

Police Involved Shooting

Date: 11-22-2016

Location of Shooting: 1000 Block N. Monroe Street

Investigated by: Baltimore Police Department

Factual Scenario:

On November 22, 2016, at approximately 10:30 p.m., in the 1000 block of Monroe Street, a Baltimore Police Department (BPD) Officer (hereinafter referred to as LEO #1) executed a traffic stop on a 2000 BMW station wagon with what appeared to be partially obliterated/tampered tags and travelling at a higher than legal speed. The vehicle had a Michigan tag (see photograph below). The paint had peeled off the tag and it appeared that someone had used a marker to blacken the numbers and letters.



LEO #1 called for back-up and two BPD Officers responded (hereinafter referred to as LEO #2 and LEO #3). Additional BPD officers responded after LEO #2 and #3. One officer is referred to as LEO#4. LEO#1 approached the vehicle and spoke to the driver. Upon arrival, LEO #2 observed LEO #1

speaking to a man in the BMW station wagon. LEO #2 approached the vehicle from the front, heading toward the passenger's side of the vehicle and made eye contact with LEO #1. The vehicle's windows were tinted and the vehicle's inside dome light was on. LEO #1 asked the driver to step out of the vehicle. As LEO #2 walked across the front of the vehicle heading toward the passenger side of the vehicle, the driver began to exit the vehicle. LEO #2 was looking through the front window when he observed the driver reach either between the seat and the door frame or under the seat and come up with a gun. LEO #2 yelled "gun, gun" and heard a single shot.

Upon arrival, LEO #3 approached the driver's side of the vehicle, slightly from behind the vehicle and arrived at the vehicle about the time the driver was moving to exit the vehicle. He saw the driver's right arm come across his body with his right hand holding a gun which was aimed at LEO #1. LEO #3, who was closest to the driver, pushed the driver as hard as he could. When LEO#3 pushed the driver, LEO#1 discharged his weapon, striking the driver in the shoulder/chest area. As a result of the push by LEO#3 and the driver being shot by LEO#1, the gun held by the driver flew through the air and landed on the vehicle's hood.

The officers fought with the driver until he was handcuffed and placed under arrest.

LEO (Law Enforcement Officer) Witness Statement Summary:¹

LEO Witness #2:

While I was at the district, I received a call to respond to the area as back up. I was the shift's wagon driver. I arrived first and observed LEO #1 speaking to the driver of a gold station wagon. As I approached the vehicle, I made eye contact with LEO#1. The driver of the vehicle was concentrating on LEO#1. The vehicle's windows were tinted but the dome light was on inside the vehicle. I tried to use my flashlight to illuminate the inside of the vehicle but it failed. LEO #1 asked the driver to exit the vehicle. The driver started to "fidget," and as he stood up, I could see that he was coming up with a gun from between the seat and the door frame or from under the seat. I yelled "gun, gun" and immediately heard a gunshot. Almost simultaneous with the gunshot, a gun flew up in to the air and landed on the vehicle's hood. We struggled with the driver and finally were able to subdue him.

¹ LEO#1 did not provide a statement.

LEO Witness #3:

I received a call to respond to the area as back up while I was at the district. I parked my vehicle behind the transport vehicle, to the right of the gold vehicle which was across the street. I approached from the back of the gold vehicle but on the driver's side. LEO #1 was at the driver's side door and LEO#2 was approaching the passenger's side door of the vehicle. When LEO#1 ordered the driver out of the vehicle, I noticed the driver looking down at the floor board. When the driver stood up, he started coming across his body with a gun. I was so close to the driver the only thing I could do was to push him as hard as I could. As I pushed him, I heard a shot near my left ear. Almost simultaneous with the shot, a gun flew up into the air and landed on the hood of the vehicle.

LEO Witness #4

I was working as the supervisor that night. I was driving with another officer. I got a call that extra units were needed on Monroe. The wagon and a patrol vehicle were at the scene. When I got out of the car, I heard, “gun” and then a gun shot. I saw an officer grab a man and try to hold him down. He was trying to get up but they were able to keep him down.

Civilian Witness Statement Summaries

CW#1:

CW#1 was home at the time of the shooting. CW#1 had two glasses of wine, and according to her is bi-polar and suffers from anxiety and depression. CW#1 heard a commotion and looked out her window. CW#1 believed she heard someone say something like “get out of the car.” CW#1 heard a boom so she jumped down onto the floor. On the second re-telling of her story, CW#1 said she saw the flash from the gun and witnessed the shooting. CW#1 said that the “black cop” was the officer who shot the driver and he shot through the front window. CW#1 observed a bullet hole through the front window. CW#1 said the 911 operator told her to go check on the wounded person and see if the person needed a pillow. After the driver was shot, CW#1 observed the officers go into the vehicle and find the gun.

CW#2:

CW#2 was at home, smoking a blunt and chilling with her children. CW#2 said that it would take more than one blunt to get her high, so CW#2 really wasn't impaired. Her attention was drawn by the police lights outside, so CW#2 went to her window and saw the police had a vehicle pulled over. CW#2 immediately started "live streaming" to Facebook. CW#2 said there were two officers out there, one behind the vehicle, and one on the driver's side of the vehicle. Once the police told the driver to get out of the vehicle, he did, and he "got out like this," meaning with his hands up. According to her, the officer then shot Mr. Gibbs. CW#2 never saw a gun, but mentioned that afterwards everyone who showed up looked at something on the hood of the vehicle. CW#2 didn't know what it was or how it got there.

When asked if CW#2 could show the video to the detectives, CW#2 explained that she could not remember the e-mail address she used to sign up for Facebook, so CW#2 could not pull up the video.

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² Legal efforts were made to obtain or verify the video but BPD and the BCSAO were unsuccessful in their efforts.

DISPATCH RECORDING SUMMARY

10:34 p.m. – LEO#1 calls into dispatch with his location

10:35 p.m.-Dispatch confirms that LEO#2 was at 1000 block of Monroe

10:37 p.m.-Someone yells “shots fired shots fired”

10:37 p.m.-Dispatch says “Signal 13, Signal 13 shots fired”

10:38 p.m.-Dispatch says “I’ve ordered up the medic”

10:38 p.m.-CW#1 calls “he was in the vehicle and then I heard a shot right in my window right here cause it could have come right through the window and shot me in the head....I hope they didn’t shoot him in the head.”

10:41 p.m.-911 tells CW#1 what instructions to follow, “Do not let him have anything to eat or drink. It might make him sick or cause problems to the digestive system...don’t move him unless it is absolutely necessary, just tell him to lay still for help to arrive...please wait for further instructions”

10:39 p.m.-Dispatch confirms that a medic has been requested

10:40 p.m.-An officer to dispatch and again requests a medic

10:40 p.m.-Dispatch says “10-4, I will put in a second request”

10:40:41 p.m.-An officer requests that dispatch put another request in for a medic

10:40:45 p.m.-Dispatch says “10-4”

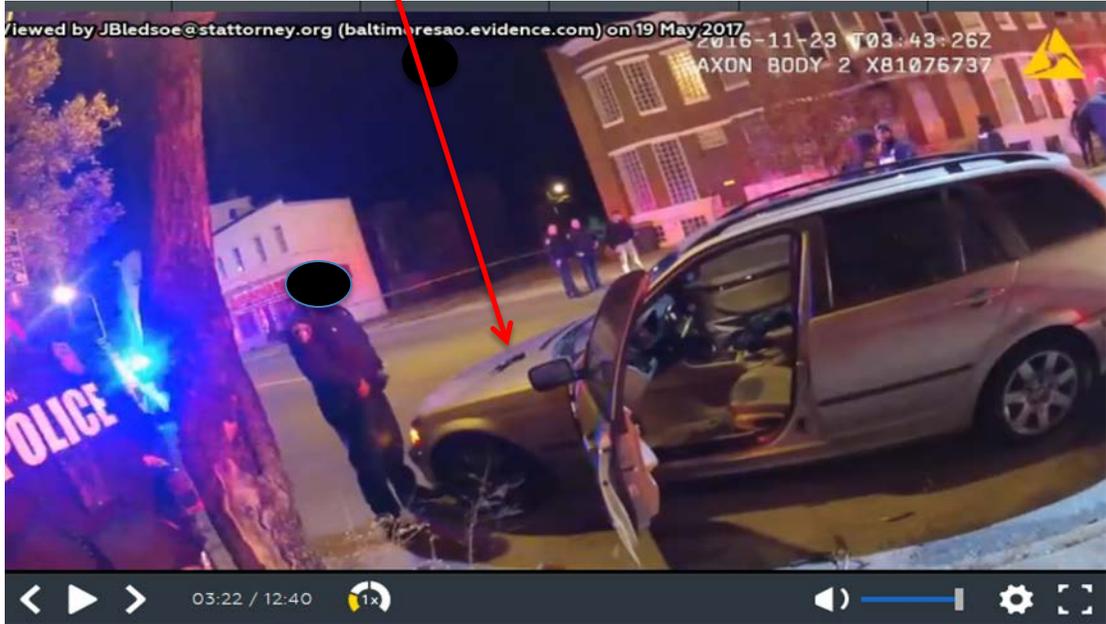
Front windshield



BODY WORN CAMERA (BWC) VIDEO:

Many of the officers who arrived after the incident were wearing BWC but the officers involved in the incident were not wearing BWC. There is BWC footage from an officer after the incident. The video contains a preliminary interview of CW#1. CW#1 gave the officer basic information and a few details about what CW#1 observed. The video also contains LEO#2 asking CW#1, "didn't you see the gun." CW#1 replies "I didn't see a gun." LEO#2 asks CW#1 "didn't you hear me yell that he had a gun?" CW#1 says "I don't know. I saw you shoot him."

LEO#2 standing by the BMW station wagon with the gun on the hood

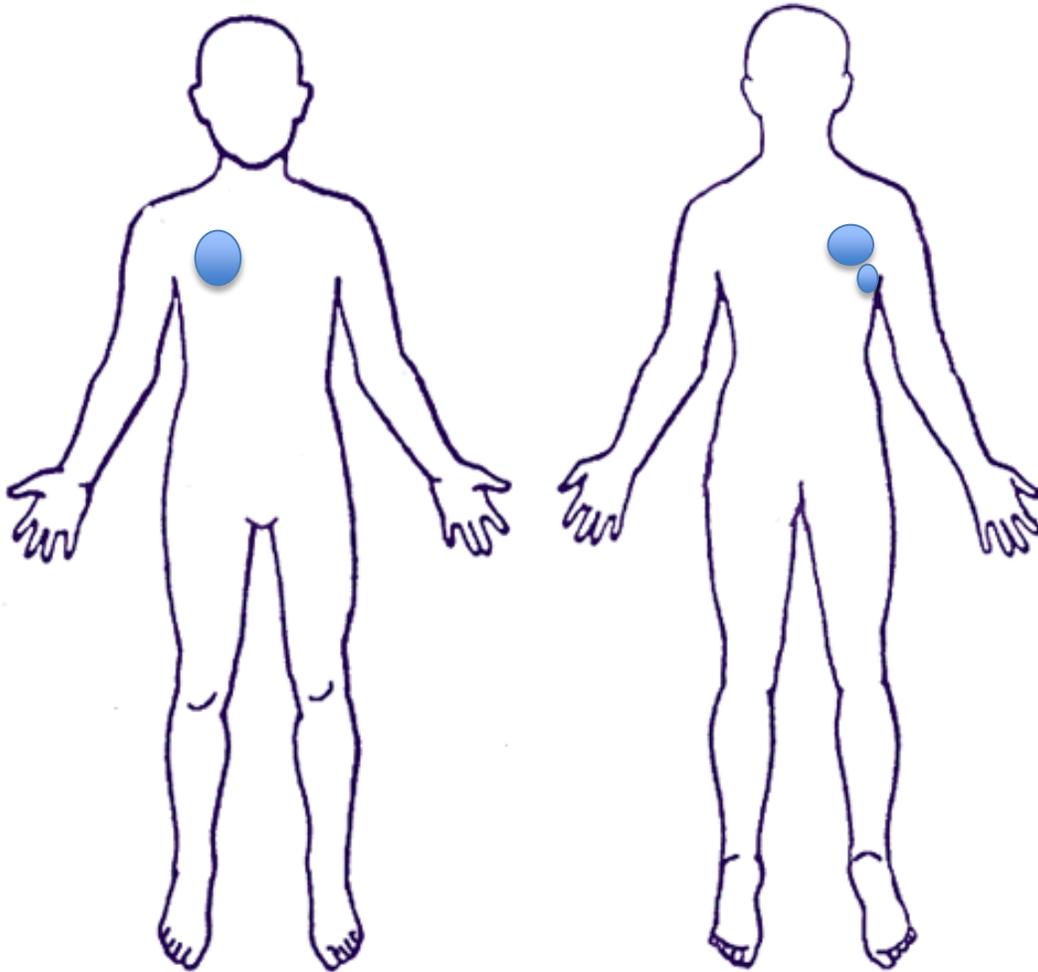


Close up of the gun on the hood



Suspect's Injuries (approximate)

The suspect was shot once in the right chest area which exited his back and a gunshot wound to the right armpit area.



Ballistics Report:

Suspect's weapon was a .38 caliber Iver Johnson revolver fully loaded and not registered in Maryland. LEO#1's weapon was a Glock Model 22 .40 caliber. Upon inspection it had one round in the chamber and twelve rounds in the magazine. The magazine holds fourteen rounds. LEO#1 fired his weapon one time. One .40 caliber casing was found at the scene.

DNA Analysis:

The Baltimore Police Department, Forensic Services Division prepared a report on May 8, 2017 giving the results of DNA testing. The lab compared a swab taken from the .38 caliber Iver Johnson revolver and the DNA profile obtained from the driver. The swab from the revolver yielded a partial DNA profile consistent with a mixture of at least two individuals but a full profile of one person, the driver. The sample was processed using probabilistic genotyping assuming the presence of two and three contributors. The driver matched an inferred genotype. A match between the driver and the inferred genotype is 184 quadrillion times more probable than a coincidental match to an unrelated individual in the African American population.

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*.

Maryland law also recognizes self-defense as a complete defense to a crime. An officer acts in self-defense if all of the following factors are present:

1. The officer was not the aggressor;
2. The officer believed that he was in immediate and imminent danger of bodily harm;
3. The officer's belief was reasonable; and
4. The officer used no more force that reasonably necessary to defend himself.

LEO#1 likely meets the four legal factors listed above to justify the shooting of the driver as well as the standard set forth by the Supreme Court. There were two officers, LEO#2 and 3, who saw the driver with an object in his hand which they believed was a gun. LEO#2 was located near the passenger's side door, looking through the vehicle from the front. He observed the driver reach for something between the door frame and the seat or underneath the seat. When the driver brought his arm up, he had a gun in it. LEO#2 yelled "gun, gun." Almost simultaneous with LEO#2's observations, LEO#3, who was

located at the driver's side door with LEO#1, saw the driver bring his arm across his body toward the direction of himself and LEO#1. The driver had a gun in his hand. In order to protect himself and LEO#3, LEO#1 discharged his weapon striking the driver. The shooting by LEO#1 was likely in defense of himself and LEO#3..

There is additional evidence that supports the events as told by LEO #2 and 3. As a result of being shot and pushed, the driver released the gun which landed on the vehicle's hood. BWC and photographs show the gun on the vehicle's hood. The gun was tested for DNA using the driver as a contributor. The report indicates a high statistical likelihood (a match between the driver and the genotype is 184 quadrillion times more probable than a coincidental match to an unrelated individual) of a match between the driver and the inferred genotype.

We acknowledge that there is a witness statement that indicated the incident was "live streamed from a Facebook account"; however, as of June 19th, 2017, there have been no social media references to the shooting. The State, independently and with the assistance of BPD, made every effort, although unsuccessful, to secure a copy of the video by requesting the video from the witness, and the driver's attorney. The BPD attempted to secure a warrant from the court which was denied.

We acknowledge CW#1 stated she witnessed the shooting however, she misidentified the shooter as LEO#2, misidentified the path of the shot(she indicated through the vehicle's front window)and, contrary to what she told BPD, was not told by the dispatcher to put a pillow under the driver's head.

Conclusion

Given that:(1) DNA evidence strongly supports the conclusion that the driver's skin cells were found on the .38 revolver, (2) two law enforcement officers saw the driver with an object believed to be a gun in his hand, and (3) LEO#2 yelled "gun, gun" having observed the driver bring what he believed to be a gun in an upward motion toward LEO#1 and LEO#3³ it would be objectively reasonable for the officer to conclude that his and other officers' safety was at risk leading him to protect himself and others by utilizing force. Furthermore, the decision to use force was likely justified under the Maryland law of self-defense and the standard put forth by the Supreme Court in *Graham v. Connor*.

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

³ Based on the Collective Knowledge Doctrine, LEO#1 was allowed to rely on the knowledge/observations of LEO#2.

Crime scene at 1000 block of Monroe Street



A close up photograph of the gun

