



INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Death in
Baltimore City on February 8, 2023

June 30, 2023

**Report of the Independent Investigations Division of the Maryland Office
of the Attorney General Concerning the Officer-Involved Death of
Alfred Fincher on February 8, 2023**

Pursuant to Md. Code, State Gov't § 6-602, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this report to Baltimore City State's Attorney Ivan Bates regarding the officer-involved death of Alfred Fincher on February 8, 2023, in Baltimore City, Maryland.

The IID is charged with "investigat[ing] all police-involved incidents that result in the death of a civilian or injuries that are likely to result in the death of a civilian" and "[w]ithin 15 days after completing an investigation ... transmit[ing] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-602(c)(1), (e)(1). The IID completed its investigation on June 29, 2023. This report is being provided to State's Attorney Bates on June 30, 2023.

I. Introduction

On February 8, 2023, several Baltimore Police Department ("BPD") officers, including Officer Devin Yancy, attempted to stop a stolen Hyundai Sonata driven by Shawn Brunson on N. Patterson Park Ave. When Mr. Brunson did not stop, officers pursued him toward the intersection of N. Wolfe St. and E. North Ave. in Baltimore.

Mr. Fincher was standing at the southeast corner of the intersection when Mr. Brunson drove the Sonata into the intersection and was struck by another car. The impact caused both vehicles to strike Mr. Fincher before they collided with a nearby building, which partially collapsed on top of Mr. Fincher and both cars. Mr. Fincher was pronounced dead at the scene by medical personnel.

The IID and BPD have entered a Memorandum of Understanding ("MOU") stating that the parties will each investigate all officer-involved deaths. The MOU recognizes that BPD entered a federal consent decree on January 12, 2017, which imposes certain obligations to investigate officer-involved fatalities. In order for BPD to meet its obligations under the consent decree and the IID to meet its obligations under state law, the MOU states that the agencies' investigators will cooperate and communicate during the investigation. If at any point the IID determines that BPD cannot maintain the level of impartiality required to conduct a thorough investigation, the IID may take over sole investigative responsibility for the case. In the present case, the IID and BPD have collaborated throughout the investigation.

This report includes an analysis of Maryland statutes that could be relevant in a case of this nature. The IID considered the elements of each possible criminal charge, the relevant departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Baltimore City State's Attorney's Office—not the

Attorney General’s Office—retains prosecution authority in this case, this report does not make recommendations as to whether any individuals should or should not be charged.¹

II. Factual Findings

The following findings are based on review of body-worn camera video, radio transmissions, analyses from the Baltimore Police Crash Team and the Office of the Chief Medical Examiner (“OCME”), and interviews with civilian and law enforcement witnesses. BPD officers are equipped with body-worn cameras but not in-car dashboard cameras. All materials reviewed in this investigation are being provided to the Baltimore City State’s Attorney’s Office with this report and are listed in Appendix A.

The events described below occurred at night with clear weather, and the pursuit lasted less than sixty seconds. It is important to note that all times are approximate to within about two seconds. That margin of error occurs because BPD body-worn cameras do not operate synchronously with CityWatch and redlight cameras, and because of time-stamp drift between different body-worn cameras.

A. Initial Events

A review of a Baltimore CityWatch camera showed that at 8:50 p.m. on February 8, 2023, BPD Lieutenant Eric Leitch—commanding officer for the Eastern District Detective Unit and Direct Action Team—was driving an unmarked car eastbound on the 1800 block of E. North Ave. behind a black Hyundai Sonata. In his interviews with BPD and IID investigators, Lt. Leitch said that the Sonata contained several passengers “hunkered down” inside. Lt. Leitch told investigators that he initially thought that the passengers were juveniles. Because there had been a recent surge in stolen vehicles within the district, many of which were Hyundais, he checked the Sonata’s tag via radio to see whether it was stolen. Dispatch responded that it was stolen, so Lt. Leitch requested assistance from a marked patrol car to perform a traffic stop on the Sonata.

Lt. Leitch followed the Sonata from a distance—he estimated approximately 200 feet away—down multiple streets until it stopped and pulled over on the east side of N. Patterson Park Ave. At that point, Lt. Leitch said he saw a man later identified as Shawn Brunson exit the Sonata along with three or four passengers. Further, he told investigators that Mr. Brunson stayed outside of the Sonata for a few moments, but when marked patrol cars became visible along E. North Ave., Mr. Brunson got back into the Sonata’s driver’s seat. Other than Mr. Brunson, only one other passenger got back into the Sonata, [REDACTED]

Officer Yancy, Officer Jasmin Djedovic, and Officer Matthew Patoska responded to Lt. Leitch’s request for assistance in marked patrol cars. All three officers activated their body-worn cameras shortly before their arrival. Their “cruise lights”—solid red and blue lights on the sides

¹On May 16, 2023, Governor Moore signed legislation that expands the IID’s purview to include the sole authority, where appropriate, to prosecute police-involved incidents that result in the death of an individual or injuries that are likely to result in the death of an individual. This new authority is effective for incidents occurring on or after October 1, 2023. For incidents occurring before that date, the local State’s Attorney retains sole prosecution authority.

of their patrol cars' light bars—were active because it is BPD policy to always turn those lights on, but they did not immediately turn on their emergency lights and sirens.

B. The Pursuit

According to Officer Yancy's body-worn camera footage, at 8:53:09 p.m., Lt. Leitch radioed for Officer Yancy's patrol car to "block Patterson Park" to "pin in" Mr. Brunson. N. Patterson Park Ave. is a one-way street in the southbound direction. Lt. Leitch told investigators that Mr. Brunson had just gotten back into the Sonata, and he "saw that as an opportune moment" to apprehend him "because the car wasn't even in drive, it was still in park at that moment."

At 8:53:11 p.m., Officer Yancy, complying with Lt. Leitch's instructions, drove toward the Sonata, which was facing southbound on N. Patterson Ave. Mr. Brunson immediately drove away, turning the Sonata into an empty lot and looping around so the car was facing north. Lt. Leitch radioed "It's taking off, I don't know if it's gonna be able to get out of here." Mr. Brunson exited back onto N. Patterson Park Ave., now heading north toward Sinclair Ln.—the wrong way on a one-way street. He turned left onto Sinclair Ln. and accelerated westbound. The officers converged behind him: first Officer Yancy, then Lt. Leitch, Officer Djedovic, and Officer Patoska. Around the same time, multiple officers attempted to use the radio at once, creating cross-talk so none of them were able to transmit clearly.

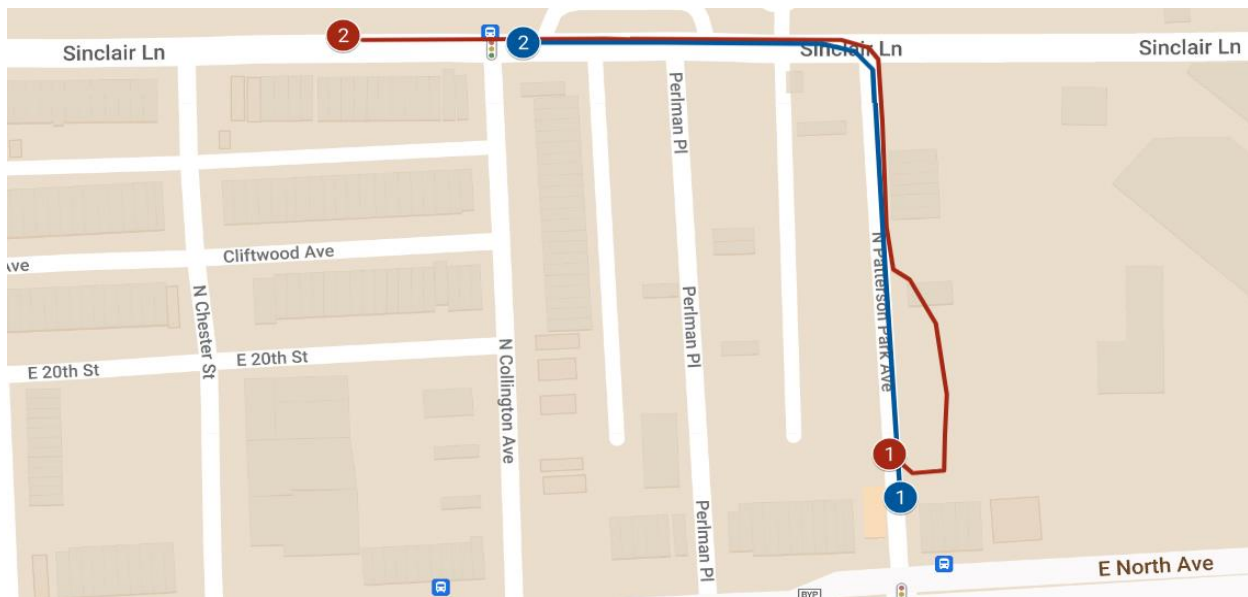


Image 1: The approximate paths of Officer Yancy (blue) and Mr. Brunson (red) as described above between 8:35:11 p.m. (Point 1) and 8:53:38 p.m. (Point 2). As noted, Mr. Brunson drove off-road in a vacant lot before making his way westbound onto Sinclair Ln.

Seconds later, when the cross-talk cleared, between 8:53:43 and 8:53:47 p.m., Officer Yancy was able to radio his location and direction of travel to other officers, stating, "Let me get on the air! Westbound Sinclair approaching...Wolfe." According to his body-worn camera footage, Officer Yancy had just passed the intersection of Sinclair Ln. and N. Chester St. at that

point. Three seconds later, after Officer Yancy passed through the intersection of Sinclair Ln. and N. Washington St., Lt. Leitch radioed to call off the pursuit, saying “Alright, just let it go guys, it’s westbound on Sinclair, it’s traveling at a high rate of speed. It looks like it’s gonna go southbound on Wolfe and come out around.”

Officer Yancy’s body-worn camera footage shows that at 8:53:55 p.m.— just after Lt. Leitch said, “it looks like it’s gonna go southbound”—he slowed down to make a left turn through a red light onto N. Wolfe St.² After completing the turn two seconds later, Officer Yancy accelerated. At 8:54:02 p.m., BPD Lt. Antoine Davis repeated the order to abandon the pursuit over the radio, telling officers “It’s not worth it, break it off.” At that point, the engine of Officer Yancy’s patrol car quieted, and two seconds later he began announcing his position via radio when he was between the 2000 and 1900 block of N. Wolfe St.

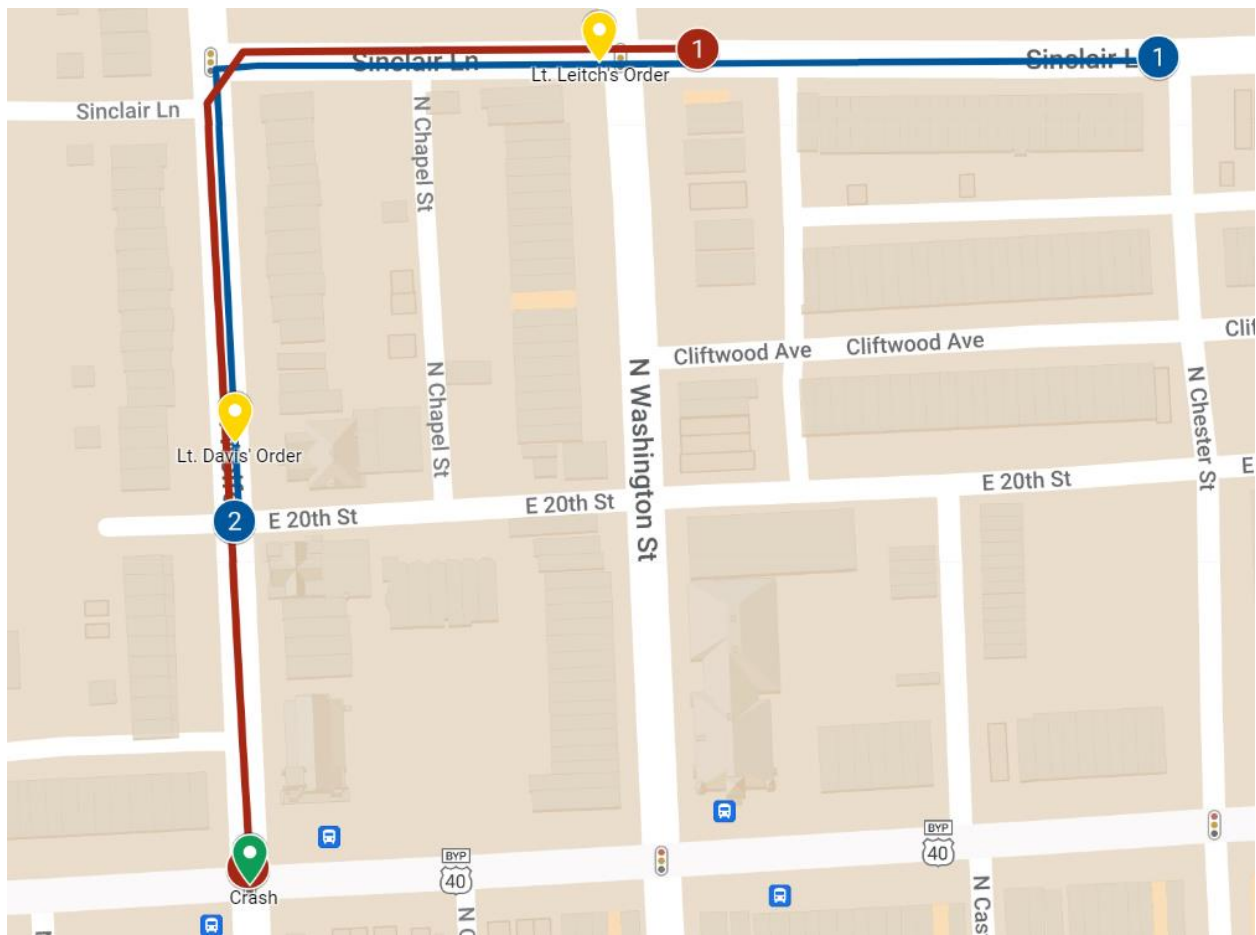


Image 2: The approximate paths of Mr. Brunson (red) and Officer Yancy (blue) as described above, between 8:53:38 p.m. (Point 1) and 8:54:04 p.m. (Point 2)—roughly one or two seconds before the crash—when Officer Yancy began announcing his position over the radio. Officer Yancy’s locations when Lt. Leitch and Lt. Davis ordered officers to abandon the pursuit are marked in yellow, and the site of the crash is marked in green.

² N. Wolfe St. is a one-way street with southbound traffic. Additionally, the extension of Sinclair Ln. on the west side of N. Wolfe St. is a one-way exit from a school parking lot.

Officer Yancy continued driving southbound down N. Wolfe St., and a CityWatch camera in the area showed him driving slightly less than one block behind the Sonata. According to the Sonata's electronic data recorder, Mr. Brunson was driving at 50 m.p.h. on N. Wolfe St. at that point; the speed limit on N. Wolfe St. is 30 m.p.h.

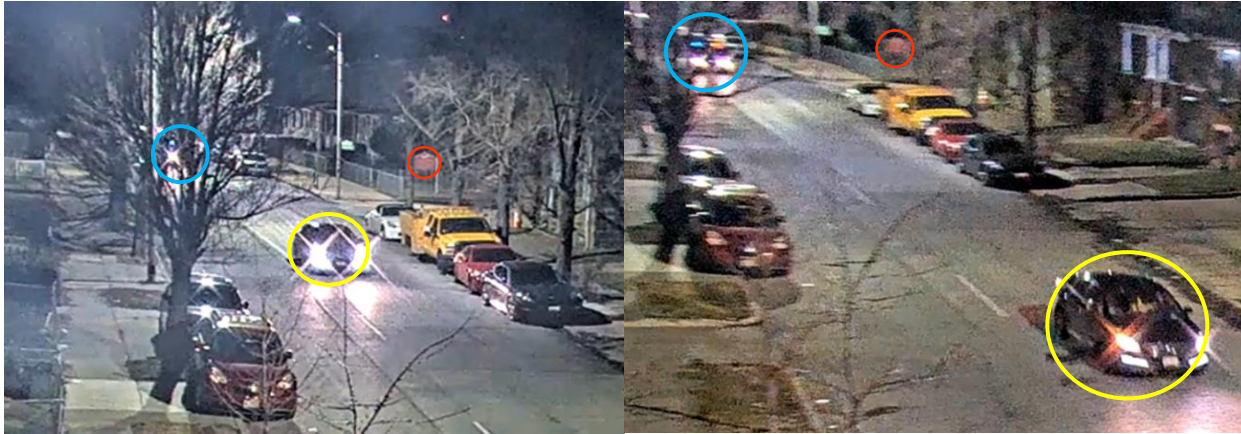


Image 3: Still footage from a city surveillance camera at the intersection of N. Wolfe St. and E. North Ave. Officer Yancy's patrol car is circled in blue, and Mr. Brunson's car is circled in yellow, and a fixed reference point at the intersection of N. Wolfe St. and E. 20th St. is circled in red. These two images are approximately four seconds apart.

C. The Crash

At 8:54:05 p.m., according to red light and CityWatch cameras in the area, Mr. Brunson ran a red light at the intersection of N. Wolfe St. and E. North Ave., crossing into the path of a 2006 Mitsubishi Eclipse that had the right of way and was traveling eastbound on E. North Ave. According to a BPD crash report, this caused the Eclipse to strike the right front fender of the Sonata. The impact redirected the Sonata toward the southeast corner of the intersection, where it struck Mr. Fincher and a building at 1901 E. North Ave. Additionally, the impact spun the Eclipse clockwise and caused it to continue in reverse, running over the sidewalk and Mr. Fincher before striking the same building. After both cars struck the building, a partial collapse of its second floor caused its brick façade to fall on top of all three parties, burying Mr. Fincher and crushing the tops of the vehicles.



Image 4: Still photographs from a city surveillance camera in the area, from top left to bottom right: (1) the initial impact between the Sonata and the Eclipse; (2) Mr. Fincher’s location—circled in blue—with respect to both cars; (3) the position of the cars after they struck Mr. Fincher; and (4) the collapse of 1901 E. North Ave. after the crash.

At 8:54:08 p.m., as Officer Yancy neared the intersection where the crash occurred, BPD Officer Cody Hastings, who was monitoring city cameras in the area from the Baltimore Community Intelligence Center, reported the crash via radio and requested medic and police response to the intersection of N. Wolfe St. and E. North Ave. According to Officer Yancy’s body-worn camera footage, he stopped his patrol car at the intersection of N. Wolfe St. and E. North Ave. at 8:54:19.

According to body-worn camera footage, at 8:54:22 p.m., Officer Yancy stopped his patrol car and activated his emergency lights and siren for the first time. He then exited his patrol car, drew his gun and walked toward the Sonata, repeatedly shouting “Show me your hands!” Officer Djedovic arrived on scene three seconds later and joined Officer Yancy at the Sonata, and Officer Patoska arrived shortly afterward and began trying get the passengers out of the Eclipse. Lt. Leitch arrived at 8:54:42 p.m. and requested medics for the scene. He then exited his

However, Officer Djedovic's body-worn camera captured [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. Occupants of the Eclipse

The passengers in the Eclipse [REDACTED] and [REDACTED] were interviewed by BPD on the night of the crash. Both women told BPD investigators that they did not remember anything related to the crash. [REDACTED] who drove the Eclipse, was interviewed by BPD on February 25, 2023, and was reinterviewed by the IID on March 1, 2023. During her interviews, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4. Other Civilian Witnesses

IID and BPD investigators interviewed a civilian bystander, an MTA bus driver, and a neighborhood resident who saw the Sonata and patrol cars pass her home; they all gave statements consistent with body-worn camera footage, the statements of other witnesses, and the information in the facts section of this report.

E. Paramedics' Statements

Reports written by EMS indicate that at 9:20 p.m., Mr. Fincher was found under a car with injuries incompatible with life. The reports state that he was pronounced dead on scene, removed from underneath the car and placed in the back of an ambulance until workers from the medical examiner's office arrived.

F. Subject Law Enforcement Officer's Statements

Under Maryland law effective July 1, 2022, a police officer must "fully document all use of force incidents that the officer observed or was involved in." Public Safety § 3-524(e)(4). The law does not provide further guidance about what "fully document" means. Baltimore Police Department policy requires that officers who engaged in a pursuit "complete an Incident Report detailing the facts providing probable cause for the pursuit." The pursuing officers must also document why the benefits of the pursuit outweighed its inherent risks. No such report is required if officers were not involved in a pursuit. BPD leadership declined to opine on whether

they considered this incident a pursuit, as their investigation into the crash is still ongoing. However, the officers that the IID interviewed considered it a pursuit based on their statements to investigators and their body-worn camera footage.

All subjects of criminal investigations—including police officers—have a right under the Fifth Amendment not to make any statement. That right also applies to written statements. Thus, if a statement is directly ordered, the result of threat, or otherwise compelled (*i.e.*, not voluntary), it cannot be used against an officer in a criminal investigation and should not be considered by criminal investigators. *Garrity v. State of N.J.*, 385 U.S. 493 (1967) (holding that officers’ statements made under threat of termination were involuntary); *Department of Public Safety and Correctional Services v. Shockley*, 142 Md. App. 312, 325 (2002) (“the dispositive issue is whether [the supervisor] **demanded** that the appellee answer the questions”) (emphasis in original).

Officer Yancy declined to be interviewed following the crash. While on scene, he did not make statements about what happened and did not complete a BPD crash reporting form or pursuit form.

G. Witness Law Enforcement Officers’ Statements

Witness officers are not the subjects of a criminal investigation, and thus can be compelled to make statements without violating the Fifth Amendment. Even so, all of the witness officers in this case provided voluntary statements to BPD and IID investigators. Each officer reported that it is BPD policy and standard procedure not to pursue stolen cars. Further, none of the witness officers reported knowing the identity of the driver until after the crash occurred. After learning of Mr. Brunson’s identity, none of them had any familiarity or prior dealings with him.

1. Lt. Leitch

Lt. Leitch was interviewed by BPD investigators on the night of the crash and reinterviewed by IID investigators on March 16, 2023. He gave consistent statements in each interview.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

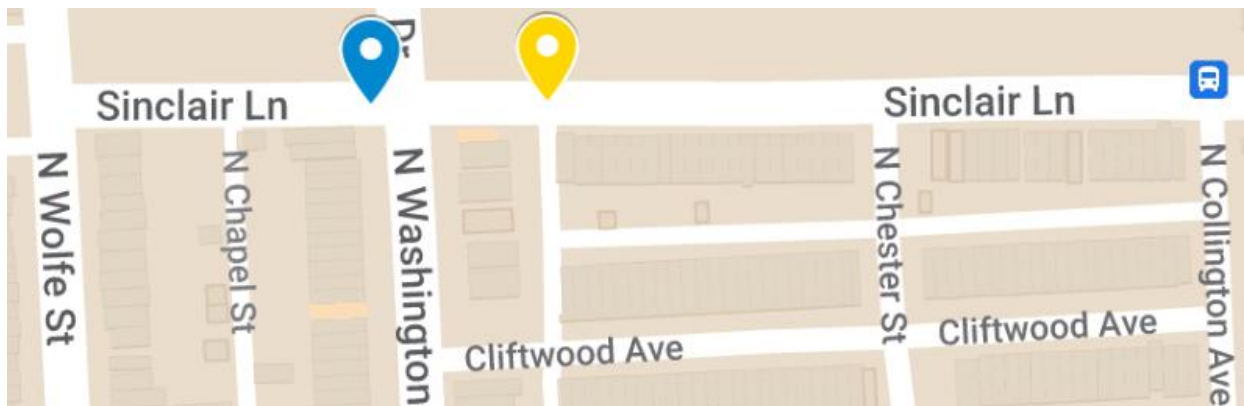


Image 5: The approximate positions of Lt. Leitch (yellow) and Officer Yancy (blue) when Lt. Leitch began ordering officers to “Let it go, guys,” at 8:53:50 p.m.

[REDACTED]

[REDACTED]

2. Officer Djedovic

Officer Djedovic provided a written statement on the night of the crash and was jointly interviewed by BPD and IID investigators on March 23, 2023, providing statements that were consistent with each other, and largely consistent with the evidence in both instances. He said that at the beginning of the incident, he was parked at 2029 E. North Ave. conducting a business check. Officer Djedovic stated that he chose to wait on E. North Ave. for the car to drive out because N. Patterson Park Ave. is a one-way street, and “by policy, unless it’s something serious, we are not allowed to enter one-way streets,” and at that point, he only knew that it was a stolen vehicle, which he did not view as sufficient.

Next, Officer Djedovic stated that when Officer Yancy approached the scene and turned onto N. Patterson Park Ave., he followed because he “can’t let him go by himself, so if he’s going in, I’m going in.” He said that once the officers turned onto N. Patterson Park Ave., the Sonata was “right there,” and he heard Lt. Leitch say something like “box him up.” He said that from his perspective, the Sonata started reversing immediately, and shortly afterward, “somehow” the Sonata managed to make it onto Sinclair Ln.

Officer Djedovic recalled that when he arrived at Sinclair Ln., he stopped and gestured for Lt. Leitch to pull in front of him. Officer Djedovic opined that he let Lt. Leitch in front of him because “I knew that this was not going to end well because... you know, I don’t think you should chase. So I was just waiting for someone to advise [us] to stop.” Accordingly, Officer Djedovic stated that he was third in line behind Officer Yancy and Lt. Leitch. Next, he reported that he began speaking into his radio, explaining that he was only following the two vehicles, not engaging in a pursuit. According to Officer Djedovic’s body-worn camera footage, between 8:53:25-35 p.m., he was driving northbound on N. Patterson Park Ave., then said “there is a stolen vehicle, I’m going sixty-one,” before pointing to the left with his right index finger before turning onto Sinclair Ln., then saying “we aren’t pursuing, we are just following him.” It is unclear from the footage whether Officer Djedovic was speaking into his radio or narrating for his body-worn camera.

Officer Djedovic recalled that the Sonata drove very fast and said that the distance between it and Officer Yancy increased over time; however, he noted that once he was on Sinclair, he could not accurately estimate the distances between vehicles. He estimated that Officer Yancy was originally about fifty feet behind the Sonata. After a few seconds, he heard someone call for officers to “break it off,” so he turned onto a side street and stopped following the other cars. He said that he made the turn to “disconnect” himself from the pursuit and show that he was no longer involved. Officer Djedovic told investigators that before turning off, he saw the Sonata turn left onto N. Wolfe St., then lost sight of it, Officer Yancy, and Lt. Leitch. Shortly after Officer Djedovic abandoned the pursuit, he heard someone announce the crash over the radio and headed straight to the scene.

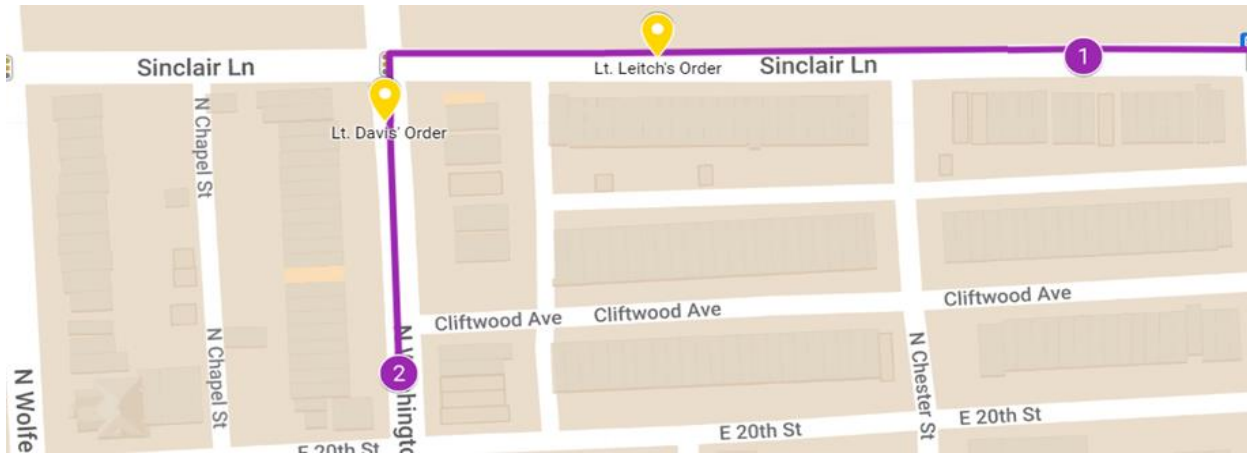


Image 5: Officer Djedovic’s approximate path between 8:53:43 p.m. (Point 1) and 8:54:04 p.m. (Point 2), roughly one or two seconds before the crash. His locations when Lt. Leitch and Lt. Davis ordered officers to abandon the pursuit are marked in yellow.

3. Officer Patoska

Officer Patoska provided a written statement on the night of the crash and was interviewed by IID and BPD investigators on March 16, 2023. He stated that he had been “pretty much across the district... on the west end,” when Lt. Leitch initially requested assistance. He decided to assist and drove eastbound on E. North Ave. before turning northbound onto N. Patterson Park Ave. behind two other marked patrol cars —Officers Yancy and Djedovic. According to CityWatch camera footage and his body-worn camera, Officer Patoska arrived on N. Patterson Park Ave. at 8:53:26 p.m., after Mr. Brunson had already begun fleeing.

Next, Officer Patoska recalled that when the other marked patrol cars attempted to stop the Sonata, it fled by making “a K-turn or U-turn.” Officer Patoska stated that he could not see the exact details of what the Sonata was doing because “the vehicles were all kinda in a cluster together,” but he knew “it was originally traveling southbound, then came back northbound.” The other cars drove northbound on N. Patterson Park Ave. after the Sonata, and Officer Patoska followed. He stated that none of the patrol cars had their emergency lights or sirens on during the incident, but their cruise lights were activated.

Officer Patoska stated that N. Patterson Park Ave. is largely open field, so as he was “coming up Patterson Park, [he] could look to his left and see... Yancy’s car and the suspect vehicle,” and the Sonata gained “a good separation from [Officer Yancy] as it proceeded.” He estimated that Officer Yancy and the Sonata were approximately “ten car lengths” apart, and also recalled that the Sonata drove fast, but not erratically, as it accelerated to “a really high rate of speed.” Officer Patoska recalled that when he turned left onto Sinclair Ln., Officers Yancy and Djedovic remained in front of him, and he believed Lt. Leitch was behind him, but he was not completely sure. He also said that at one point on Sinclair Ln., the police cars were “all pretty close” together, but the distance between them increased over time. According to the body-worn camera footage and officers’ interviews, when the patrol cars were traveling down Sinclair Ln., Officer Yancy was the first officer in line, Lt. Leitch was the second officer, Officer Djedovic was the third officer, and Officer Patoska was the last officer.

Officer Patoska said that he was a little less than two blocks away from N. Wolfe St. when he heard Lt. Leitch call off the pursuit, and that he heard Lt. Davis repeat the order a few seconds later. He recalled that he slowed down to a normal rate of speed after Lt. Leitch's order, observed Officer Djedovic making a left turn onto N. Washington St.³, and saw Officer Yancy continue toward N. Wolfe St. He opined that Officer Djedovic made a turn because "common practice, I'm not sure if it's policy, but normally you make a turn to make it very clear that you are no longer behind that vehicle." According to his body-worn camera, Officer Patoska himself did not turn off of the pursuit route, but instead, continued driving forward slowly on Sinclair Ln. until the crash was announced over the radio. When he heard about the crash, he activated his emergency lights and turned left onto N. Wolfe St.

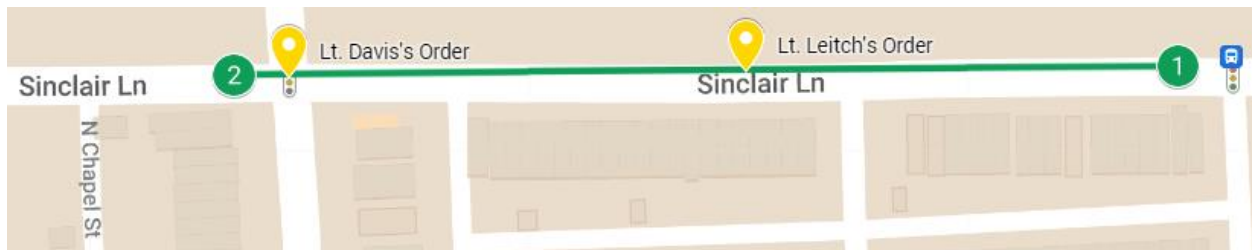


Image 6: Officer Patoska's approximate path between 8:53:43 p.m. (Point 1) and 8:54:04 p.m. (Point 2), roughly one or two seconds before the crash. His locations when Lt. Leitch and Lt. Davis ordered officers to abandon the pursuit are marked in yellow.

Officer Patoska recalled that he did not actually see the crash, but when he arrived at the scene, he immediately went to the Eclipse because he knew that Officer Yancy and another officer were dealing with the Sonata, and he wanted to get the Eclipse victims "out of the way in case anything happened with the vehicle."

4. Lt. Davis

Lt. Davis spoke with IID investigators on March 28, 2023, and said that on the evening of the incident, he was completing administrative tasks in his office when he heard radio traffic about the pursuit of a stolen vehicle. Based on the radio communications, Lt. Davis believed that the pursuit was not within policy, and he used his portable radio to order officers to disengage; he told investigators that a chase for a simple stolen vehicle absent other exigent circumstances is not permitted. Lt. Davis can be heard on all officers' body-worn camera footage saying, "It's not worth it, break it off." Once he heard that the crash occurred, he responded to the location and assumed command.

³ According to Officer Djedovic, he turned onto N. Chester St., not N. Washington St. The two are one block apart.

H. Medical Examination

Mr. Fincher's autopsy was conducted on February 9, 2023, by Dr. Edernst Noncent of the Office of the Chief Medical Examiner. The examination revealed multiple injuries to Mr. Fincher's head, neck, and torso, including lacerations to his scalp, chest, back, and lungs; multiple hemorrhages in the brain and soft tissue; hemoaspiration (blood found in the lungs); fractures of the right radius and ulna, the left hyoid horn, the sternum, both clavicles, the left humeral head and scapula; multiple bilateral rib fractures; and punctures in the lungs. The autopsy concluded that the cause of death was Multiple Injuries sustained as a pedestrian struck by a car, and the manner of death was Accident.⁴

I. BPD Crash Report

The BPD Crash Team ("AIU") issued a report regarding the crash. The following information uncovered during their investigation is relevant to the legal analysis in Subsection V of this report.

1. Vehicle Speeds

None of the officers were involved in events that would have triggered their cars' electronic data recording devices, which turn on when a car is involved in an accident. BPD patrol cars are not equipped with dash camera systems. However, each of the marked patrol cars contain an automatic vehicle locator system that provides speed and location updates once per minute via GPS. That system provides the only available evidence of any of the officers' speeds on Sinclair Ln. during the pursuit.

Officer Yancy's system registered no recorded speed during the pursuit; the pursuit occurred between the one-minute intervals at which the system records data. The vehicle locator system did record the speed of another car involved in the incident, however. At 8:53 p.m., Officer Djedovic was traveling 49.1 m.p.h. near 2202 Sinclair Ln., the main path of the pursuit. As noted above, Officer Djedovic was behind Officer Yancy and Lt. Leitch at that point.

2. Crash Data Retrieval ("CDR")

The AIU uses CDR software to retrieve electronic data from vehicles after a crash to assist in accident reconstruction. They were able to retrieve data from the Sonata—the car driven by Mr. Brunson—which was equipped with an Event Data Recorder ("EDR"). The EDR was activated during the crash and stored certain data—recorded vehicle speed, engine throttle percentage, brake activation, engine r.p.m., anti-lock braking system activity, steering input, and acceleration pedal percentage—from five seconds prior to the crash, along with an overlapping set of data

⁴ Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The Office of the Chief Medical Examiner of Maryland uses five categories of manner of death: natural, accident, suicide, homicide, and undetermined. "Accident" applies when an injury or poisoning causes death and there is little or no evidence that the injury or poisoning occurred with intent to harm or cause death. These terms are not considered a legal determination; rather, they are largely used to assist with public health statistics. "A Guide for Manner of Death Classification," First Edition, National Association of Medical Examiners, February 2002.

from the Sonata's impact with the building. Though the information captured by the EDR is limited (i.e., it shows when the driver pressed the brakes, but not how hard), it provided several relevant facts:

- Five seconds prior to the crash, the Sonata was traveling at 50 m.p.h. on N. Wolfe St.
- AIU investigators were able to calculate that during those five seconds, the Sonata traveled a total of 326 feet. At the moment of its impact with the Eclipse, the Sonata was traveling 46 m.p.h.
- The Sonata's brakes were on 3.0 seconds before the crash with the Eclipse, and off again 1.5 seconds before the crash.
- The Sonata's anti-lock braking system was on 2.5 seconds before the crash with the Eclipse, and off again 1.5 seconds before the crash.
- The Sonata's acceleration pedal was pressed one second before the crash with the Eclipse.

AIU investigators were unable to capture any electronic data from the Eclipse because it was "not supported by CDR software."

III. Involved Parties' Backgrounds

As part of its standard investigative practice, the IID obtained information regarding all parties' criminal histories, as well as the officer's departmental internal affairs record and relevant training. To the extent it exists, any criminal history information is being provided to the State's Attorney's Office with this report. In this case, the information did not affect the analysis of potential criminal charges.

A. Albert Fincher

Mr. Fincher was a 54-year-old Black man who lived in Baltimore.

B. Shawn Brunson

Mr. Brunson is a 33-year-old Black male who lives in Baltimore.

C. BPD Officer Devin Yancy

Officer Yancy was hired by BPD on March 1, 2017. He is a Black man and was 35 years old at the time of this incident. [REDACTED]

[REDACTED]

IV. Applicable Policies

BPD has the following policy concerning vehicle pursuits. The complete policy is attached as Appendix B.

A. Policy 701: Departmental Radio Communications

This policy requires that “[a]ll members equipped with a body-worn camera (BWC) must call ‘10-61’ when activating and call ‘10-62’ when de-activating the BWC.”

B. Policy 1502: High Visibility Patrol

This policy requires that “[m]embers operating a patrol unit equipped with an emergency light bar shall activate the cruise lights (solid, non-flashing lights) at all times.” The policy grants a “very limited exception... when a stealthy response is needed to protect the safety of the member or others, and/ or to apprehend a suspect” (emphasis in original).

C. Policy 1503: Emergency Vehicle Operation and Pursuit Policy

This policy defines a vehicle pursuit as, “[w]hen a member operating a law enforcement vehicle attempts to keep pace and/or to immediately apprehend one or more occupants of an eluding vehicle.” An eluding vehicle is one in which the driver “increases speed, takes evasive action, and/or refuses to stop despite a member’s signaling to stop by hand, voice, emergency lights, and/or siren even after a reasonable amount of time to yield or stop has passed.” Pursuits are permissible when:

- 1.1. The vehicle contains a felony suspect and failure to immediately apprehend poses an immediate threat of death or serious bodily injury to the member or others; and
- 1.2. Before the pursuit is initiated, there exists probable cause to believe the fleeing suspect committed a felony which resulted, or could have resulted, in death or serious bodily injury.

An officer deciding whether to engage in or continue a pursuit must weigh factors such as safety to the public based on the setting and conditions, whether the identity of the suspect is known, and the “availability of other resources, such as air support assistance.” Officers are also directed to exercise appropriate caution when approaching intersections during pursuits because they “present a high risk of collisions.” Officers involved in pursuits have designated roles — primary, secondary, and supervisor. The policy mandates that secondary units use a different siren sound from the primary unit, implying that primary units are also required to use their sirens in a pursuit.

The policy prohibits officers from initiating a pursuit when the risks outweigh the value of apprehending the driver, or when a vehicle is not equipped with working lights and sirens. Further, it prohibits officers from initiating pursuits for misdemeanor crimes, or traffic violations where there is no imminent danger. The policy also explicitly prohibits officers from initiating pursuits when “the initial violation is a crime against property (including auto theft).”

After terminating a pursuit, the primary officer must “[call] out their location and mileage to dispatch.” After engaging in a pursuit, the policy requires that officers complete an Incident Report detailing the facts that caused them to initiate the pursuit and the reasons they determined

the value of the pursuit outweighed its risks. A use of force report is required only if the officers intentionally make contact with another vehicle.

V. Applicable Law & Analysis

The IID analyzed Maryland statutes that could be relevant in a vehicle pursuit of this nature. This section presents the elements of each possible criminal charge and analyzes these elements in light of the factual findings discussed above.

There are two primary charges applicable to deaths caused when a driver hits a pedestrian: manslaughter by vehicle, Crim. Law § 2-209, which is analyzed in subsection A, and criminally negligent manslaughter by vehicle, Crim. Law § 2-210, which is analyzed in subsection B, below. The IID is charged with investigating the conduct of law enforcement officers, while the State's Attorney's Office retains jurisdiction over Mr. Brunson, the Sonata's driver. On February 9, 2023, Mr. Brunson was charged with three crimes for his role in the incident, and on March 21, 2023, he was charged with an additional crime. This section only analyzes law enforcement conduct.

With that in mind, there are two relevant questions to answer under each of these statutes: (1) did Officer Yancy's actions rise to the required level of negligence to sustain a conviction; and (2) were Officer Yancy's actions the cause Mr. Fincher's death?

A. Manslaughter by Vehicle⁵

The manslaughter by vehicle statute states: "A person may not cause the death of another as a result of the person's driving, operating, or controlling a vehicle or vessel in a grossly negligent manner." Crim. Law § 2-209(b). The crime requires proof of gross negligence, meaning that "the defendant *was conscious of the risk* to human life posed by his or her conduct." [96 Md. Op. Atty. Gen. 128](#), 138 (Dec. 21, 2011) (emphasis in original). Grossly negligent driving consists of "a lessening of the control of the vehicle to the point where such lack of effective control is likely at any moment to bring harm to another". *Duren v. State*, 203 Md. 584, 584 (1954). "Reckless driving is not enough; there must be reckless disregard for human life." *Khawaja v. Mayor & City Council, City of Rockville*, 89 Md. App. 314, 319 (1991).

To prove manslaughter by vehicle, the State must establish: "(1) that the defendant drove a motor vehicle; (2) that the defendant drove in a grossly negligent manner, and (3) that this grossly negligent driving caused the death of [the decedent]." MPJI-Cr 4:17.10 Homicide—Manslaughter by Motor Vehicle, MPJI-Cr 4:17.10 (2d ed. 2021). Grossly negligent conduct is conduct that "amount[s] to a wanton and reckless disregard for human life." *Duren*, 203 Md. at 588 (citing *State of Maryland v. Chapman, D.C.*, 101 F. Supp. 335, 341 (D. Md. 1951); *Hughes v. State*, 198 Md. 424, 432 (1951)).

To answer the question of whether Officer Yancy's actions were "grossly negligent"—the relevant negligence threshold for a conviction under this statute—Maryland courts must ask

⁵ This report does not analyze the charges of common law involuntary manslaughter or depraved heart murder because those charges are preempted by the manslaughter by vehicle statute. *State v. Gibson*, 254 Md. 399, 400-01 (1969); *Blackwell v. State*, 34 Md. App. 547, 555-56 (1977).

what a “reasonable officer” would do. *See Boyer v. State*, 323 Md. 558, 589 (1991) (“the police officer’s conduct should be judged not by hindsight but should be viewed in light of how a *reasonably prudent police officer* would respond faced with the same difficult emergency situation” (emphasis added)). As exemplified by the BPD policy discussed below, the reasonable officer standard must account for the fact that an officer is permitted to violate some traffic laws under certain circumstances, though they must consider both the severity of the crime that they are responding to and the magnitude of the traffic violations. In making the “reasonable officer” determination, a factfinder may consider whether an officer has violated departmental policy. *See State v. Pagotto*, 361 Md. 528, 557 (2000) (“*Pagotto IP*”). The Court has explained that “while a violation of police guidelines is not negligence *per se*, it is a factor to be considered in determining the reasonableness of police conduct.” *Id.* (citations omitted). Maryland courts have previously applied this policy analysis to vehicular manslaughter cases, examining departmental standards for pursuits, for speeding, and for other safety considerations. *See e.g., Boyer*, 323 Md. at 580.

In this case, the relevant departmental standard is BPD Policy 1503. Under that policy, a pursuit occurs when an officer operating a police vehicle attempts to “keep pace with and/or immediately apprehend one or more occupants of an eluding vehicle.” The same policy defines an eluding vehicle as one where the driver attempts to evade police and refuses to stop even after a reasonable amount of time to yield has passed. Accordingly, one could conclude that Mr. Brunson’s refusal to yield even after driving off road and speeding the wrong way down a one-way street made him an “eluding” driver shortly after officers encountered him. Therefore, based on BPD Policy 1503, one could also conclude that when Officer Yancy drove after Mr. Brunson, he engaged in a pursuit. Further, Mr. Brunson’s only known offense at the time the pursuit began was operating a stolen vehicle, a crime for which the policy explicitly prohibits pursuits. Both Lts. Leitch and Davis told investigators that they ordered the involved units to disengage because the pursuit was violative of the policy, and Officers Patoska and Djedovic acknowledged that BPD policy prohibited a pursuit under these circumstances. With that in mind, one could reasonably conclude that Officer Yancy violated BPD Policy 1503 during this incident. However, it is important to note that a policy violation alone is not sufficient to constitute gross negligence.

A number of cases have analyzed what level of conduct is required for an officer’s driving to rise to the level of gross negligence; in addition to policy violations, other factors have included speed, the seriousness of the emergency, road conditions, and the presence of lights and sirens. For example, in *Khawaja*, the Court of Special Appeals held that a vehicle driving through a red light at 25 m.p.h. over the speed limit without a siren and directly causing a collision did not constitute gross negligence. 89 Md. App. at 318. Further, in *Boyer*, the then-Court of Appeals, now the Supreme Court of Maryland, held that allegations that a state trooper driving at up to 100 m.p.h. on a congested highway in an attempt to apprehend a suspected intoxicated driver, in violation of policy, were unduly vague and therefore did constitute gross negligence. 323 Md. at 580.

With those cases in mind, it would be difficult to prove that Officer Yancy’s actions constituted gross negligence. To review, like the officer in *Khawaja*, Officer Yancy did not activate his emergency sirens during the pursuit, and like the trooper in *Boyer*, Officer Yancy violated department policy in the process of the pursuit. However, neither of those officers were

deemed grossly negligent. Further, unlike the officers in those cases, Officer Yancy was neither directly involved in a collision—his car did not strike another vehicle during this incident—nor was he driving in a congested area. In sum, because Officer Yancy’s conduct was less severe than that of officers who were not deemed grossly negligent, then it is unlikely that his conduct demonstrated the “wanton or reckless disregard for human life” that a finding of gross negligence requires. *See Khawaja*, 89 Md. App. at 319.

To answer the question of whether Officer Yancy caused Mr. Fincher’s death, which is the third element of the statute, the chain of causation—a logical link between the accused person’s actions and another person’s death—must be analyzed. *Cf.* MPJI-Cr 4:17.10 Homicide—Manslaughter by Motor Vehicle, MPJI-Cr 4:17.10 (2d ed. 2022). Establishing the chain of causation is a two-pronged undertaking, where the State must show: (1) “but-for causation” (*i.e.*, but for the defendant’s conduct, the death at issue would not have occurred); and (2) “legal causation” (*i.e.*, the ultimate harm was reasonably foreseeable given the defendant’s actions and was reasonably related to those actions). *State v. Thomas*, 464 Md. 133, 152 (2019) (citing *Palmer v. State*, 223 Md. 341, 352-53 (1960)). In both instances, the chain of causation may be broken by an “unforeseen and intervening event” that more immediately causes the death. *Pagotto v. State*, 127 Md. App. 271, 364 (1999) (“*Pagotto I*”). Whether an event is sufficient to break the causal chain is a fact-specific inquiry, and *Pagotto I* provides the controlling standard for conducting that analysis.

In *Pagotto I*, an officer was convicted of involuntary manslaughter when his gun accidentally discharged during a traffic stop, killing the car’s driver. *Id.* at 358. At trial, evidence was introduced that the officer may have been violating department policies—one of which was holding his gun incorrectly—which “may well have contributed to the creation of a dangerous confrontation” and showed “what may be a case of actionable civil negligence.” *Id.* at 356. The officer appealed his conviction, and the Appellate Court found that the officer had not legally caused the driver’s death because the driver’s pre-planned attempted flight from the stop, which may have caused the officer’s gun to discharge, constituted a sufficient intervening cause. *Id.* The Court wrote that “critical” to its reasoning was the fact that “the beginning of the execution of the [getaway] plan literally [] preceded the discharge of the weapon.” *Id.* at 361. Additionally, the Court found that the fleeing car hitting the officer’s gun was not within the realm of foreseeable consequences of the officer’s conduct. *Id.* Essentially, to be sufficient to break the chain of causation, an intervening event’s influence must outweigh the effect of the accused person’s negligent act and produce an outcome that was not a foreseeable consequence of the negligent act. Applied here, that would mean that Mr. Brunson’s decisions while driving could break the chain of causation if their influence outweighed the effects of Officer Yancy’s pursuit decisions and produced an outcome that was not a foreseeable consequence of the pursuit.

While the circumstances of *Pagotto I* allowed the Appellate Court to separate the negligent and intervening acts in a relatively clear manner, the circumstances of this case make it more difficult for a factfinder to draw that line here. One critical difference between the cases is that the intervening act in *Pagotto I*—the fleeing car bumping the officer’s hand—occurred too quickly for the officer to react to it and had a direct effect on the discharge of the officer’s gun. *See id.* (“[A] dramatic and unforeseen event occurred a few critical seconds before the fatal shot was fired.”). In contrast, here, Officer Yancy had nearly sixty seconds and several car lengths of distance to decide how to respond to Mr. Brunson’s decisions; Officer Yancy could have slowed

down or ceased pursuit to comply with BPD policy at several points during the incident. Another critical distinction between the cases is that although the gun discharging by virtue of the decedent hitting it may not have been within the realm of likely consequences of the officer's actions in *Pagotto I*, a fatal car crash is within the likely realm of consequences of a police pursuit.

Several Maryland cases dealing with third party deaths in street races could provide useful persuasive insight, even if they are not controlling. In those cases, defendants who did not directly cause a person's death shared culpability with their co-racers because they participated in and encouraged an inherently dangerous act. For example, in *Goldring v. State*, the Appellate Court held that one street racer was criminally liable for his co-racer's death because the conditions of the race were so inherently dangerous that death was reasonably foreseeable, even though it was the decedent who lost control of his car. 103 Md. App. 728, 739 (1995). *See also Hensen v. State*, 133 Md. App. 156, 171-72 (2000) (to establish causation for the death of a third party, "[i]t is sufficient that the ultimate harm is one which a reasonable man would foresee as being reasonably related to the acts of the defendant."); *cf. Alston v. State*, 339 Md. 306, 321 (1995) (reasoning that where each participant "aided, abetted, and encouraged the other to engage" in the conduct that resulted in a death, a defendant need not be the person who actually caused the death to be criminally liable). Bearing in mind Lt. Leitch's acknowledgement that pursuing police officers can "further" an eluding driver's choice to flee, and possibly cause a wreck by doing so, one could apply some of the logic of these cases here. Because an officer in an out-of-policy pursuit places lives and property at risk outside of the department-established boundaries of their duties, they could be viewed as engaging in an inherently dangerous activity similar to a street racer. However, it would strain credulity to suggest that any provocation provided by a pursuing officer—even one violating policy—is identical to the encouragement offered by a co-participant in a race. Defendant street racers were found to have implicitly encouraged the crimes by their willing participation, while police officers engaging in pursuits are trying to stop an ongoing criminal act. *See Goldring*, 103 Md. App. at 734 (noting that competing in the race provided sufficient evidence to show the defendant caused or "aided and abetted" the deaths of two spectators). Even so, the death of a suspect or bystander is a foreseeable outcome of such a pursuit, which a factfinder could consider in their intervening cause analysis.

Given the evidence in this case, a factfinder could make a detailed examination of both Mr. Brunson's and Officer Yancy's decisions in the moments leading up to the crash. On the one hand, a factfinder could use that evidence to determine that Officer Yancy's choice to pursue Mr. Brunson in violation of policy—and to continue the pursuit after Lt. Leitch called it off—"may well have contributed to the creation of a dangerous confrontation" in which a potentially fatal car crash was within the likely realm of foreseeable consequences. *Pagotto I*, 127 Md. App. at 356. That determination could see Officer Yancy share culpability with Mr. Brunson. On the other hand, a factfinder could determine that any or all of Mr. Brunson's decisions—his choice to flee, his speed, or even when he applied the brakes—were acts that more significantly influenced the outcome of the incident than any of Officer Yancy's decisions, and were also beyond Officer Yancy's control. Furthermore, because [REDACTED] stated, consistent with the evidence, that she did not see any police lights or hear any sirens, one could argue that the visibility of the officers' cars was not the ultimate cause of Mr. Brunson's driving decisions.

B. Criminally Negligent Manslaughter by Vehicle

There is also a lesser level of criminal culpability to consider, namely, criminally negligent manslaughter by vehicle. Criminal Law § 2-210 states: “(b) A person may not cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a criminally negligent manner. (c) For purposes of this section, a person acts in a criminally negligent manner with respect to a result or a circumstance when: (1) the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that such a result will occur; and (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person. (d) It is not a violation of this section for a person to cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a negligent manner.” While there have been no cases analyzing this statute with respect to police officer conduct, the “reasonable person” language would likely be adjusted to “reasonable officer,” as it is in the other manslaughter by vehicle statute described above. *See Boyer*, 323 Md. at 589; *see also Albrecht v. State*, 97 Md. App. 630, 642 (1993), *rev’d on other grounds* (applying the reasonable officer standard requires a review of evidence including police academy training and the actions of various working officers in order to determine what “a reasonable officer similarly situated” would have done under the circumstances).

Addressing the question of whether Officer Yancy’s actions caused Mr. Fincher’s death would require a factfinder to undertake the same causation analysis used in the manslaughter by vehicle statute. However, this statute differs from manslaughter by vehicle in that it requires proof of a lower negligence threshold; criminal negligence rather than gross negligence. MPJI-Cr 4:17.10 Homicide—Manslaughter by Motor Vehicle, MPJI-Cr 4:17.10 (2d ed. 2021). Criminal negligence requires proof that “the defendant *should have been aware, but failed to perceive* that his or her conduct created a ‘substantial and unjustifiable risk’ to human life and that the failure to perceive that risk was a ‘gross deviation’ from the standard of care that a reasonable person would exercise.” 96 Md. Op. Atty. Gen. at 138 (emphasis in original; quoting Crim. Law § 2-210). In sum, the statute “criminalizes a failure to perceive a substantial risk, when the failure constitutes a gross deviation from the standard of care exercised by a reasonable person.” *Beattie v. State*, 216 Md. App. 667, 684 (2014). In *Beattie*, the Appellate Court explained Maryland’s “gross deviation” standard by comparing it with a similar Kansas statute that used the “material deviation” standard, stating: “a ‘material deviation’ from the standard of care require[s] ‘something more than ordinary or simple negligence yet something less than gross and wanton negligence.’” *Id.* at 683. The court’s analysis presents negligence as a spectrum—with simple negligence on one end, followed by criminal negligence (“a gross deviation from the standard of care”), and ending with gross negligence.

While there is little case law interpreting the criminal negligence statute, which was created only in 2011, the cases that exist have applied the gross deviation standard by factoring in speed, driving conditions, driver impairment, and the drivers’ decisions while operating their vehicles when evaluating substantial risk. For example, the Appellate Court of Maryland has upheld a conviction where a defendant “drove his 70-foot tractor trailer, in the dark, across three lanes of traffic on a highway where the speed limit was 65 miles per hour. Due to his location near the curve of the road, he could see only a distance of a quarter mile.” *Beattie*, 216 Md. App. at 684. *See also e.g., Dobrzynski v. State*, 223 Md. App. 771 (2015) (upholding a conviction of a

driver operating on medication and severely over-tired, who drove above the speed limit knowing that her child was unbuckled in the back seat).

Like the drivers in the above cases, the question at issue is whether the cumulative effect of Officer Yancy's conduct when operating his vehicle created a substantial risk of serious injury or death to a bystander. In *Beattie*, the cumulative effect of all of the driver's choices—such as choosing to cross multiple lanes of traffic, and choosing to do so in the dark with a limited field of view—were factors that the court considered in addition to his driving. *Beattie*, 216 Md. App. at 684. Accordingly, after taking the driving conditions into account, a factfinder could also consider Officer Yancy's overall decision to engage in the pursuit and his decisions during it.

Because the first part of the criminal negligence standard asks whether an officer “should have been aware” of the “substantial and unjustifiable” risks of death due to his conduct, then the presence of policies that warn an officer about potential risks, or the impressions and actions of peer and supervisory officers are particularly noteworthy here. BPD Policy 1503 states that BPD recognizes that “it is better to allow a suspect to temporarily escape apprehension than to jeopardize anyone's safety in a Vehicle Pursuit.” It also advises officers that intersections present a high risk of collisions and requires officers to assess the risk to public safety, the suspect, and/or any passengers in an eluding vehicle before beginning or continuing a pursuit. Policy 1503 requires officers to use their lights and sirens during a pursuit, and to abandon the pursuit if their emergency lights or siren become partially or completely inoperable. The policy also explicitly prohibits vehicle pursuits where the initial violation is a stolen vehicle, or where “the risk of a Vehicle Pursuit outweighs the need to stop the Eluding driver.” Further, based on body-worn camera footage and their statements to investigators, the other officers involved in the incident, peers and supervisors alike, were aware of the policy prohibitions. Both peer officers—Patoska and Djedovic—told investigators BPD policy and common practice requires them to let a stolen vehicle go if it flees. Both supervisors, Lt. Davis and Lt. Leitch, can be heard on body-worn camera footage ordering officers to abandon the pursuit, and both told investigators that they gave their orders due to department policy. Moreover, Lt. Leitch expressed concerns about the risk that pursuing officers might encourage Mr. Brunson to accelerate into an intersection and injure bystanders. Based on that information, a factfinder could conclude that Officer Yancy either was or should have been aware of those same risks and that his failure to act accordingly was evidence of a failure to perceive the risk. But a mere failure to perceive the risk is not sufficient to sustain a conviction under this statute; the failure to perceive the risk must have been a gross deviation from the standard of care exercised by other reasonable officers.

A factfinder's conclusion regarding whether Officer Yancy grossly deviated from the standard of care depends on how his actions could be viewed in relation to “a reasonable police officer similarly situated.” *Albrecht*, 97 Md. App. at 642. Accordingly, a factfinder could compare Officer Yancy's behavior with any or all of the four officers present during the incident. In particular, Officer Djedovic's behavior offers a useful comparison because: (1) he and Officer Yancy are peers, rather than in supervisory roles over each other; and (2) unlike Officer Patoska, Officer Djedovic was on scene with Officer Yancy when Mr. Brunson began driving away. For instance, when examining Officer Yancy's initial decision to engage in the pursuit, a factfinder could note that at first glance, Officer Djedovic and the other officers engaged in similar behavior. However, a factfinder could also note that upon arriving at Sinclair Ln., Officer Djedovic yielded to Lt. Leitch, allowing his supervisor to set the pace and distance of the pursuit,

in contrast with Officer Yancy, who pursued the Sonata at his own pace. As noted in the maps above, Officer Yancy's pace took him further along the path of the pursuit more quickly than the officers following Lt. Leitch; Officer Yancy was the only officer on N. Wolfe St. at the time of the crash. Additionally, when Lt. Leitch ordered officers to abandon the pursuit, Officer Djedovic made an almost immediate turn onto a side street, while Officer Yancy turned onto N. Wolfe St. and accelerated, only slowing after Lt. Davis repeated the order. But direct comparisons between officers are not the only way a factfinder could draw conclusions about Officer Yancy's level of negligence, or lack thereof; there are mitigating factors to consider as well. For example, there is no conclusive evidence regarding Officer Yancy's speed on Sinclair Ln., so the possibility exists that he was unable to safely stop before turning onto N. Wolfe St. With that in mind, and the fact that Lt. Letich's order to abandon the pursuit occurred within seconds of Officer Yancy's arrival at N. Wolfe St.—a one-way street that only allows drivers to turn left from Sinclair Ln.—a factfinder could also conclude that Officer Yancy did not have time to react to the order. Additionally, because Officer Yancy abandoned the pursuit after Lt. Davis's order and before the crash, a factfinder could also conclude that he did not hear Lt. Leitch's initial order. Ultimately, determinations about where Officer Yancy's actions fell on the negligence spectrum would rest on the shoulders of a factfinder. And, as mentioned previously, such a conclusion could only be drawn if a factfinder determined that Officer Yancy's actions were the legal and proximate cause of Mr. Fincher's death.

C. Reckless Driving & Negligent Driving

Transportation Article § 21-901.1(a) states: "A person is guilty of reckless driving if he drives a motor vehicle: (1) In wanton or willful disregard for the safety of persons or property; or (2) In a manner that indicates a wanton or willful disregard for the safety of persons or property."

Transportation Article § 21-901(b) states: "A person is guilty of negligent driving if he drives a motor vehicle in a careless or imprudent manner that endangers any property or the life or person of any individual."

Factors such as "[s]peed, erratic driving, disregard of the red light, [and] force of impact ... can be taken as evidence of wanton or reckless disregard . . ." *Taylor v. State*, 83 Md. App. 399, 404 (1990) (citing *Boyd v. State*, 22 Md. App. 539 (1974); *State v. Kramer*, 318 Md. 576, 590 (1990)).

These two statutes present a lower standard of proof than the homicide charges described above because:

the object of the disregard is different. The disregard required under [manslaughter by vehicle] must be "for human life." The disregard required under § 21-901.1(a) may be for less than that—for the "safety of persons or property." Moreover, § 21-901.1(a) does not require a finding that the defendant actually harbored a wanton or willful disregard but permits a conviction on a finding that his manner of driving "indicates" such a disregard.

Taylor, 83 Md. App. at 403.

While the standard here is lower than for the manslaughter charges discussed above, the factors being analyzed are similar. As discussed above, if the factfinder concluded that Officer Yancy's actions indicated a disregard for the lives or property of those around him, he could be culpable for either of these offenses.

D. Misconduct in Office

The common-law crime of misconduct in office requires the State prove: (1) that the defendant was a public officer; (2) that the defendant acted in their official capacity or took advantage of their public office; and (3) that the defendant corruptly did an unlawful act (malfeasance), corruptly failed to do an act required by the duties of their office (nonfeasance), or corruptly did a lawful act (misfeasance). MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and Nonfeasance), MPJI-Cr 4:23 (2d ed. 2021). “[T]he conduct must be a willful abuse of authority and not merely an error in judgment.” Comment to *id.* (citing Hyman Ginsberg and Isidore Ginsberg, *Criminal Law & Procedure in Maryland* 152 (1940)). The viability of a misconduct in office charge is dependent on the analysis of the risk and seriousness level of the conduct as discussed in the charges above.

E. Other Charges Considered

There are several other charges for which full analysis was not warranted given the facts of this incident. Those charges are addressed briefly here. The crimes of first-degree murder, intentional second-degree murder, and voluntary manslaughter each requires the State to prove the defendant had “either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result.” MPJI-Cr 4:17 Homicide—First Degree Premeditated Murder and Second Degree Specific Intent Murder, MPJI-Cr 4:17 (2d ed. 2021); *Cox v. State*, 311 Md. 326, 331 (1988) (voluntary manslaughter is “an intentional homicide”). In this case, there are no facts suggesting that Officer Yancy intended to kill or cause serious bodily harm to Mr. Fincher. Additionally, this report does not analyze the potential charge of reckless endangerment because the relevant subsection of that statute “does not apply to conduct involving ... the use of a motor vehicle.” Criminal Law § 3-204(c)(1)(i).

VI. Conclusion

This report has presented factual findings and legal analysis relevant to the fatal vehicle pursuit that occurred on February 8, 2023, in the city of Baltimore, Maryland. Please feel free to contact the IID if you would like us to supplement this report through any further investigation or analysis.

Appendices

Appendix A – Materials Reviewed

Body-Worn Camera Video (11 recordings, 2 certifications, and 1 transcription)
CAD Reports (1 item)
Civilian Witness Statements (9 recordings and 12 additional items)
Communications Audio (1 item with certification)
Decedent Documents (1 item)
Departmental Policies (7 items)
IA History and Training Records (7 items)
Lab Report (2 items)
Medical Records (23 items)
OAG Reports (17 items)
OCME (3 items and 7 photographs)
Officer Involved Statements (2 items)
Officer Witness Statements (5 recordings and 18 written)
Other Video (33 recordings, 1 player, and 1 certification)
Photographs (161 items)
Police Reports (28 items)
Subpoenas (12 items)

All materials reviewed have been shared with the Baltimore City State's Attorney's Office via a secure filesharing service.

Appendix B – Relevant Baltimore City Departmental Policies

See attached policies.

Appendix B
Relevant Baltimore City Departmental Policy



Policy 701

Subject

DEPARTMENTAL RADIO COMMUNICATIONS

Date Published

3 October 2016

Page

1 of 3

By Order of the Police Commissioner

POLICY

1. **Officer Safety.** Members of the Baltimore Police Department (BPD) shall adhere to the strict radio usage protocols contained in this Policy for purposes of officer safety.
2. **Transparency and Accountability.** Adherence to this Policy promotes accountability and transparency by establishing a record of BPD activity.
3. **Courteous and Professional.** All transmissions via police radio shall be courteous, professional, clear and concise. Radio communications are archived as public records, subject to disclosure through the discovery process and Maryland Public Information Act (MPIA) requests.

REQUIRED ACTION

Member

1. Comply with the verbal directives of the Communications Section dispatcher and your supervisor, unless re-directed by higher authority, and respond immediately to the scene of a dispatched call for police service.
2. All members equipped with a body-worn camera (BWC) must call "10-61" when activating and call "10-62" when de-activating the BWC (see Policy 824, *Body Worn Cameras*).
 - 2.1. The BWC shall be activated at the initiation of a call for service or other activity or encounter that is investigative or enforcement-related in nature, or
 - 2.2. During any encounter with the public that becomes confrontational.
 - 2.3. The BWC must be activated immediately upon receipt of or response to any in-progress call, or activity likely to require immediate enforcement action, prior to or upon arrival (e.g., in progress or just occurred armed robbery, armed person, aggravated assault, etc.).
 - 2.4. The BWC shall be activated upon arrival for routine, non-emergency calls for service (e.g., larceny from auto report, destruction of property report, Signal 30, etc.).

3. Upon arrival to any call for service, "On-View incident," or the scene of police activity, advise the Communications Section dispatcher of your call number and that you are "10-23."

NOTE: Notification of "10-23" must be made verbally via police radio. A verbal "10-23" acts as a notification to supervisors, the dispatcher and other responding units that an officer is on the scene.

4. In multiple officer units, all members shall individually call "10-23" and "10-61" (if equipped with a BWC) and investigate all calls for service, sharing equal responsibility.
5. When the required on-scene activity is complete, advise the dispatcher you are "10-8 and, if applicable, that the BWC is "10-62."
6. When placing yourself out of service, advise the dispatcher, provide your location, and call "10-7."
7. Upon leaving your post, even when remaining in-service, request/advise the dispatcher of the reason and your destination. However, when leaving your post to patrol another post or sector upon the direction of your supervisor, or dispatcher, you need not inform the dispatcher.

Supervisor

1. Monitor officers' communications via police radio.
2. Ensure officers call "10-23," "10-8," and "10-7."
3. Ensure officers notify the dispatcher when activating and de-activating their BWC by calling "10-61" and "10-62."

Communications Section Dispatcher

1. Control BPD radio traffic.
2. Dispatch calls for service based on the priority status of the call and exigency.
3. Remind members to call "10-23," "10-61," and "10-62."
4. Notify the member's supervisor when a member repeatedly or routinely fails to utilize proper "10 codes."

APPENDIX

- A. Official Baltimore Police Department Codes and Signals

ASSOCIATED POLICIES

Policy 824, *Body Worn Cameras*

COMMUNICATION OF POLICY

This Policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A**Official Baltimore Police Department Codes and Signals**

Form 37/123
Revised 9/16

OFFICIAL BALTIMORE POLICE DEPARTMENT CODES AND SIGNALS

WMPY	Replaces Headquarters or Radio	10-26	Request change to City Wide Channel	10-46	Permission granted
10-1	Transmission Check	10-27	Driver's license information	10-47	Negative
10-2	Signal is good	10-28	Vehicle registration information	10-48	Positive
10-3	Signal is poor	10-29	Check records for wanted	10-49	Hourly call – give 10-20
10-4	Acknowledgement	10-30	Person or vehicle is wanted, use caution	10-50	Helicopter landing status and 10-20
10-5	Failed to acknowledge	10-31	Crime in progress	10-50 Green	Green – Normal landing (not heliport)
10-6	Stand-by-busy, unless urgent	10-32	Sufficient Units on scene, return to posts	10-50 Amber	Amber – Precautionary landing (minor malfunction)
10-7	Out of Service, give 10-20	10-33	Emergency	10-50 Red	Red – Emergency landing (damage or injury likely)
10-8	In-service	10-34	Major civil disturbance in progress	10-61	BWC activated
10-9	Repeat	10-35	Major crime alert	10-62	BWC de-activated
10-11	Meet at ...	10-36	Standby to copy description	10-80	Positive match Terrorism related... Followed by CODE1, 2, 3, or 4.
10-12	Not available	10-37	Request tow truck	10-80 CODE 1	Subject is confirmed associate with terrorism with a valid outstanding arrest warrant, make arrest
Signal 13	Assist an officer- preceded by alert tone	10-38	Request ambulance (responding advise)	10-80 CODE 2	Subject is of an investigative interest with association with terrorism
10-14	Wagon run	10-39	Disabled departmental vehicle, give 10-20 and vehicle shop number	10-80 CODE 3	Individual may have possible ties with terrorism
10-15	Urgent Wagon run	10-40	Request Crime Laboratory	10-80 CODE 4	Identity provided by this subject may have possible ties with terrorism
10-16	Back up unit__	10-41	Request Impound Truck	10-90	Looting (for a second or third day, etc., use even numbers in series 92, 94, etc.)
10-17	Call unit assigned	10-42	Request Animal Shelter	10-91	Sniping and/or shooting (for a second or third day, etc., use odd numbers in series 93, 95, etc.)
10-18	Go into unit assigned to	10-43	Malfunctioning Traffic Signal:	Signal 30	Accident, no injury
10-19	Return to _____		A – Signal completely out	Signal 31	Accident, personal injury
10-20	Location		B – Red signal out	Signal 32	Accident, fatal
10-21	Call ___ (other than 10-17)		C – Signal sticking	Signal 34	Accident, Departmental, no injury
10-22	Disregard		D – Stop sign or Yield sign down or missing	Signal 35	Accident, Departmental, personal injury
10-23	Arrived at scene.	10-44	Request Permission to__	Signal 40	Assist Fire Dept. – preceded by alert tone
10-25	Stopping suspicious vehicle give 10-20, tag#, etc.	10-45	Permission denied		



Policy 1502

Subject	
HIGH VISIBILITY PATROL	
Date Published	Page
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By Order of the Police Commissioner

POLICY

1. **Crime Reduction.** The policy of the Baltimore Police Department (BPD) is to deploy officers using patrol tactics that promote high visibility and accessibility so as to combat crime and increase the effectiveness of police presence within the community.
2. **Community Engagement.** The BPD strives to maximize its visibility and alert citizens of police presence so that police patrol units are readily recognizable in the event immediate assistance is needed.

GENERAL

This policy communicates procedures members shall follow when operating patrol vehicles equipped with an emergency light bar.

REQUIRED ACTION

Member

Members operating a patrol unit equipped with an emergency light bar shall activate the cruise lights (solid, non-flashing lights) at all times. This includes while responding to routine calls for service, while on routine patrol, when stationary, etc. Members operating a patrol unit equipped with an emergency light bar without the cruise light feature are exempt from this requirement.

EXCEPTION: A very limited exception shall be granted when a stealthy response is needed to protect the safety of the member or others, and/or to apprehend a suspect. Immediately re-activate cruise lights when safe to do so and be prepared to explain to a supervisor why it was necessary to deactivate cruise lights in any given situation.

Supervisor

Ensure subordinates adhere to this policy at all times unless specific circumstances make this an unsafe measure or prevents approved covert operations.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.



Policy 1503

Subject	
EMERGENCY VEHICLE OPERATION AND PURSUIT POLICY	
Date Published	Page
24 November 2019	1 of 12

By Order of the Police Commissioner

POLICY

The purpose of this policy is to provide guidance on conducting safe emergency vehicle operations and pursuits. Members shall use sound judgement and discretion while upholding the sanctity of human life in all instances of emergency response and pursuit.

While members must at all times comply with the minimum legal requirements governing the use of force, they must also comply with even stricter standards set forth by Departmental Policy.

CORE PRINCIPLES

1. **Member and Public Safety.** Members shall operate all vehicles with the utmost care and caution, and will comply with all traffic regulations. While operating in Emergency Response Mode, members shall comply with Maryland State Law governing emergency vehicle operations. Members shall weigh the risks of driving in Emergency Response Mode against the nature of the emergency.
2. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
3. **Value and Worth of All Persons.** All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.
4. **Peaceful Resolutions.** Members shall avoid the Use of Force unless it is not possible to do so.
5. **De-Escalation.** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the Use of Force or with the lowest level of force possible (See Policy 1107, *De-Escalation*).
6. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
7. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member uses force.
8. **Use of Force: Reasonable, Necessary, and Proportional.** Members shall use only the force reasonable, necessary, and proportional to respond to the threat or resistance to effectively and

safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.

9. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the Use of Force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).
10. **Duty to Intervene.** Members shall intervene to prevent abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
11. **Duty to Provide Medical Assistance.** After any Use of Force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause positional asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.
12. **Accountability.** Members shall be held accountable for uses of force that violate law or policy.
13. **Sound Judgement and Discretion.** The BPD recognizes it is better to allow a suspect to temporarily escape apprehension than to jeopardize anyone's safety in a Vehicle Pursuit. No member shall be criticized or disciplined for a decision not to engage in a Vehicle Pursuit or to terminate an ongoing Vehicle Pursuit based on the risk involved, even in circumstances where this policy would permit the commencement or continuation of a pursuit.
14. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

DEFINITIONS

Emergency Response Mode – Driving with emergency lights and siren activated.

Eluding – An Eluding driver increases speed, takes evasive action, and/or refuses to stop despite a member's signaling to stop by hand, voice, emergency lights, and/or siren even after a reasonable amount of time to yield or stop has passed.

Primary Unit – The law enforcement vehicle driven by a member who initiates a pursuit, or any unit that assumes control of the pursuit as the lead vehicle (the first police vehicle immediately behind the eluding vehicle).

Secondary Unit – Any law enforcement vehicle which becomes involved as a backup to the Primary Unit and follows the Primary Unit at a safe distance.

Street Paralleling – Driving a law enforcement vehicle on a street parallel to a street on which a pursuit is occurring.

Terminate – To discontinue the pursuit of an eluding vehicle.

Trail – Following the path of the pursuit while obeying all traffic laws and without activating emergency lights or sirens. If the pursuit is at a slow rate of speed, the trailing vehicle will maintain sufficient distance from the pursuit vehicles so as to clearly indicate an absence of participation in the pursuit.

Vehicle Pursuit – When a member operating a law enforcement vehicle attempts to keep pace and/or to immediately apprehend one or more occupants of an eluding vehicle.

DIRECTIVES

Emergency Response Mode

1. Driving in Emergency Response Mode is only permitted in law enforcement vehicles equipped with emergency lights and siren.
2. Officers shall not drive in Emergency Response Mode when transporting civilians or prisoners.
3. Before operating a law enforcement vehicle in an Emergency Response Mode, members shall consider the following:
 - 3.1. The nature or seriousness of the offense or the call for service.
 - 3.2. Current road or environmental conditions.
 - 3.3. Familiarity with the route and destination.
 - 3.4. Pedestrian and vehicular density.
4. When responding to an emergency call for service, such as an in-progress incident with the potential for injury, or armed person calls, members are authorized but not required to respond in an Emergency Response Mode.
5. When responding to an assist an officer call (Signal 13) as either the primary or backup unit assigned by dispatch, members shall drive in Emergency Response Mode in such a manner as to minimize the risk of injury to members of the BPD and the public (See Policy 705, *Procedure for Assist an Officer Call*).
6. When operating in an Emergency Response Mode, in keeping with Maryland Code, Transportation Section 21-106, "Privileges for Drivers of Emergency Vehicles", members may:
 - 6.1. Exceed the speed limit, so long as members do not endanger life or property.
 - 6.2. Proceed through a red light or stop signal, a stop sign, or a yield sign, but only after slowing down as necessary for safety.
 - 6.3. Disregard regulations governing turning or movement in a specified direction.

Vehicle Pursuit Authorization

1. Members may pursue an eluding vehicle when:
 - 1.1. The vehicle contains a felony suspect and failure to immediately apprehend poses an immediate threat of death or serious bodily injury to the member or others; and
 - 1.2. Before the pursuit is initiated, there exists probable cause to believe the fleeing suspect committed a felony which resulted, or could have resulted, in death or serious bodily injury.
2. Factors that shall be considered, both individually and collectively, when deciding to initiate or continue a pursuit, include, but are not limited to:
 - 2.1. The safety of the public, including: the type of area, such as a school zone; time of day and lighting; weather, road conditions, and density of vehicular and pedestrian traffic; and the speed of the pursuit relative to these factors.
 - 2.2. The pursuing members' familiarity with the area of the pursuit, the quality of radio communications between the pursuing vehicles and dispatchers/supervisors, and the driving capabilities of the pursuing member(s) under the conditions of the pursuit.
 - 2.3. Whether or not the identity of the suspect has been verified.
 - 2.4. The performance capabilities of the vehicles used in the pursuit in relation to the speed and other conditions of the pursuit.
 - 2.5. Other persons in or on the eluding vehicle, such as passengers, suspects, and hostages.
 - 2.6. The availability of other resources, such as air support assistance.
 - 2.7. The likelihood of apprehension at a later time.
3. Upon notification that a pursuit has been initiated, supervisors shall at their discretion approve or disapprove the continuation of the pursuit, and may direct additional units to join the pursuit.

Vehicle Pursuit Prohibitions

Members are prohibited from initiating a Vehicle Pursuit when:

1. Transporting passengers (including arrestees) other than on-duty police officers.
2. The initial violation is a crime against property (including auto theft), misdemeanor, a traffic offense without imminent danger, or is a non-violent warrant.
3. The vehicle (marked or unmarked) is not equipped with lights and siren, or the lights and siren are malfunctioning.
4. The risk of a Vehicle Pursuit outweighs the need to stop the Eluding driver, including:

- 4.1. Underlying reason for pursuit.
 - 4.2. Traffic conditions (density of pedestrians and vehicles).
 - 4.3. Weather and road conditions.
 - 4.4. Speed and capabilities of the Eluding vehicle.
 - 4.5. Geographic considerations (e.g., direction of travel, location density, terrain).
5. Member has not completed Emergency Vehicle Operations course at Education and Training (E&T).

Vehicle Pursuit Considerations

1. The decision to use specific driving tactics requires the same assessment of safety factors that a member considers when determining whether to initiate and/or terminate a pursuit.
2. Members must space themselves from other involved vehicles to enable them to see and avoid hazards or react safely to unusual maneuvers by any vehicle involved in the pursuit.
3. Because intersections present a high risk of collisions, members shall exercise due caution and slow down, as necessary, when proceeding through intersections, especially controlled intersections.
4. Members shall not pursue a vehicle driving the wrong direction on a roadway. In the event the eluding vehicle drives in the wrong direction, members shall maintain visual contact with the eluding vehicle by paralleling the vehicle while driving on the correct side of the roadway.
5. Members shall not attempt to pass other pursuing vehicles unless requested to do so by the Primary Unit, and there is a clear understanding between all members involved that a member will be passing the other vehicles.

Primary Unit Responsibilities

1. The Primary Unit is responsible for the conduct of the pursuit unless he/she is unable to remain reasonably close to the eluding vehicle. The highest responsibility of the Primary Unit is the preservation of life and public safety.
2. At the earliest practical time when the member anticipates that a pursuit might be required, the member should activate his or her body-worn camera in compliance with Policy 824, *Body-Worn Cameras*.
3. The Primary Unit shall notify the dispatcher that a Vehicle Pursuit has been initiated, commencing with a request for priority radio traffic, and for the Aviation Unit to respond. As soon as practicable, the Primary Unit shall provide information including, but not limited to:
 - 3.1. Location, direction of travel, and estimated speed of the eluding vehicle.

- 3.2. Description of the eluding vehicle including the license plate number, if known.
 - 3.3. Reason for the pursuit.
 - 3.4. Use of firearms, threat of force, violence, injuries, hostages, or other safety hazards.
 - 3.5. Number, identity, and description of occupants in the eluding vehicle.
 - 3.6. Weather, road, and traffic conditions.
 - 3.7. Need for any additional resources or equipment.
 - 3.8. Identity of other law enforcement agencies involved in the pursuit.
4. Until relieved by a supervisor or a Secondary Unit, the Primary Unit shall be responsible for broadcasting the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the Primary Unit shall relinquish the responsibility of broadcasting the progress of the pursuit to a Secondary Unit or to Air Support to minimize distractions and allow the Primary Unit to concentrate foremost on safe pursuit tactics.

Secondary Unit Pursuit Responsibilities

1. Immediately notify the dispatcher of entry into the pursuit and continue pursuit at supervisor's discretion.
2. At the earliest practical time when the member anticipates that a pursuit might be required, the member should activate his or her body-worn camera in compliance with Policy 824, *Body-Worn Cameras*.
3. Use a different siren sound (e.g., wail or yelp) than the Primary Unit.
4. Remain a safe distance behind the Primary Unit, unless directed to assume the role of Primary Unit.
5. Assume broadcast responsibilities from the Primary Unit until the Aviation Unit assumes this responsibility.
6. Serve as backup to the Primary Unit once the eluding vehicle has been stopped.

Pursuit Trailing

1. In the event that the Primary Unit relinquishes control of the pursuit to another agency, the Primary Unit and/or any Secondary Units may, with the permission of a supervisor, trail the pursuit to the termination point in order to provide information and assistance for the arrest of the suspect and in reporting the incident.
2. While trailing, regardless of the jurisdiction, members must continue to follow this policy.

Pursuit Ending Tactics

1. The use of a departmental vehicle to deliberately strike another vehicle or to act as a roadblock is strictly limited to exigent circumstances and may only be used when:
 - 1.1. The Eluding vehicle is being operated in such a manner as to pose an imminent threat of death or serious bodily injury to members or others; and
 - 1.2. Insufficient time exists to resort to other alternatives.

NOTE: The use of non-departmental vehicles in Pursuit Ending Tactics is strictly prohibited.

2. At no time will a roadblock be established until:
 - 2.1. Authorized by the Shift Commander; and
 - 2.2. All pursuing police vehicles are made aware of the existence of the roadblock and its location, and have acknowledged this awareness via radio communications.

NOTE: Members may not remain inside vehicles acting as blocking vehicles.

3. Intentional vehicle-to-vehicle contact is a use of force that members must report as directed in Policy 725, *Use of Force Reporting, Review, and Assessment*.
4. The stationary placement of a BPD vehicle to protect an accident or crime scene shall not be considered a roadblock.

Terminating a Pursuit

1. When a supervisor directs the pursuit to be terminated, members shall immediately terminate the pursuit and advise the Communications Section dispatcher of their location.
2. Members may terminate a pursuit when the pursuing member believes that the danger to the member(s) or the public outweighs the necessity for immediate apprehension of the Eluding driver, even if not directed to terminate the pursuit.
3. Factors that shall be considered, both individually and collectively, when deciding to terminate a pursuit, include, but are not limited to:
 - 3.1. If there is a person(s) injured during the pursuit and there are no other personnel able to render immediate medical assistance.
 - 3.2. The distance between the pursuing vehicle and the eluding vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
 - 3.3. The eluding vehicle's location is no longer definitively known.
 - 3.4. The pursuing vehicle sustains damage or a mechanical failure that renders it unsafe to drive.

- 3.5. The pursuing vehicle's emergency lighting equipment or siren becomes partially or completely inoperable.
- 3.6. When the identity of the Eluding driver is known and it does not reasonably appear that the safety needs for immediate capture outweigh the risks associated with continuing the pursuit.
- 3.7. When pursuit requires that the member(s) drive in a manner which exceeds the performance capabilities of the pursuing vehicles or the member(s) involved in the pursuit.
4. When terminating a pursuit, Primary and Secondary Units will call out the location and last known direction of Eluding vehicle.
5. Primary and Secondary Units shall terminate the pursuit by:
 - 5.1. Calling out their location and mileage to dispatch,
 - 5.2. Turning off the vehicle's lights and sirens, and
 - 5.3. Immediately pulling over or taking the nearest right turn in order to safely pull over.

Use of Firearms

1. Members shall not fire any weapon from or at a moving vehicle, except:
 - 1.1. To counter an immediate threat of death or serious physical injury to the member or another person, by a person in the vehicle using means other than the vehicle.
 - 1.2. To counter a situation where the officer or another person is unavoidably in the path of the vehicle and cannot move to safety. Members shall not position themselves in the path of a moving vehicle where they have no option but to use deadly force/lethal force (See Policy 1115, *Use of Force*).

Air Support Assistance

1. Air support should be requested at the onset of the pursuit. Once the air support crew establishes visual contact with the eluding vehicle, air support should video record the pursuit and assume communication control over the pursuit.
2. The air support crew should coordinate the activities of resources on the ground, report on the progress of the pursuit, and provide members with details of upcoming traffic congestion, road hazards, or other pertinent information to assist in evaluating whether to continue the pursuit.
3. At any time, air support can recommend terminating the pursuit. If members on the ground are not within visual contact of the eluding vehicle, and the air support crew determines that it is unsafe to continue the pursuit, the air support crew shall recommend terminating the pursuit.

Inter-Jurisdictional Considerations

1. Due to communications limitations between local law enforcement agencies, a request for an outside agency's assistance requires the outside agency to assume responsibility for the pursuit once the pursuit enters a foreign jurisdiction.

NOTE: BPD will only assist outside jurisdictions with pursuits when they meet BPD pursuit criteria.

2. Members should not join a pursuit unless specifically requested to do so by the pursuing agency and with approval from a supervisor, except when a single vehicle from the initiating agency is in pursuit. Under this circumstance, a member may, with supervisor approval, immediately join the pursuit until sufficient vehicles from the initiating agency join the pursuit or until additional information is provided allowing withdrawal from the pursuit.
3. When a request is made to assist or take over a pursuit that has entered Baltimore City, the supervisor should consider all of the factors this policy requires for initiating a pursuit, including, but not limited to:
 - 3.1. The public's safety.
 - 3.2. The safety of members and officers from other jurisdictions.
 - 3.3. The seriousness of the offense and whether the suspect seriously injured or attempted to injure someone.
 - 3.4. The sufficiency of staffing to maintain the pursuit.
4. As soon as practicable, a supervisor or the Shift Commander should review a request for pursuit assistance from an outside agency. The Shift Commander or supervisor, after considering the above factors, may assist or decline to assist with the outside agency's pursuit.
5. In the event that the termination point of a pursuit from an outside agency is within the City, members shall provide appropriate assistance including, but not limited to, scene control, coordination and completion of supplemental reports, and any other assistance requested or needed.

Members Not Involved In the Pursuit

1. Members not involved in or assigned to the pursuit shall remain in their assigned areas, shall not parallel the pursuit route, and shall not become involved with the pursuit unless directed otherwise by a supervisor.
2. When authorized by a supervisor, uninvolved members may use police vehicles and emergency equipment along the pursuit path to keep intersections clear of vehicular and pedestrian traffic to protect the public. Those members shall account for the tactical positioning of their vehicle to avoid additional collisions and collateral damage from the pursuit.

Reporting Requirements

1. The Primary Unit who initiated the pursuit must complete an Incident Report detailing the facts providing probable cause for the pursuit.
2. All members and supervisors who participate in a pursuit shall tag and download body-worn camera data in accordance with Policy 824, *Body-Worn Cameras*. Members who did not activate their body-worn camera during the pursuit shall submit a supplemental report detailing their actions.
3. The Primary Unit must also document the facts that caused the member to believe the safety risks of the pursuit were outweighed by the risks that the Eluding driver might seriously injure someone if not immediately apprehended.

REQUIRED ACTION**Supervisor**

1. Ensure that members under their supervision maintain a valid state issued driver's license.

NOTE: Members are required to immediately notify the BPD if their license is suspended or revoked.

2. Manage control over all Vehicle Pursuits involving supervised members.
3. Closely monitor the emergency response driving of BPD personnel, and, when necessary, cancel or alter the conduct of the emergency response.
4. The first-line supervisor of the Primary Unit, or if unavailable, the nearest supervisor, shall:
 - 4.1. Engage in the pursuit, when appropriate. If engaging, supervisors shall activate their body-worn cameras.
 - 4.2. Exercise management control of the pursuit, including assigning additional units to join the pursuit.
 - 4.3. Ensure that no more than three law enforcement vehicles are pursuing the Eluding vehicle (not to include Street Paralleling drivers or intersection control drivers).
 - 4.4. Direct the pursuit to be terminated at any time.
 - 4.5. When driving on a highway, request other members to monitor exits available to the eluding vehicle.
 - 4.6. Determine if the pursuit violates this policy.
 - 4.7. Determine whether the danger of injury to members or others outweighs the danger that the Eluding driver will injure or kill someone if not immediately apprehended. In making

this determination, supervisors shall weigh the factors listed in **Vehicle Pursuit Authorization** for initiating or terminating a pursuit.

- 4.8. Ensure that assistance from air support, canine, or additional resources are requested when appropriate.
- 4.9. Ensure that the Shift Commander is notified of the pursuit as soon as practicable.
- 4.10. Control and manage BPD Members when a pursuit enters another jurisdiction.
- 4.11. Prepare a post-pursuit review and ensure all incident reports and other required documentation are completed and entered into BlueTeam.

NOTE: Supervisors will be held strictly accountable for maintaining command and control of a pursuit and for the emergency response conduct of their subordinates.

Shift Commander

1. Upon becoming aware that a pursuit has been initiated, monitor and continually assess the pursuit and ensure it is conducted within the requirements of this policy. The Shift Commander has the final responsibility for the coordination, control, and termination of a Vehicle Pursuit and shall be in overall command.
2. Approve/Disapprove requests by members or supervisors to establish a roadblock.
3. When the order to terminate a pursuit is given, notify the Primary Unit and any Secondary Units that they are prohibited from continuing to follow or remain behind the eluding vehicle.

Communications Section

1. If the pursuit is confined within City limits, radio communications will be conducted on the primary channel, unless instructed otherwise by a supervisor or dispatcher. If the pursuit is approaching a different jurisdiction, or once it leaves the City's jurisdiction, involved members should respond when dispatch directs them to switch radio communications to a tactical or emergency channel most accessible to participating agencies.
2. Upon notification that a pursuit has been initiated, the dispatcher shall:
 - 2.1. Clear the radio of non-emergency communications.
 - 2.2. Notify a supervisor of the pursuit.
 - 2.3. Coordinate pursuit communications of the involved members.
 - 2.4. Broadcast pursuit updates as well as other pertinent information, as necessary.
 - 2.5. Notify and coordinate with other involved and affected agencies.
 - 2.6. Notify the Shift Commander of the pursuit.

- 2.7. Ensure all members participating in the pursuit are logged into Computer Aided Dispatch (CAD).
3. Communications shall notify the Maryland State Police and/or other law enforcement agencies if it appears that the pursuit may enter another jurisdiction.

Education and Training (E&T) Section

1. E&T shall ensure that all members have successfully completed the Emergency Vehicle Operations course.
2. When necessary, E&T shall provide a remedial Emergency Vehicle Operations course for members.

ASSOCIATED POLICIES

Policy 319, *Duty to Intervene*
Policy 705, *Procedure for Assist an Officer Call*
Policy 725, *Use of Force Reporting, Review, and Assessment*
Policy 804, *First Amendment Protected Activities*
Policy 824, *Body-Worn Cameras*
Policy 1107, *De-Escalation*
Policy 1115, *Use of Force*

RESCISSION

Remove and destroy/recycle Policy 1503, *Emergency Vehicle Operation and Pursuit Policy*, dated 13 September 2017.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.