

REPORT BY OFFICE OF THE BALTIMORE CITY STATE'S
ATTORNEY ON THE CITIZEN VEHICULAR FATALITY
LOCATED AT 300 HILTON PARKWAY



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CITY

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INTRODUCTION

The Baltimore City States Attorney's Office (BCSAO) completed its review of the civilian vehicular fatality in the 300 block of Hilton Parkway. The BCSAO review was conducted by the office's Public Trust and Police Integrity Division 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 May 24, 2018, a Baltimore Police Officer (hereinafter referred to as the Involved Officer) was on duty in a marked vehicle when he observe a Chevrolet Tahoe without a front license tag. The officer attempted a traffic stop but the Tahoe accelerated and fled. The officer chose not to pursue the vehicle but instead to drive in the direction of the Tahoe. The Involved Officer was traveling in the 300 block of Hilton Parkway when he observed a tree in the road. Upon further investigation by him, it appeared that the Tahoe had left the roadway and hit a tree. The damage to the Tahoe was catastrophic as it had rolled over several times, partially ejecting a passenger. The officer called for medical assistance.

As detailed below, all available evidence supports the conclusion that the Involved Officer did not pursue the Tahoe and was not a cause of the accident. The Baltimore City State's Attorney, therefore, declines to pursue criminal charges in this matter.

OVERVIEW OF THE INCIDENT

(Motor Vehicle Fatality)

At approximately 0220 hours, the Involved Officer was on duty and in a marked police cruiser at the Sunoco gas station located at 3300 W. Baltimore Street when he stated that he observed a 2003 Chevrolet Tahoe with no front tag and its headlights¹ off traveling northbound on Hilton Street towards Edmondson Avenue. The Involved Officer attempted a traffic stop on the Tahoe. The Involved Officer was wearing a Body Worn Camera (“BWC”) but it was not on during this entire incident.

The Involved Officer called out that he was attempting a traffic stop, and seconds later the Tahoe accelerated and fled instead of stopping. The Involved Officer declined to pursue, instead choosing to head in the general direction that the Tahoe had fled, in hopes of catching up to the vehicle again. It is at this time that the Involved Officer activated his BWC.

Within one minute after the Involved Officer called out that the Tahoe was fleeing from him, he found a tree down in the middle of the roadway in the area of the 300 Block of N. Hilton Parkway. The Involved Officer then realized that the Tahoe he had seen just a moment prior had been involved in a single-vehicle motor vehicle accident, having left the roadway and striking a tree (or trees). The Tahoe suffered catastrophic damage. Upon fully realizing the nature of the events, the Involved Officer called out for additional medics and additional units. The Involved Officer began requesting assistance, noting the urgency.

Medic 12 was able to render aid to Involved Citizen #1 immediately upon arrival, as he was not trapped inside the vehicle. He was transported to Shock Trauma to treat for lacerations and complaints of ear pain. Shock Trauma treated him, and released him within 24 hours.

Medic 11 was unable to render full aid to Involved Citizen #2 until he was extracted from the vehicle. From the moment EMTs began rendering any aid, Involved Citizen #2 was unresponsive, but his vitals were stable. During transport to Shock Trauma, medics noted that Involved Citizen #2’s response to their treatment(s) was “improving.”

¹ Video shows that the vehicle did have its front lights activated.

The following day, with his mother present, Involved Citizen #2 died. An autopsy was performed, and the OCME determined that Involved Citizen #2 died of “multiple injuries” and that the manner of death was an “accident.” Toxicology reports indicated that Involved Citizen #2 was not under the influence, and that the only substance found in his system was an anti-seizure medicine.

In addition to SIRT (BPD Special Investigation Response Team), AIU (Accident Investigation Unit) has been actively involved in this case. Their primary focus has been to determine who was driving the vehicle. There is physical evidence (Involved Citizen #1’s boot trapped under the emergency break) coupled with scientific evidence (Involved Citizen #1’s DNA on the driver’s air bag) that suggests that Involved Citizen #1 was the driver, and Involved Citizen #2 was the passenger. Evidence further suggests that neither person was wearing a seat belt.

AIU determined the following: 1) that the vehicle was travelling at 70 mph just 2 seconds prior to the crash; 2) that the driver was accelerating and gaining speed in the 6 seconds prior to the crash (except for the last second prior to the crash); 3) that the brakes were not applied in the 5 seconds prior to the crash; and, 4) that the speed at impact with the tree(s) was 57.99 mph. The speed limit on that part of the road was 25 mph.

The vehicle was subsequently identified as stolen out of Baltimore County on May 22, 2018, just two days prior, between midnight and 0100 hrs. BCPD had teletyped it into the system as stolen.

SUMMARY OF THE EVIDENCE

TIMELINE OF THE INCIDENT

02:20:18	Involved Officer first contacts dispatch about the traffic stop
02:20:24	"I've got one taking off on me, heading north on Hilton towards Edmondson."
02:21:01	"...I think they... ok, they crashed."
02:21:40	Involved Officer, answering dispatch, advises "...they took off and I stopped so I think they crashed when I followed up there."
02:21:53	Involved Officer appears to realize severity of accident, asks for medics and additional units.
02:22:01	Involved Officer ask for a "bunch of units up here."
02:22:36	Responding to dispatch questions, Involved Officer responds "I am fine, but the whole car is in the ditch, we need more units here right now."
02:23:20- 02:23:48	Involved Officer's mic is keyed up, and you can hear him repeatedly asking the trapped passenger "...sir, can you hear me, sir, are you ok" multiple times. He then instructs dispatch "Get an ambulance here right now."
02:32:00	Medic 11 arrives on scene.
02:34:00	Medic 11 first contacts Involved Citizen #2 and begins assisting.
02:38:00	Medic 12 arrives on scene.
02:50:00	Medic 12 first contacts and begins assisting.
02:56:00	Medic 11 arrives at Shock Trauma
13:00:00 (next day)	Doctors in Shock Trauma pronounce Involved Citizen #2's death. BPD receives notice via OCME.

VIDEO

There are 3 sources of relevant available video.

1. The officer's body camera. The BWC is turned on soon after the failed attempt to make the traffic stop on the Tahoe. The BWC does not, therefore, show any evidence of the

RAS/PC for the stop (license plate/headlights). The BWC does show that the Involved Officer's blue emergency lights are flashing—they are seen reflecting off of the side-view mirror. Though the blue emergency lights are on, there is no evidence that the Involved Officer engaged in a pursuit. The BWC is consistent with the Involved Officer's statement that he did not engage in a pursuit.

2. Business video captured at Sunoco. This video is crystal clear. The officer is seen putting his cruiser in a tactical position for traffic enforcement. The Tahoe drives by, and it is clear that the officer had an unobstructed view of the Tahoe; however, the headlights are clearly on. The front license plate cannot be seen. Given the angle of the video, a license plate could potentially have been properly attached and not picked up by the video. That being said, there are other cars that pass by. However, because of the reflections from both moving and stationary lighting sources, you can see those other cars' license plates. This gives rise to the inference that if the Tahoe in fact had a properly mounted plate, you would be able to see it from the Sunoco camera.
3. There is a third video from a school near the Sunoco gas station. The video shows nothing more than the Tahoe and the Involved Officer's cruiser passing by, giving no additional evidence, direct or circumstantial, that anything else not already identified herein occurred.

FORENSIC BIOLOGY REPORT

The Forensic Biology Report found, with a high statistical probability, that Involved Citizen #1's DNA was on the driver's side airbag, suggesting that he was the driver of the motor vehicle when it struck the tree.

AUTOPSY OF THE INVOLVED CITIZEN

The autopsy found the cause of death of Involved Citizen #2 to be multiple injuries to virtually every part of his body, and the manner of death was accident. There were no drugs or alcohol found in Involved Citizen #2's body other than anti-seizure medicine(s).

CADS/KGA

The KGA radio transmissions were reviewed for this legal review and the KGA appears consistent with the CAD report. The following are relevant CADS entries:

02:20:19	8A42, #1, traffic stop Hilton/Edmondson
02:22:19	Adult male with neck and back pain
02:24:07	Male not moving in the vehicle
02:48:11	Signal 31, traffic blocked

BODY WORN CAMERA (“BWC”) VIDEO²

1. Involved Officer:

Involved Officer’s BWC is activated after a failed motor vehicle stop. The first thirty seconds merely capture the Involved Officer driving. The video shows fairly conclusively that the blue emergency lights were on. The video, while not conclusive, suggests that the Involved Officer was operating his cruiser at a low speed.

The audio turns on at approximately the same time that the Involved Officer arrives on the accident scene. Within 10-15 seconds, the Involved Officer is seen and heard engaging in investigation and in scene management, including calling for medics and back up law enforcement.

The overwhelming majority of the rest of the BWC footage is of the Involved Officer coordinating the accident scene. However, there are several people who can’t be seen but can be heard talking to the Involved Officer, asking questions about what happened leading up to the accident. These people seem to be both sworn officers as well as civilians (possibly medics in some instances). The Involved Officer is consistent in his answer each time he speaks about the moment before the accident.

² There are back-up officers who activated their BWCs, but there is nothing on any of those cameras that supplement what is seen and heard on #1’s BWC.

WITNESSES STATEMENT SUMMARIES

LAW ENFORCEMENT WITNESSES

1. Law Enforcement Witness #1:

In the course of investigating this fatal motor vehicle accident, Law Enforcement Witness #1 submitted a report to the AIU primary, noting that he had reviewed the Sunoco video and it appears Tahoe had its lights on.

Law Enforcement Witness #2:

This detective is an Accident Reconstructionist. He wrote a report identifying the following critical components of the fatal accident: 1) that the vehicle was travelling at 70 mph just 2 seconds prior to the crash; 2) that the driver was accelerating and gaining speed in the 6 seconds prior to the crash (except for the last second prior to the crash); 3) that the brakes were not applied in the 5 seconds prior to the crash; and, 4) that the speed at impact with the tree(s) was 57.99 mph.

CIVILIAN WITNESSES

1. Civilian Witness #1, interviewed at the scene and later formally at PBD

Civilian Witness #1's three statements, verbal, written, and oral (recorded) are all consistent. In summary, she says that she and her husband live directly across the street from the location of the accident. She heard what she described as someone "flying" up the road, and "before I could say anything to my husband, I heard bang, bang, bang." She immediately looked out the front of her house, and realized there had been a motor vehicle accident.

Civilian Witness #1 was also asked about the Involved Officer. She indicated that she saw him arrive in his squad car soon after she heard the collision. She said that the Involved Officer arrived after the collision, that he was driving slowly, and when specifically questioned if she thought he was chasing the Tahoe, she definitively said no.

LEGAL ANALYSIS

The Involved Officer was positioned for traffic enforcement, and believed he saw an infraction that would give rise to a traffic stop. Soon after he pulled out behind the vehicle, he observed the vehicle (the Tahoe) accelerate such that it was gaining distance on the officer. It appears from the evidence that the Involved Officer did not chase the vehicle, yet the vehicle fled at an increasing rate of speed, ultimately losing control and causing the Tahoe to leave the paved road and collide with stationary trees.

The operator did accelerate in an effort to evade the police officer and did so likely only because the officer pulled up behind him and the stolen vehicle. There is a nexus between the officer's actions and the vehicle initially fleeing; however, the officer did not pursue the vehicle. By not pursuing the vehicle, the nexus dissipated.

Palsgraf v. Long Island Railroad Company, 248 N.Y. 339 (1928) is the most famous case in which “actual” or “legal” cause are first differentiated from “proximate” cause:

“A boy throws a stone into a pond. The ripples spread. The water level rises. The history of that pond is altered to all eternity. It will be altered by other causes also. Yet it will be forever the resultant of all causes combined. Each one will have an influence. How great only omniscience can say. You may speak of a chain, or if you please, a net. ... Each cause brings about future events. Without each the future would not be the same. ... But that is not what we mean by the words ‘proximate cause’. ... A cause, but not the proximate cause. What we mean by the word proximate is, that because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point.”
Id.

Palsgraf ultimately stands for the sufficiency of a nexus between an act and a result, and the foreseeability of the result at the time the act is committed. Though in dissent, the Court boils it down even further, citing to the need to apply “fair judgment” to the assessment. Id.

As applied to this case, the actions of the operator of the Tahoe supersede, or negate, anything that the police officer did. Once the operator took flight, and successfully gained sufficient distance such that the Involved Officer no longer saw him³, no matter how brief that

³ And was not chasing.

time was, any possible nexus between the Involved Officer's actions and the Tahoe's operator's actions was diminished, if not fully negated.

In addition, at no time can it be shown that the Involved Officer could have reasonably foreseen either the car taking flight, or that the car—completely out of view of the Involved Officer—would have lost control and caused a fatal collision. The conclusion, therefore, must be that while there is cause-in-fact, there is no proximate causation, and thus no legal causation.

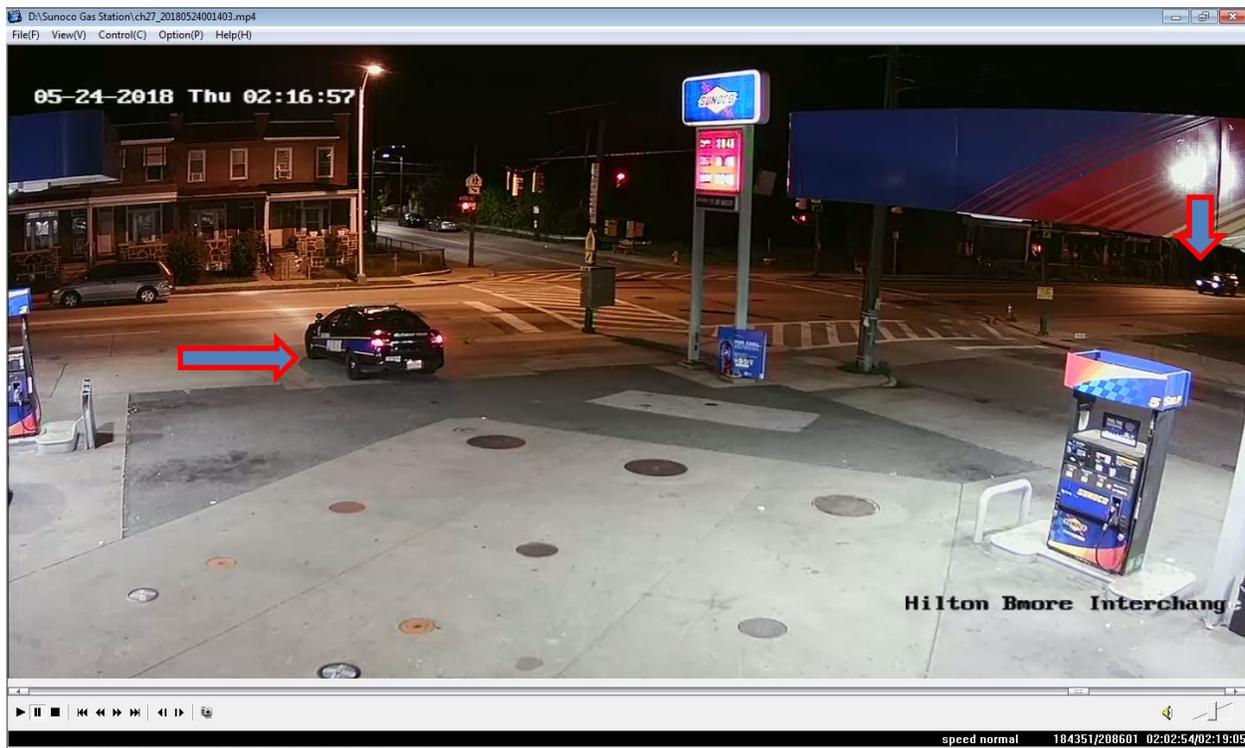
Once the conclusion was reached that there was no legal nexus, the review compartmentalized and refocused on the issue of the attempted stop itself—and, to a certain degree, whether the officer was honest about the attempted traffic stop.

CONCLUSION

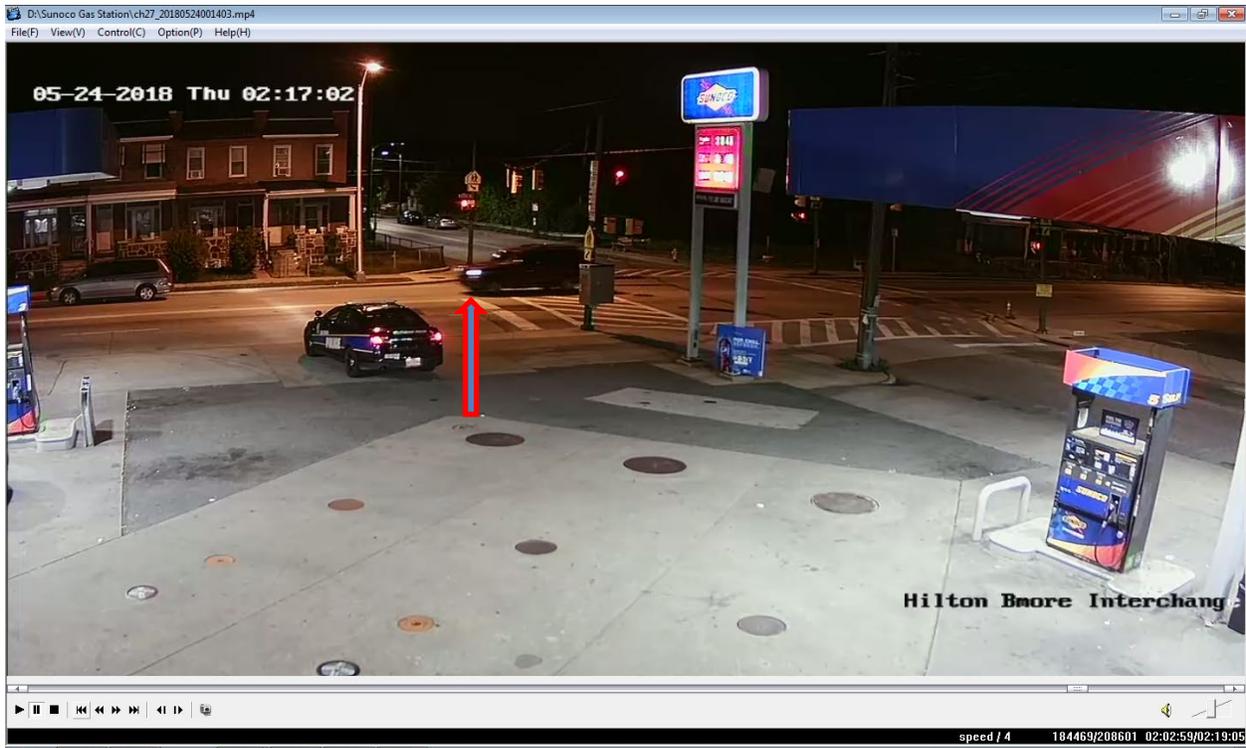
Given that (1) there was probable cause to make a traffic stop (2) the Tahoe accelerated when the officer pulled his vehicle behind the Tahoe (3) the Involved Officer did not pursue the vehicle (4) the Involved Officer lost sight of the Tahoe and still chose not to pursue the vehicle, the State cannot establish a nexus between the Involved Officer's actions and the vehicle crash.

The officer's action in this case did not rise to a level of criminal culpability. Therefore, the State declines to prosecute the officer.

OVERVIEW OF THE VIDEO/PHOTO EVIDENCE OF THE INCIDENT



This is the view from the Sunoco gas station's camera. It shows the IO in a tactical position for traffic enforcement. On the far right, this is the first time that there is a video of the Involved Citizens.



The Involved Citizens and the Tahoe are passing the Involved Officer. In the time frame between this picture and the last picture, there is no indicia of the front license plate being affixed.



The scene as the OI first finds it. The tree in the road to the right, the Tahoe deep inside the tree line.

Viewed by strostle (baltimoresao.evidence.com) on 07 Dec 2018

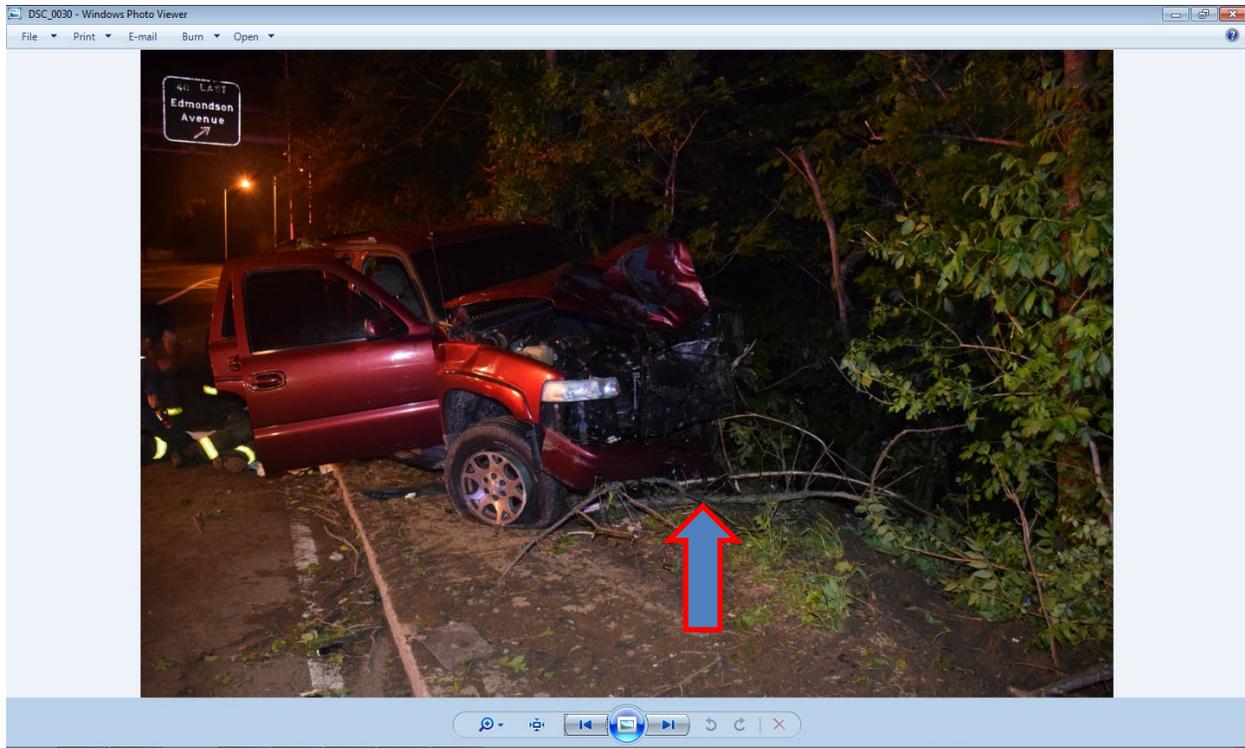
2018-05-24 T06:23:28Z
AXON BODY 2 X81017160



This is Involved Citizen #2, as first seen by the IO approximately 80-90 seconds after he arrived at the scene.



AUI's picture of the pavement where they believe the Tahoe began to lose control (in lane #1, "the fast lane"). The trajectory of the tread marks lead directly to where the tree was down in the road way (the tree was removed prior to this picture being taken).



AIU took several pictures of the scene. This shows the front of the Tahoe after it had been flipped from its side and onto its tires. There is no front license plate attached. The investigators did find the license plate, but indicated that there's no evidence of it having been attached and "separated" during the accident (not bent, not scuffed, no grass/tree stains), strongly suggesting that the plate had been removed prior to the accident and was located in the interior of the Tahoe at the moment that it passed the Involved Officer at the Sunoco station.