immediate danger of physical harm, which is, at a minimum, reckless endangerment, and at most an assault in the 1st degree – a felony.

The driver then put his vehicle into drive, lurching forward past IO2 and accelerating toward and into the patrol vehicle, striking it with sufficient force to shake and severely damage it to a degree that it became inoperable. The act of intentionally accelerating a vehicle with a curb weight¹ of c. 3,185 lbs. into the stationary police car, i.e., turning the car into an instrumentality of physical force, without consideration for the safety of either officer, in itself can give rise to serious criminal charges ranging from attempted murder in the first degree to assault charges

IO2's BWC, at T11:51:40, revealed that IO2 discharged his weapon at the driver's side window of the moving Camry as it passed him and just before it struck the patrol car. IO1's BWC footage indicates that the officer was looking over the patrol car toward IO2 when he heard the shots, then reached out his hands toward the shaking patrol vehicle as the suspect vehicle pushed through. IO1 then pointed his weapon toward the suspect vehicle as it fled. He did not fire.

Ultimately, the issue is whether the IO2's discharging his weapon at the Involved Citizen was a lawful use of force. If not legally justified, the officer's use of potentially lethal force against the Involved Citizen could potentially constitute a number of criminal offenses under Maryland law.

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).

¹ Curb weight is defined as the weight of an automobile without occupants or baggage.

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")).

Arguably, neither IO1 nor IO2 were directly in the path of the accelerating Camry. However, IO2 was close enough to be struck by the car with his left hand right before he cleared his weapon and fired. IO1 was located next to his patrol car as it was struck, also close enough to place his hand on it as it shook violently on impact with the fleeing car. Witness #1 characterized the driver's conduct as an attempt to "maneuver aggressively to get around the officers' car," and that only then the officers pulled their guns.

While the fact that the suspect driver was occupying a vehicle whose registration plates were reported stolen would be insufficient itself to justify the use of potentially deadly force to prevent his escape, IO2 arguably and reasonably could have been under the good-faith assumption that the Involved Citizen, as he accelerated his car back and forth in a confined space with pedestrians nearby, and then intentionally striking the marked police vehicle, posed a significant, imminent, and immediate threat of serious physical harm to the officer and/or others. It is plausible that, given the totality of the circumstances, IO2 was under the reasonable impression that the vehicle was being used as a weapon, and that he discharged his firearm in defense of himself and/or IO1. On his BWC, at T11:52:17, he can be heard stating "he tried to run me over," an impression corroborated by IO1's excited utterances captured on BWC.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the benefit of hindsight.

With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of

a judge's chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* at 112. IO2 used potentially deadly force on a fleeing suspect who aggressively operated his car as an impact weapon. The entire incident, from the moment IO2 exited the patrol vehicle to the moment of the last gunshot, took a mere eight seconds.

IO2’s decision to fire clearly was made in the proverbial “split second” - he did not initially approach the car with his gun drawn.

BPD policy 1503 details in the Use of Firearms section that “Members shall not fire any weapon from or at a moving vehicle, except to counter an immediate threat of death/serious physical injury to the member or another person, by a person in the vehicle *using means other than the vehicle.*” Policy 1503 provides an exception by which an officer may fire at or from a moving vehicle when it is done to “counter a situation where the officer or another person is unavoidably in the path of the vehicle and cannot move to safety.” By all witness accounts, IO1 was at the rear of the patrol car, had not yet made it around to the passenger side, and was thus out of actual and immediate danger. However, IO2’s line of vision of IO1 was obstructed by the moving car and the parked cruiser, his attention reasonably focused on avoiding potential injury as the Camry passed close enough to him he could touch its fender.

CONCLUSION

While firing a handgun into a moving vehicle may cause substantial risk of death or serious physical injury to the operator as well as civilians, under the objective ‘reasonable officer’ standard it cannot be said that the officer’s decision to fire his gun in the instant circumstance was *unreasonable*. Therefore, IO2’s conduct does not rise to criminal conduct or criminal negligence.

Upon review of all available evidence, the Office of the State’s Attorney for Baltimore City declines to prosecute this matter.