

REPORT BY OFFICE OF THE BALTIMORE CITY STATE'S
ATTORNEY ON THE CITIZEN FATALITY LOCATED IN THE
6300 BLOCK OF YORK ROAD



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TABLE OF CONTENTS

I. INTRODUCTION..... 3

II. OVERVIEW OF THE INCIDENT4

III. SUMMARY OF THE EVIDENCE.....4-20

IV. LEGAL ANALYSIS20-21

VI. CONCLUSION.....21

INTRODUCTION

The Baltimore City State's Attorney's Office (BCSAO) completed its review of the civilian fatality in the 6300 block of York Road. The BCSAO review was conducted by the office's Public Trust and Police Integrity Unit (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, his 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.

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

OVERVIEW OF THE INCIDENT
(Police-Involved Fatal Shooting)

On October 30, 2019 at around 9:30AM, Detective #1 of the Regional Auto Theft Task Force alerted the Northern District that a vehicle suspected of being associated with a robbery had passed through a license plate reader in the area of Woodbourne Ave. and York Rd. The vehicle, described as a dark colored 2012 Chevrolet Impala MD License Plate# 5DY0498, was used in conjunction with an armed robbery inside the Horseshoe Casino Garage.

At around 9:40AM , the Involved Officer conducted a canvas of the area near the 6300 Block of York Rd. Involved Officer spotted a 2012 Chevrolet Impala MD License Plate# 5DY0498 during his search. He pulled up to the parking lot of the Rite Aid pharmacy located at the 6300 block of York Rd. He then approached the driver's side of the vehicle and conducted a pat-down of the driver. The Involved Officer then asked for the driver's name and obtained his driver's license.

The Involved Officer radioed that he had made contact with the driver and while waiting for further instruction, he instructed the Involved Citizen to sit in the driver's seat of the vehicle. The Involved Citizen overheard the instructions over the radio that both the Involved Citizen and the vehicle were to be detained. At this point in time, the Involved Citizen reached underneath and grabbed a hidden .22 Smith and Wesson automatic handgun. He then stood up and pushed through the Involved Officer in an attempt to flee. The Involved Officer then tried to tackle the Involved Citizen and a struggle ensued on the ground.

During that time, the Involved Citizen was seen on CCTV with a handgun in his hand. As the Involved Officer continued to struggle, Officer #2 arrived in his patrol car. Officer #2 exited his vehicle and ran to where the Involved Officer was struggling with the Involved Citizen to assist. According to a civilian witness, the Involved Citizen attempted to reach for an officer's service pistol. Officers discharged 3 rounds during the struggle and were finally able to detain the Involved Citizen. The Involved Citizen received wounds to his chest and shoulder. He was transported to Johns Hopkins Hospital for treatment but succumbed to his injuries. He was pronounced dead at 10:37AM.

Officer #2 and the Involved Officer received light injuries as a result of the struggle. Officer #2 also had a chipped tooth. No civilian bystanders were hurt during the incident.

SUMMARY OF THE EVIDENCE

FIREARMS ANALYSIS

The ballistics analysis concluded that there were 4 specimens removed from the Involved Citizen' body. There was a bullet jacket fragment in his right chest. There were also 3 bullet specimens located in the Right Lower Chest, Right Posterior Torso and Left Anterior Arm. All bullet specimens were determined to have come from a .40 S&W / 10MM Automatic handgun. The only two known handguns capable of firing this caliber ammunition were the officers' Glock

22 service pistols. Based on the weapons inspection, the officers fired three rounds in total. It can be reasonably argued that since there were three bullet specimens found and three total rounds fired, that both officers fired and hit the Involved Citizen. There is no information in the ballistics analysis to determine which officer fired into which body part. The Involved Citizen' weapon was also test fired and capable of firing.

AUTOPSY OF THE INVOLVED CITIZEN

A Post-Mortem Examination Report was completed by a medical examiner. The medical examiner reported that there was a gunshot entrance wound on the right side of the chest in the superior-medial pectoral region. This indicates that the Involved Citizen was shot once in the front. The medical examiner also noted soot, searing and powder particles as well as gunpowder stippling. This would indicate that this wound was inflicted at close range. The medical examiner also noted a gunshot wound to the left side of the mid-back. There was gunpowder stippling on the skin and gunpowder particles near the wound. A third gunshot wound was located on the left posterior shoulder, with skin searing and gunpowder particles. Three bullets were recovered during the autopsy. All three of the gunshot wounds were consistent with contact range or close range discharges.

BODY WORN CAMERA ("BWC") VIDEO

Involved Officer:

- T13:37:20 The Involved Officer was the driver of a police cruiser. He is driving into the parking lot of the Rite Aid Parking during the 30 second pre-roll footage prior to BWC activation. After the Involved Officer activates his BWC, he says over the radio, "He's in the car now, I'm about to approach him."
- T:13:37:35 The Involved Officer walks to the driver's side of the Impala. The Involved Citizen rolled down the window. The Involved Officer then asked for the Involved Citizen's identification. The Involved Officer asked the Involved Citizen to turn off the vehicle and the Involved Citizen complied. The Involved Officer then ordered the Involved Citizen to step out of the vehicle, cautioning the Involved Citizen not to reach for anything in the passenger seat.



T:13:38:08 The Involved Citizen steps out of the vehicle and the Involved Officer conducts a pat-down search of the Involved Citizen's person. The Involved Citizen begins to question why he is being searched when the Involved Officer informs him that he's not under arrest and that he's just searching for weapons. The Involved Citizen gives the Involved Officer his ID.



T:13:38:32 The Involved Officer asks the Involved Citizen if he knew why he was here. The Involved Citizen told the Involved Officer no. The Involved Officer asked the Involved Citizen what his name was and he replied, "(name of driver being withheld)."

T:13:38:42 The Involved Citizen asked to know why he was being detained. The Involved Officer told him, "I would like to know the same thing. I was actually told to stop you." The Involved Citizen asked again, why he was being detained. The Involved Officer told him that he'd "get to it in a minute."

T13:38:54 The Involved Officer took out his handcuffs and tried to restrain the Involved Citizen. The Involved Citizen then asked why the Involved Officer was arresting him. The Involved Citizen turned around to face the Involved Officer. He then told

the Involved Officer that he wanted to speak to the boss. The Involved Officer then ordered the Involved Citizen to take a seat in the car.



T:13:39:08 The Involved Citizen told the Involved Officer that he would rather sit on the curb. The Involved Officer instructed him to take a seat inside the vehicle. The Involved Citizen then complied. No force was used at this point in time.



T:13:39:14 The Involved Officer asked for the suspect's name over the radio. During that time, The Involved Citizen was able to hear the radio traffic. The Involved Citizen asks, "What guy?" The officer on the radio then confirmed that the person to be detained was (the name given is being withheld) and that he was to be transported to the Southern EDU along with the vehicle.

T:13:39:43 The Involved Citizen appears nervous as he overhears the radio conversation. The Involved Officer asks on the radio whether the Involved Citizen was "10-30 or is he just wanted for questioning?" The officer on the radio responds that he is and that they "want him to be transported to the District so yes, he is wanted."



T:13:39:57 The Involved Citizen then attempts to get out of the vehicle. The Involved Officer exclaims, “You’re moving too much for me, man.” The Involved Citizen replied, “Cause I don’t know what’s going on, buddy.”



T:13:39:59 It appears that the Involved Citizen leaned down and may have reached for something by the vehicle floor. Prior to this, there was nothing visible in the Involved Citizen’s hands.



T:13:40:05 The Involved Officer orders the Involved Citizen to stand up. An audible clicking can be heard. The Involved Citizen then stands up suddenly and pushes through the Involved Officer. A single handcuff is seen on the Involved Citizen’s left arm. The Involved Citizen’s right arm is concealed from the officer’s view.



T:13:40:08 Video Ends

Officer #2

T:13:40:56 Officer #2's BWC is facing the ground. His radio microphone fell off and it appears he has his Glock 22 service pistol in his hand.



T:13:40:57 Two pistols and a blue and pink sneaker are visible on the ground a few feet away from the Involved Officer and the Involved Citizen. The Involved Officer stood above the Involved Citizen, attempting to gain control of his right arm.



T:13:41:11 The Involved Citizen rolled over onto his stomach by the Involved Officer and cuffed. There is a visible blood stain on his back and also on the ground. There is a second pair of handcuffs on the ground.



T:13:41:36 Officer #2 walks away. He is audibly out of breath. There is a person with a burgundy shirt and a dark colored jacket with a cell phone visible on BWC. BPD was unable to interview this individual or obtain the cell phone footage.



T:13:41:46 Officer #2 turns back towards the Involved Citizen. The Involved Citizen appeared to be conscious and on his side. An officer called for a medic on the radio. An officer indicated that the Involved Citizen had a gunshot wound to the chest.



T:13:42:35 Another officer stands beside Officer #2 and asks if he needs medical assistance and if he was hit. Officer #2 is audibly out of breath and is unable to answer the officer clearly.



T:13:42:53 Officer #2 says on the radio, “31 myself and 21 shot a suspect armed with a gun, fighting on the ground”

T:13:43:12 Officer #2 turns his attention again to the Involved Citizen. The Involved Citizen’s eyes are wide open and he does not appear to be responsive at this moment. Officer #2 goes down on his knees and starts chest compressions. The Involved Citizen winced and Officer #2 asked if he was breathing. There is a large blood stain on the center of the Involved Citizen’s chest. Officer #2 requests the medic again.



T:13:44:00 Officer #2 notices the Involved Citizen’s eyes have gone wide again. He shakes him to see if the Involved Citizen will respond. He does not move. Officer #2 asks for a medic again. He is told that the medic is on the way and to do whatever first aid he can. Officer #2 still appears to be out of breath.



T:13:45:18 Officer #2 asks other officers, “Am I missing a tooth?” Officer #2 is still audibly out of breath.

T:13:46:34 An officer checks the Involved Citizen for breath. The Involved Citizen does not appear to be responsive at this point in time.



T:13:46:55 Officer #2 goes to his patrol vehicle to get some water. Of note, his vehicle is parked directly in front of the entrance of the Rite Aid pharmacy and between the dark Chevy Impala. When Officer #2 parked his vehicle, he would have had a clear view of the struggle with the Involved Citizen and the Involved Officer through his windshield. Officer #2 was seen with his service pistol drawn as he approached the Involved Officer and the Involved Citizen.



T:13:48:58 Officer #2 is ordered not to walk through the crime scene and to sit in the Lieutenant’s vehicle. Officer #2 goes to the police SUV across the street. He says he can’t sit down and he continues to breathe heavily.

T:13:54:12 A Sgt. from the SIRT team asks Officer #2 if he is okay. He continues to walk around. Officer #2 pulls up his pant leg and there are visible redness on his knee and shin.



T:13:56:30 Officer #2 says to a female Lieutenant “If I didn’t come up here,” before he is ordered to turn off his camera and take it off.

T:13:57:27 Video ends

RITE AID EXTERNAL CCTV

The timestamps for the Rite-Aid external CCTV camera are in the local time as noted on the top of the screen.

9:37:18 The Involved Officer pulls up behind the dark colored car and blocks the vehicle.



9:37:34 The Involved Officer approaches the driver’s side door.



9:38:22 The Involved Officer conducts a pat-down search.



9:39:15 The Involved Citizen sits down in the driver's seat of the vehicle.



9:39:58 The Involved Citizen stands up.



9:40:04

The Involved Citizen leans down under window level.



19:40:09

The Involved Citizen runs into the Involved Officer.



19:40:10

The Involved Officer attempts to tackle the Involved Citizen.



9:40:11

The Involved Citizen has a handgun in his right hand when he is tackled to the ground.



9:40:14

Officer #2 runs towards the Involved Officer and the Involved Citizen. The handgun is visible in the Involved Citizen's hand at this point in time.



9:40:17

Officer #2 approaches with his service pistol drawn.



9:40:20

Both officers continue to struggle with the Involved Citizen. Civilian Witness #1 is visible near the door of the Rite Aid.



9:40:31

The struggle continues with the officers' bodies and the Involved Citizen's body only partially viewable on the screen.



9:40:53

An officer rolls away with a visible firearm in his hand.



9:41:06

Officers attempt to restrain the Involved Citizen. The firearms appear to be near the curb.



RITE AID INTERNAL CCTV

9:30:04

The Involved Citizen was inside the Rite Aid and had not made any purchases.



WITNESSES STATEMENT SUMMARIES

LAW ENFORCEMENT WITNESSES

1. **Officer #1** Regional Auto Theft Task Force
Date: October 30, 2019

Officer #1 told investigators that he was monitoring the LPR and Dispatcher systems. These systems allow an officer to monitor any tag reader in the city. Officers are also able to view patrol cameras and the stationary cameras. Officer #1 was monitoring the system when the license plate reader triggered an alert that a suspect vehicle had passed Woodbourne and York Rd. at around 9:27 AM. The northbound camera picked up a potential stolen vehicle, a black Chevy Impala with the license plate number 5DY0498. Officer #1 recognized the tag as one belonging to a vehicle suspected in a robbery.

Prior to the date of incident, Detective #1 contacted Officer #1 and notified him of a vehicle that he had entered into the license plate reader system. The vehicle was described as a 2012 Chevrolet Impala that was involved in a robbery at the Horseshoe Casino parking garage on 5/9/19 at around 12:15AM. The report for the incident was filed under CC#: 193820169. According to

Detective #1, the driver pulled a gun out on an individual in the parking lot. The suspect was described as a number one male wearing a black hoodie and blue jeans. The vehicle may have been occupied by five people. Detective #1 also added on the tag reader notes that the vehicle was wanted for an armed robbery and to hold all occupants. Detective #1 also included that the owner of the vehicle was known to be (name withheld but the same name as the Involved Citizen) and that officers were ordered to hold the Involved Citizen for fingerprints.

Officer #1 aired on the Northern District channel for officers to locate the vehicle and the approximate location. He also aired that the car was used in a robbery and if you have the owner, hold on to him. According to Officer #1, 2 minutes later an officer responded and asked for the tag number. The officer stated that the vehicle was parked in front of the Rite Aid 6300 York Rd. The officer also aired the vehicle's information and verified the license plate number. According to Officer #1, he heard another unit say that he was leaving the pumps to back the officer on the scene.

Officer #1 heard an officer say that there was a struggle on the radio. Officer #1 responded to the scene when he heard a Signal 13 dropped. Officer #1 stated that he knew he had to explain what was going on to investigators on the scene.

Officer #3

Date: October 30, 2019

Officer #3 was on patrol and designated Unit 5B33. Officer #3 heard a traffic unit call out a hit on a vehicle used in a robbery at the casino, the unit had tracked the vehicle going northbound on York Rd. An officer aired that he had found the vehicle at 6300 block of N. York. That officer also stated that it was occupied by number one male. When Officer #3 arrived, he had approached the vehicle. To Officer #3's knowledge shots had already been fired.

When he arrived, he saw the Involved Officer was getting off the ground. The Involved Officer pointed to the gun near the curb that was supposedly taken from the suspect. Officer #3 secured the gun and put it in his vehicle. Officer #2 indicated to him that he had a tooth knocked out. Officer #3 rendered aid to the suspect by keeping him alert and awake. Officer #3 stated that he used gauze to soak up blood and attempted to apply pressure. He did not do CPR. He stated that the suspected individual had a gunshot wound to the chest and that CPR wouldn't help him at all. Officer #3 stated that he had requested a medic about 10 times.

Officer #3 was able to see a single gunshot wound to the chest of the suspected individual. He also noted that the handle of the suspect's weapon was wrapped in tape. Officer #3 had picked it up in order to render it safe. To his knowledge there was a round in the chamber. Officer #3 had racked the slide of the weapon and placed it in the floorboard of the driver's side of the car. Officer #3 then locked the vehicle. Officers stood by the vehicle while Officer #3 was rendering aid.

Another officer then took the keys to Officer #3's patrol vehicle. Officer #3 was instructed to wait at the scene. Officer #3 alerted another officer that the gun was in the car.

CIVILIAN WITNESSES

1. Civilian Witness #1:

Date: October 30, 2019

Civilian Witness #1 was a customer of the Rite Aid store during the time of incident. When Civilian Witness #1 walked out of the store at around 9:39AM he saw a police car with the lights flashing. Civilian Witness #1 moved to his right coming out of the door and stood by the second brick column. Civilian Witness #1 stated that when he came out of the Rite Aid, he had a pretty clear view of the struggle.

Civilian Witness #1 recounted that he saw the lights from a police vehicle as soon as he came out of the store. There was a police vehicle parked to the right of him that had turned into the parking area from Gittings Ave. At that point he saw one officer struggling with a black male individual (the Involved Citizen). He then saw another officer running to assist. According to Civilian Witness #1, the Involved Citizen “was putting up a fight.” The Involved Citizen “would not give up, no matter what.” He also stated that officers were struggling to subdue the Involved Citizen. He described the struggle as like a wrestling match. Even with two officers, they weren’t able to subdue him. At some point, the Involved Citizen grabbed for a gun.

Civilian Witness #1 heard one of the officers say, “He grabbed my gun. He’s got my gun.” Civilian Witness #1 stated that the struggle continued on and it appeared to him that the Involved Citizen was grabbing the officer’s gun. Civilian Witness #1 recalled that an officer shot him twice and that he was able to hear two shots. He believed that the shots were not simultaneous. Civilian Witness #1 told investigators that he saw the gun between the two officers. He stated that it didn’t take more than two or three minutes for the struggle before the gun shot. According to Civilian Witness #1, the Involved Citizen was getting the best of both officers. The officers could not get him in cuffs. Both officers looked spent and exhausted. He told investigators “If anyone has wrestled, 3 minutes of wrestling would leave you exhausted.”

Civilian Witness #1 told detectives that he “Would consider it clearly self-defense on the part of the officers.” He did not remember hearing officer issue a command to stop. According to Civilian Witness #1, the Involved Citizen was absolutely non-compliant and “fighting like hell. Not giving in one inch.” He also stated that he was not trying to invent details. Civilian Witness #1 stated that he was not injured during the incident.

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 pulled the trigger. The Involved Officer and Officer #2 knew the following facts:

- The Involved Officer was acting on the information provided to him over the radio regarding a vehicle suspected to be involved with a robbery. Officer #1 provided a

description of the vehicle and the tag number over the air. The Involved Officer then verified the tag number. When the Involved Officer walked up to the vehicle, he obtained the name and license of the Involved Citizen. This information was cross-checked with the available information of the suspect driver. The Involved Citizen was the named owner of the vehicle and was wanted for questioning.

- The Involved Citizen leans down under window level and appears to come up and out of the vehicle with an object in his hand (later identified as a gun).
- The Involved Citizen pushes into the Involved Officer while exiting his vehicle, trying to escape.
- The Involved Officer attempts to tackle the Involved Citizen. The Involved Citizen has a handgun in his right hand when he is tackled to the ground.
- According to Citizen #1, the Involved Citizen continued to fight the Involved Officer.
- Officer #2 arrives on the scene and observes the Involved Officer wrestling with the Involved Citizen who is armed
- Citizen #1 hears one of the officers yelling “he grabbed my gun, he’s got my gun.”

Given that Graham requires consideration of what the officer reasonably believed at the time he pulled the trigger, it is clear that the Involved Officer and Officer #2 reasonably believed that the Involved Citizen was armed, dangerous and was putting the safety of both officers at risk.

CONCLUSION

Given the following: (1) The Involved Citizen was detained as a result of his alleged participation in an armed robbery, (2) After verifying the tag number and the identity of the Involved Citizen, the Involved Officer had probable cause to believe that the Involved Citizen had committed, an armed robbery allowing for on-scene arrest; (3) the Involved Citizen with a gun in his hand attempted to flee by pushing the Involved Officer, and (4) During the struggle to detain the Involved Citizen, the Involved Citizen grabbed the officer’s gun, it would be objectively reasonable for the officers to conclude that their safety was at risk. The decision to use force was justified under the Maryland law of self-defense, defense of others and the standard put forth by the Supreme Court in *Graham v. Connor*.

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