

Issued Date: JANUARY 6, 2025

From: Director Gino Betts, Jr. 
Office of Police Accountability

Case Number: 2023OPA-0043

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 - Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy
Finding: Sustained
 2. **Allegation #2:** 13.030 - Emergency Vehicle Operations, 13.030-POL-3. Officers Shall Modify Their Emergency Response When Appropriate (effective 03/01/2018)
Finding: Sustained
 3. **Allegation #3:** 5.001 - 13.030 - Emergency Vehicle Operations, 13.030-POL-5. Officers Are Responsible for the Safe Operation of Their Police Vehicle (effective 03/01/2018)
Finding: Sustained
 4. **Allegation #4:** 13.030 - Emergency Vehicle Operations, 13.030-POL-4. Officers Use Emergency Lights for Emergency Response (effective 03/01/2018)
Finding: Sustained
 5. **Allegation #5:** 16.230 - 5.001 - Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional
Finding: Allegation Removed
- **Proposed Discipline:** 270 Hours (30 Days) to Termination
 - **Imposed Discipline:** Termination

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Administrative Note on Proposed Findings:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human

resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

Executive Summary:

On January 23, 2023, Named Employee #1 (NE#1), driving a police vehicle in emergency response to a Priority 1 overdose call, struck and killed Community Member #1 (CM#1). Emergency response is “when an officer operated an authorized police vehicle in a manner that is substantially outside of a normal traffic pattern.” SPD Policy 13.030-POL-1 (effective 03/01/2018). "Priority 1," or “precedence 1” calls, are the highest priority, for which SPD aims to arrive within seven minutes. See 12.010POL-7. Preceding the collision, NE#1 drove up to 74 miles per hour (MPH), nearly three times the posted speed limit. NE#1’s emergency lights were activated throughout the emergency response. However, NE#1’s siren was not continuously activated. Instead, he chirped it intermittently. It was alleged that NE#1 violated policy by failing to safely operate his vehicle and use his siren when necessary to alert others about his emergency response driving. It was also alleged that NE#1 did not possess a valid Washington State driver’s license.

Administrative Note:

On November 4, 2024, the Seattle Office of Inspector General certified OPA’s investigation as thorough, timely, and objective. OPA paused its administrative investigation during the criminal and prosecutorial reviews. On February 21, 2024, the King County Prosecuting Attorney’s Office (KCPAO) declined to file felony criminal charges against NE#1. Likewise, the Seattle City Attorney’s Office (SCAO) declined misdemeanor criminal charges but proceeded with traffic infractions. Additionally, OPA and the Seattle Police Officers’ Guild (SPOG) agreed to toll the administrative investigation during the traffic proceedings. On October 1, 2024, OPA reopened this case to avoid further delay. On November 8, 2024, when OPA routed its initial DCM to SPD, OPA recommended a Not Sustained –Inconclusive finding for Allegation #1 (SPD Policy 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy). On November 13, 2024, OPA and SPD participated in a discipline meeting for this case. A robust conversation concerned whether the evidence and circumstances supported a sustained finding for Allegation #1. Upon further consideration, OPA concluded it did and amended its recommendation for the reasons covered in Named Employee #1 – Allegation #1 of the “Analysis and Conclusions” section.

Summary of Investigation:

During its investigation, OPA reviewed community complaints, computer-aided dispatch (CAD) call reports, SPD reports, Seattle Fire Department (SFD) run reports, the SPD Traffic Collision Investigation Squad (TCIS) Criminal Investigation report, the KCPAO declination memorandum, Washington State and Arizona license information, body-worn videos (BWV), in-car videos (ICV), email correspondence, training records, recorded 9-1-1 calls, and records from NE#1’s prior officer-involved collision. OPA interviewed NE#1, two witness employees, and a SCAO division chief. Assistant Chief #1 (AC#1) led SPD’s Patrol Operations Bureau on the incident date.

Training Officer #1 (TO#1) instructed SPD's emergency vehicle operations course (EVOC), which NE#1 attended in June 2020. Prosecutor #1 was SCAO's deputy criminal division chief.

A. Incident Summary

1. Overdose Call

On January 23, 2023, around 8:00 PM, a community member called 9-1-1, reporting that he thought he was experiencing a drug overdose. The call taker designated it a "Priority 1" call for service, the highest priority call. The initial disposition of the call was "OD1 OVERDOSE – DRUG RELATED CASUALTY."

Around 8:01 PM, the West Precinct dispatcher (West Dispatch) broadcast the call, provided an address, and noted that the caller was out front and "thinks they are overdosing on cocaine." The call taker also noted, "SFD SCREENING." At 8:02 PM, NE#1 radioed, "Did you need someone to head to that overdose in Queen sector?" West Dispatch responded affirmatively. SPD divides Seattle into sectors for patrol. Queen sector encompasses the greater Magnolia and Queen Anne neighborhoods. At the time of the call for service, NE#1 was at SPD's West Precinct, about 1.1 miles from the incident location. NE#1 replied, "I can check and advise if he's just saying that he is overdosing and is fire en route?" West Dispatch advised that SFD was en route and requested a backing officer for NE#1.

At 8:04 PM, NE#1 logged onto his mobile data terminal and started driving. NE#1 exited the West Precinct garage and turned right (northwest) onto 8th Avenue. NE#1 activated his vehicle's emergency lights, drove toward a multidirectional intersection at Lenora Street and Westlake Avenue, and then slowed and chirped his siren before proceeding through a red light. NE#1 continued northwest, slowed, and chirped his siren before proceeding through a red light at Blanchard Street. West Dispatch advised, "The person overdosing is calling it in himself. ... He wants to stay on the phone with us until officers arrive."

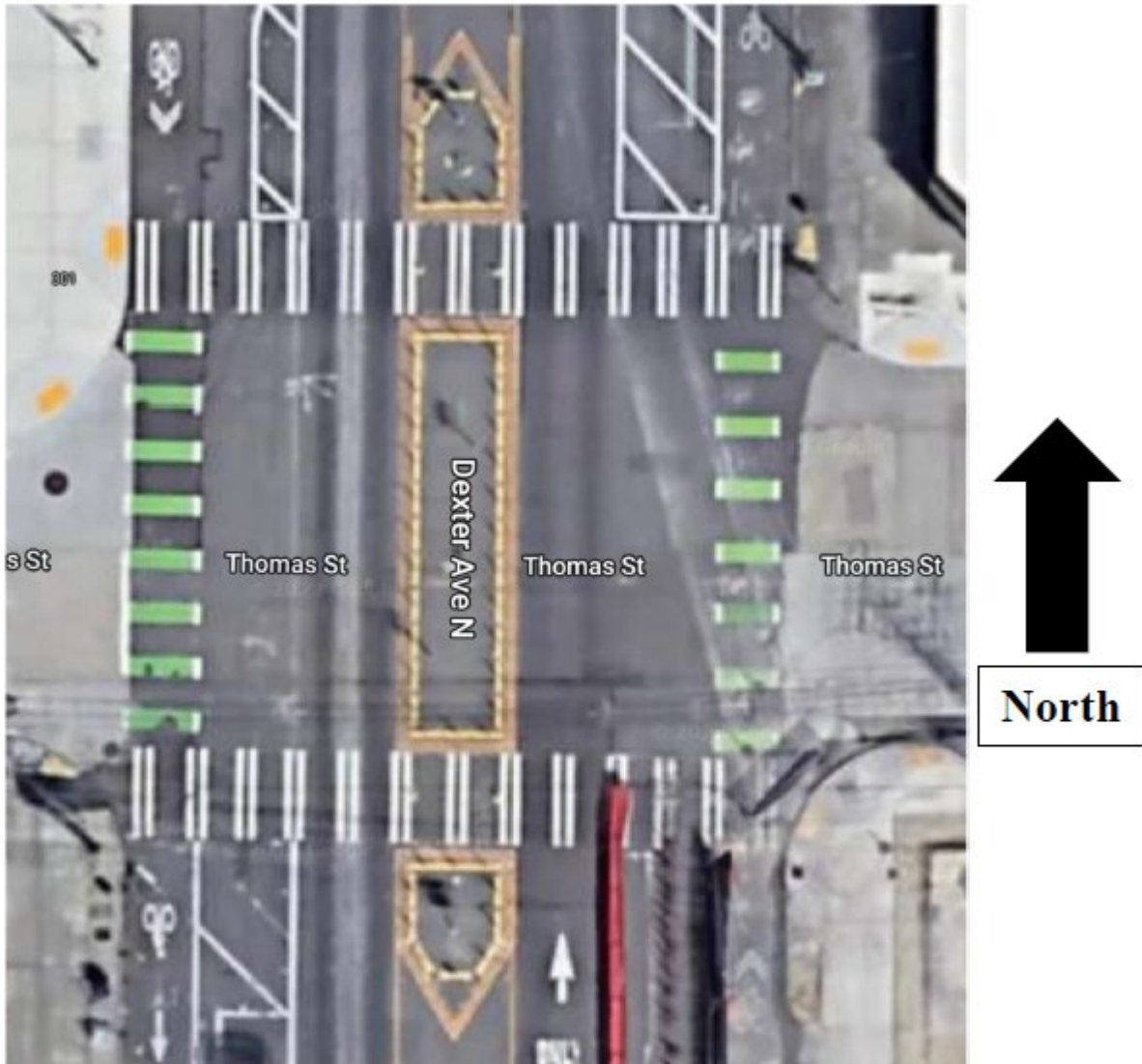
NE#1 continued northwest along 8th Avenue. NE#1 approached Bell Street, slowed for blinking red lights, and turned left (southwest) onto Bell Street. NE#1 acknowledged the update from West Dispatch. NE#1 proceeded southwest and slowly turned right (northwest) onto 7th Avenue. NE#1 accelerated down Dexter Avenue before chirping his siren, slowing to a stop, and proceeding through a red light at Denny Way.

2. Collision

NE#1 accelerated northbound on Dexter Avenue. Just before crossing John Street, NE#1 chirped his siren but maintained the speed as he crossed the uncontrolled intersection. NE#1's speed reached about 60 MPH. NE#1 continued accelerating, reaching 74 MPH, as he approached Thomas Street.

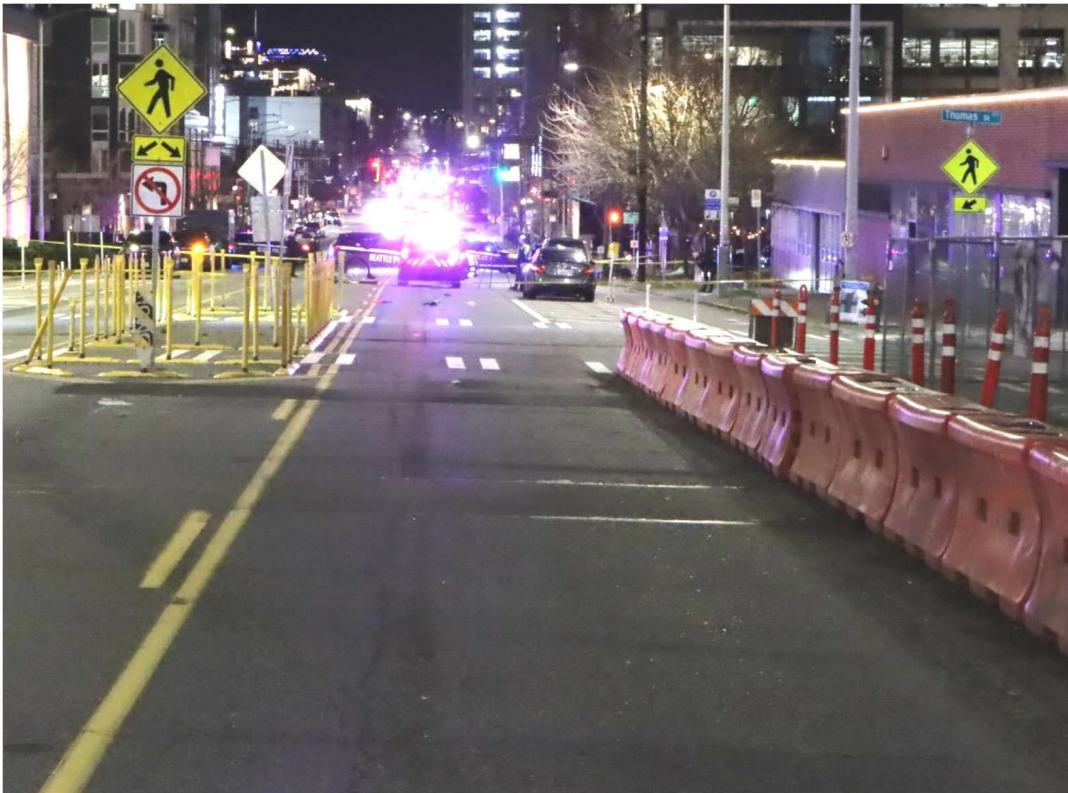
The weather conditions were dark and partially overcast. The temperature was about 42 degrees Fahrenheit, and the roads were dry. Dexter Avenue was an arterial street for northbound and southbound traffic, with a speed limit of 25 MPH. It had one vehicle lane in each direction, divided by a turning lane. The turning lane at the Thomas Street intersection had a pedestrian island with

bright yellow pedestrian crossing signs posted. Outside both vehicle lanes were parking lanes, bicycle lanes, and a sidewalk. Near the Thomas Street intersection, construction barriers and fencing lined the east side of Dexter Avenue (depicted below).

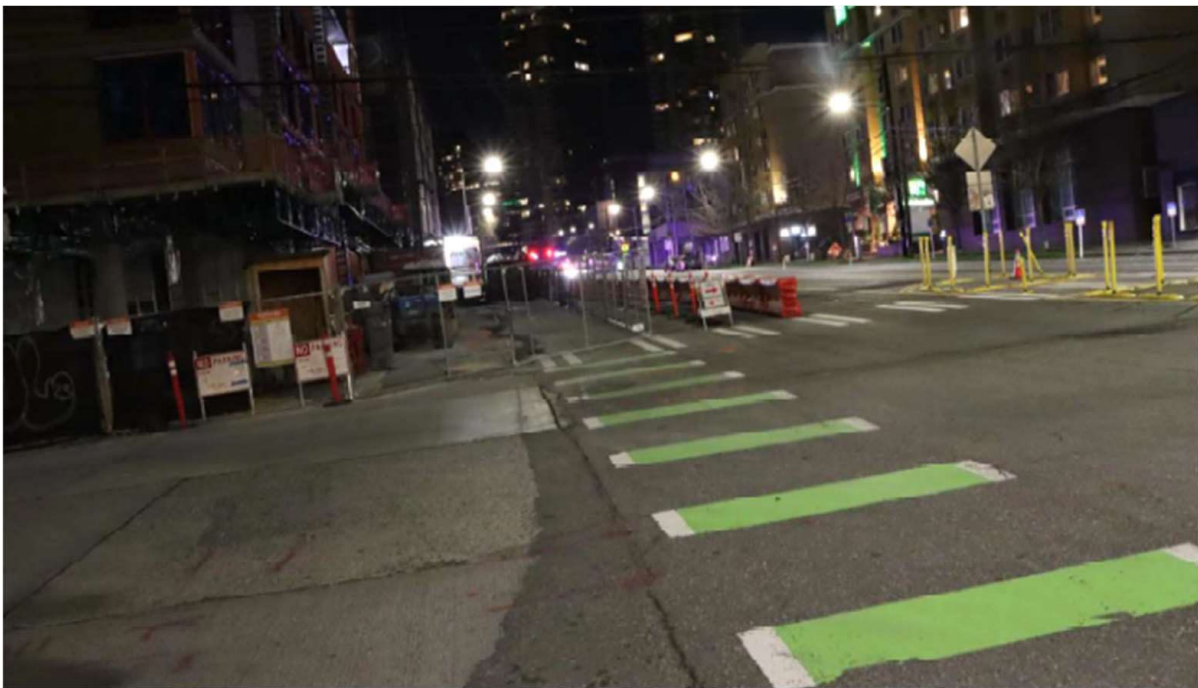


Overhead view of the intersection.

A row of dark orange construction barriers is in the southeast quadrant.

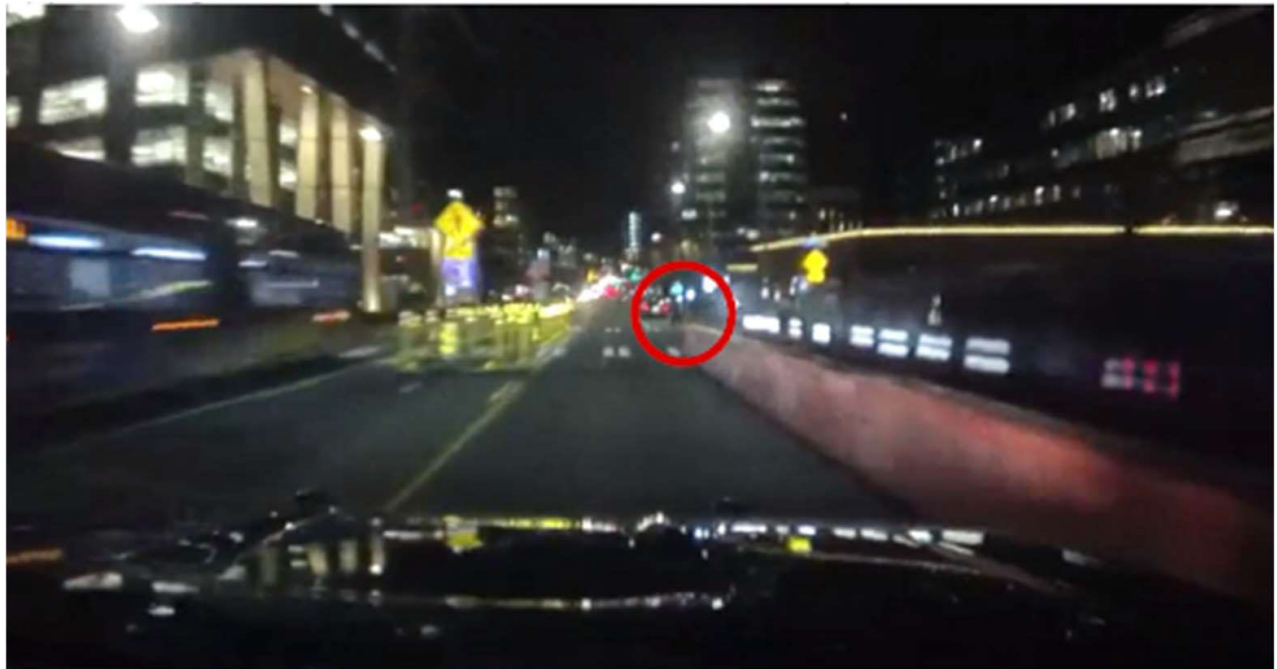


*Northbound view on Dexter Avenue approaching Thomas Street.
The row of construction barriers and fencing are on the right.*



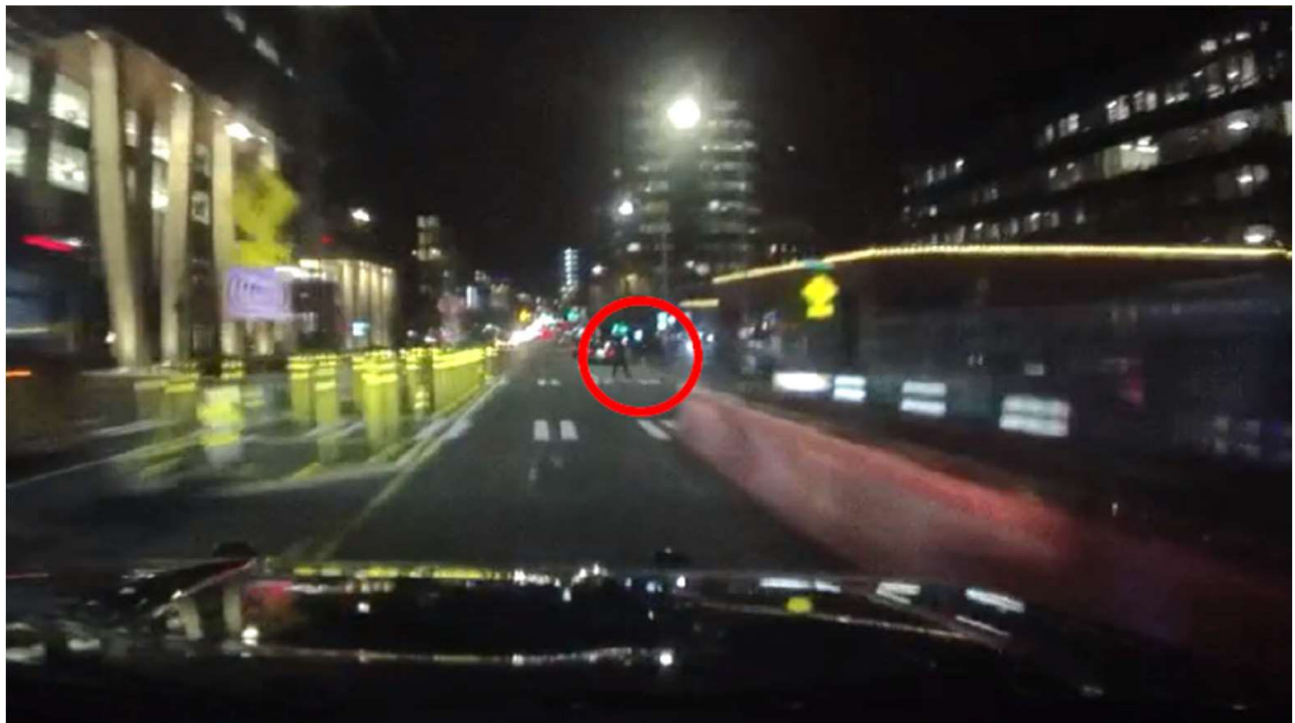
Southbound view along Dexter Avenue from the northeast corner of Thomas Street.

As NE#1 approached the intersection of Dexter Avenue and Thomas Street, NE#1's ICV depicted CM#1 entering the crosswalk from the east side of Dexter Avenue.

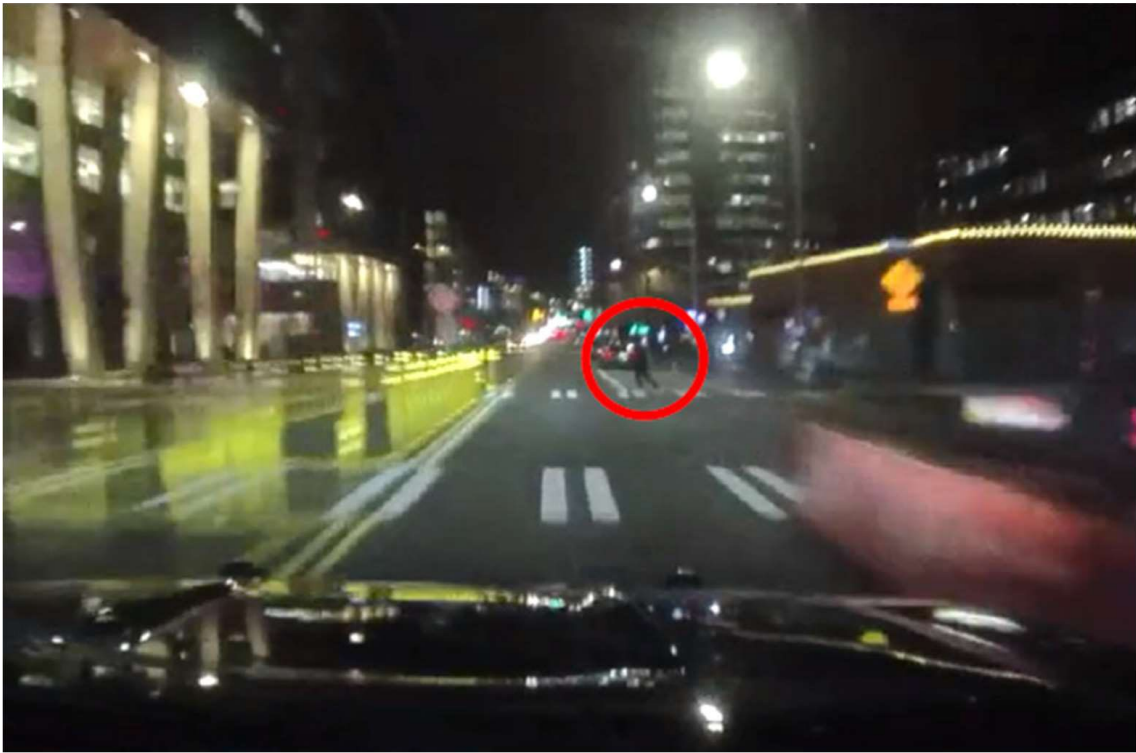


Northbound view from NE#1's ICV. CM#1 is circled in red. Metrobus to the left.

CM#1 started taking longer strides, leaned forward, and moved faster through the crosswalk.



NE#1 activated his siren for the first time since the Dexter Avenue and John Street intersection.



CM#1 continued through the crosswalk, entering the vehicle travel lane.



Immediately before impact, ICV showed CM#1 wearing a black jacket, black pants, a tan backpack, and white shoes. Her jacket hood appeared to cover her head.



NE#1's vehicle was traveling around 63 MPH when it struck CM#1. The impact speed was estimated from reviewing NE#1's BWV, which displayed NE#1's speed gauge at the time of the impact. Although the image was blurred—appearing to display either 63 MPH or 68 MPH—the TCIS detective compared the revolutions per minute (RPM) gauge to a different moment when NE#1 drove at 68 MPH. The TCIS detective concluded that NE#1's vehicle traveled about 63 MPH at the time of impact.



CM#1's body hit the hood of NE#1's vehicle and flew about 138 feet northwest, landing in the center turning lane.

3. Aftermath of the Collision

After the collision, NE#1 stopped his vehicle near CM#1. NE#1 requested a supervisor and SFD for a struck pedestrian. NE#1—a certified emergency medical technician (EMT)—exited his vehicle, checked CM#1, and administered cardiopulmonary resuscitation (CPR). Less than three minutes later, other officers arrived and took over treating CM#1. An on-scene sergeant asked NE#1 whether he was alright. NE#1 responded, "No, I'm not alright." NE#1 said, "Lights were on. I was chirping the siren as I was ..." NE#1 continued, "She was in the crosswalk. She saw me. She started running (inaudible) crosswalk. Slammed on my brakes. Instead of staying back where she should before crossing, she just zips." NE#1 choked up and started crying.

NE#1 was escorted to a patrol vehicle and sat with another officer. The other officer told NE#1 he imagined the process would be the same as for officer-involved shootings. NE#1 responded, "That's not what I'm worried about." The other officer asked NE#1 whether he needed anything. NE#1 replied, "A time machine."

SFD personnel arrived and medically treated CM#1. SFD personnel noted that CM#1 did not have a pulse and was unconscious. SFD personnel transported CM#1 to Harborview Medical Center. CM#1 arrived in critical condition and was later pronounced deceased.

The King County Medical Examiner's Office determined that CM#1 died from injuries sustained from the collision.

B. Community Complaints

OPA received multiple community member complaints concerning this incident, which was widely covered in the media. Many of the complainants referenced NE#1 driving about 50 MPH over the speed limit, causing the collision and killing a pedestrian. Other community members confused NE#1 with another officer, whose comments about the collision were also the subject of widespread media coverage. See 2023OPA-0336. Two community member complaints are below:

- He was not traveling at a speed where if there was a pedestrian suddenly appearing in front of him at that crosswalk, he would have time to stop. He did not ANTICIPATE a pedestrian being present; a fatal error in judgment. The collision was preventable and his fault.... I locate the vehicle by listening for the siren. If [NE#1] had his siren on continuously, maybe [CM#1] would have looked up sooner before stepping into the crosswalk. We will never know. ----- I believe in his report, the SPD officer involved asked, "Why did she zip across the street?" Well, she was probably running for her life. Even if she appears suddenly in the crosswalk, the excessive freeway speed of the SDP vehicle places the fault on the driver.
- I am alleging [a] violation of law policy violation. I am alleging the cop was traveling well above [the] posted speed limit [at] a level which would constitute criminal recklessness. I am alleging the cop did NOT have hazard and sirens activated while they were traveling above the speed limit at a threshold that would meet criminal reckless driving and, therefore, would constitute vehicular manslaughter, a crime.

C. Traffic Collision Investigation Squad Investigation

SPD's Traffic Collision Investigation Squad (TCIS) conducted a criminal investigation.

1. Evidence Reviewed

The assigned detective (TCIS Detective) and TCIS team went to the incident location, collected evidence, took photographs and measurements, located and reviewed department and other videos, identified and interviewed witnesses, conducted calculations, and reached conclusions.

Among the evidence collected, the TCIS Detective found two Apple AirPods Pros, one with a missing rubber insert. The rubber insert was also recovered. The TCIS Detective concluded that CM#1 "possibly had Apple AirPods Pros inserted in her ears at the time of the collision," citing the locations and distances where the AirPods were found. The TCIS Detective noted that the

AirPods rubber tips were “pulled outwards ... in a manner not consistent with someone casually pulling them out.” He also noted that they did not recover a storage case for the AirPods and that their make and model had noise-canceling and noise-enhancing features. However, he could not determine whether either feature was activated during the collision.



Left to Right: Left Airpod without tip, Right Airpod with tip, and Airpod tip.

The TCIS Detective requested a drug recognition expert (DRE#1) to evaluate NE#1 for impairment. The TCIS Detective noted that “it was TCIS protocol to have drivers evaluated in serious injury or fatality collisions.” DRE#1 evaluated NE#1 at the West Precinct. DRE#1’s report noted that the TCIS Detective advised him that NE#1 showed no signs of impairment. DRE#1 wrote that NE#1 voluntarily underwent a DRE assessment. DRE#1 opined that NE#1 was unimpaired. After the DRE assessment, DRE#1 left the West Precinct. While driving, DRE#1’s BWV inadvertently recorded his phone conversation. That recording was widely reported and the subject of 2023OPA-0336. OPA received multiple community complaints that incorrectly attributed these comments to NE#1.

The TCIS Detective noted that, immediately before impact, NE#1’s steering “input behavior” changed. The TCIS Detective wrote, “[NE#1] appeared to quickly turn the steering wheel, though slightly, as a collision avoidance tactic. The inputs in steering did not appear to alter the direction of the vehicle drastically.” The TCIS Detective also noted that the anti-lock braking system was pulsating after the collision, indicating heavy braking.

The TCIS Detective obtained a private security video depicting the brake lights of NE#1’s vehicle activating shortly before the collision.



A still from the private security video. NE#1's right brake light is illuminated at the top, right of center.



NE#1's rear brake lights are captured at the top, left of center.

The TCIS Detective also documented that NE#1's emergency lights possibly reflected off material along Dexter Avenue as NE#1 approached Thomas Street, possibly obstructing NE#1's view. He also noted an approaching metrobus with illuminated headlights may have further impacted NE#1's view before the collision.



2. Interviews

The TCIS Detective identified three independent eyewitnesses to the collision.

Eyewitness #1 said he was riding his bicycle southbound on the west side of Dexter Avenue about 20 meters north of Thomas Street when he saw and heard NE#1's vehicle approaching from the south, traveling northbound. Eyewitness #1 said he saw the vehicle's emergency lights and heard the siren but could not remember whether the siren was continuous or intermittent. Eyewitness #1 said he saw CM#1 crossing Dexter Avenue about five to 10 meters outside and to the north of the crosswalk. Eyewitness #1 said CM#1 appeared unaware of NE#1's vehicle and stepped in front of it.

Eyewitness #2 stated he was crossing Dexter Avenue westbound at Republican Street. Republican Street is two blocks north of Thomas Street. Eyewitness #2 said he saw the police vehicle with lights activated approaching from two blocks away. Eyewitness #2 believed he heard a siren but was unsure if it was continuous or intermittent. Eyewitness #2 said he heard what sounded like a car striking a curb. Eyewitness #2 stated he walked toward the collision and saw NE#1 performing CPR.

Eyewitness #3 stated she was walking behind CM#1 as they approached the Dexter Avenue and Thomas Street intersection. Eyewitness #3 said that she and CM#1 moved from the south side of Thomas Street to the north side due to the construction barriers. Eyewitness #3 stated she heard the siren and thought CM#1 heard it too. Eyewitness #3 did not notice whether CM#1 paused or stopped before entering the crosswalk. Eyewitness #3 said she saw CM#1 begin to run,

“presumably to exit the roadway as they heard a siren approaching.” Eyewitness #3 stated she heard a loud “thump” and saw the police vehicle come to a stop. She estimated she was on Thomas Street, less than half a block east of Dexter Avenue when the collision occurred. Eyewitness #3 stated, “I just saw [CM#1] start to run, and then I heard the thump. I think it all happened very fast. I don’t know that either party had much time to react.” Eyewitness #3 described hearing the siren but said it started just before the collision. Eyewitness #3 distinctly remembered, “Siren, followed by accident.” Describing the moments before the collision, Eyewitness #3 stated, “I heard the siren. I observed. And I ... I believe the pedestrian likely also heard the siren because. ... I saw her, like, start to move faster as though, like, I need to get out of the street; there’s a siren coming. Um, and then I heard a loud thud. Um, which I assume would have been the car colliding with her.”

3. Conclusions

The TCIS Detective made several observations and conclusions. The TCIS Detective proposed a few theories based on measurements, observations, and calculations. One theory was that had NE#1’s vehicle been in the same position when CM#1 started running and had CM#1 continued running at the same pace, NE#1 would have had to be traveling at 39.5 MPH for CM#1 to have safely clear the crosswalk. A second theory was that had NE#1 been traveling at 50 MPH or less as he approached the intersection and encountered CM#1, and if NE#1 and CM#1 had responded in the same manner, the collision would not have occurred. The TCIS Detective determined that more likely than not, CM#1 could not accurately estimate NE#1’s vehicle speed until it got closer to the intersection. He wrote that when CM#1 realized how fast the vehicle was moving, she had “little time to assess her options to respond to the threat.” The TCIS Detective determined that NE#1’s speed as he approached the intersection was the proximate cause of the collision:

[NE#1] accelerated to 74 MPH in a 25 MPH zone while headed to an emergency call. [CM#1] entered the crosswalk and had the right of way when the Ford was about 475 feet to the south of the intersection. The speed at which [NE#1] was traveling did not allow [CM#1] or him sufficient time to detect, address, and avoid a hazard that presented itself.

D. King County Prosecuting Attorney’s Office Review

The TCIS Detective referred his investigation to the KCPAO for criminal charge consideration but made no recommendation concerning whether charges were warranted.

1. Declination Memorandum

KCPAO reviewed the case for potential charges under two sections of vehicular homicide: (1) driving recklessly and (2) driving with disregard for the safety of others. RCW 46.61.522(1)(a). RCW 46.61.522(1)(c). KCPAO noted that the driving “code” does not exempt officers from liability when the officer’s driving endangers life or property but specified that Washington State law requires a higher showing of culpability for criminal charges. Ultimately, KCPAO declined to pursue felony charges against NE#1. KCPAO cited insufficient evidence to prove the requisite mental state for either crime, even though the mental state for reckless manner vehicular

homicide was easier to prove than that for simple reckless driving. KCPAO also noted that NE#1 likely had a viable “superseding intervening cause” defense against felony charges based on “the pedestrian’s choice to run across the street when she could have stayed still and not been struck.”

KCPAO summarized:

After a full and thorough review of all available evidence and applicable law by senior deputy prosecuting attorneys within the KCPAO and independent experts specifically retained to complete an analysis of the collision events, the KCPAO has determined that it cannot file felony charges against Seattle Police Department (SPD) Officer [NE#1] ... because there is insufficient evidence to prove felony charges beyond a reasonable doubt.

2. The Accredited Collision Examination Specialists, Inc., Report

KCPAO sent TCIS’ investigation to a third-party investigative entity, The Accredited Collision Examination Specialists, Inc. (ACES), for review. ACES conducted an independent analysis and evaluation of the collision. ACES verified the pertinent calculations, times, and measurements and concluded that the TCIS Detective’s investigation was “thorough, detailed, and transparent.”

The ACES report broadly validated the TCIS Detective’s conclusions but noted differing opinions. For example, ACES concluded that NE#1’s vehicle likely traveled between 72 and 73.6 MPH preceding the collision and 59.4 to 61.4 MPH at the time of impact.

The ACES report also concluded, by a preponderance of the evidence:

- The patrol car was identifiable to [CM#1] prior to [CM#1] entering the northbound lane. [CM#1] had the time and distance to stop walking prior to entering the northbound lane. There was insufficient information to confirm or refute whether [CM#1] had AirPods in her ears.
- Once [CM#1] moved into the northbound lane and continued to cross the road, the collision was unavoidable with the patrol car travelling [sic] between 72 MPH to 73.6 MPH.
- [CM#1] had the right of way in the crosswalk. The patrol car was about 475 feet to the south when she was initially crossing, and it would have been difficult for her to assess the speed and acceleration of the approaching patrol car.
- [NE#1] is the proximate cause of the collision. He had accelerated to about 74 MPH in a 25 MPH zone while responding to an emergency call. The high speed and narrowed lane of travel did not provide for a reasonable escape route or the possibility of reacting and avoiding the hazard presented by [CM#1].

E. Seattle City Attorney’s Office Case

After KCPAO declined felony charges, the case was returned to SPD, which referred it to SCAO for consideration of misdemeanor charges and traffic infractions.

1. Case Status

SCAO cited NE#1 under Seattle Municipal Code (SMC) 11.58.005(C) (Operating motor vehicle in a negligent manner/vulnerable user), a non-criminal, civil traffic infraction. Id. “A person commits negligent driving in the second degree with a vulnerable user victim if, under circumstances not constituting negligent driving in the first degree, he or she operates a vehicle, as defined in Section 11.14.710, in a manner that is both negligent and endangers or is likely to endanger any person or property, and he or she proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of a public way.” SMC 11.58.005(C)(1). The civil proceedings are ongoing.

2. Prosecutor #1

OPA interviewed Prosecutor #1, SCAO’s Criminal Division’s deputy chief.

Prosecutor #1 said SCAO reviewed the case for criminal charges and infractions. SCAO prosecutes misdemeanor and gross misdemeanor crimes. It also represents the City of Seattle in contested infractions. SCAO does not prosecute felonies. See 2023 Annual Report, Seattle City Attorney’s Office (March 2023), available at www.seattle.gov/documents/Departments/CityAttorney/Reports/CAO2023Report.pdf.

Prosecutor #1 said SCAO considered charging NE#1 with misdemeanor reckless driving. See SMC 11.56.120 (Reckless driving); RCW 46.61.500 (Reckless Driving—Penalty). However, SCAO decided against it for reasons consistent with KCPAO’s decision not to charge vehicular homicide. Specifically, Prosecutor #1 noted—as did the KCPAO declination memorandum—that the culpable mental state for misdemeanor reckless driving (willful or wanton disregard for the safety of persons or property) was more challenging to prove than that for reckless manner vehicular homicide. Prosecutor #1 insisted that SCAO proceed with the most appropriate charge under the circumstances, negligent driving in the second degree (resulting in death). He also emphasized that because it was a civil infraction, it had to be proven only by a preponderance of the evidence rather than a higher criminal standard.

Prosecutor #1 told OPA that even establishing probable cause for a criminal charge was unlikely due to the mens rea element.

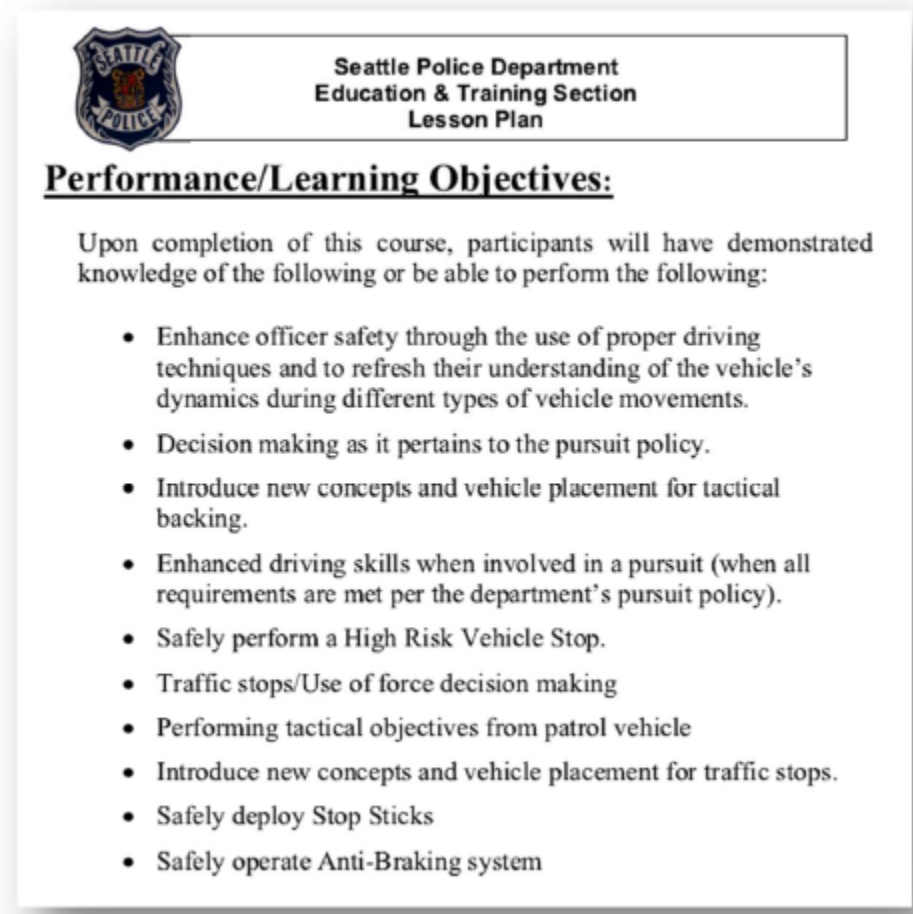
Prosecutor #1 believed that NE#1 violated his standard of care due to NE#1’s speed, the narrow street, construction to the right of NE#1’s direction of travel, darkness, and the nature of the city street.

F. Training

OPA reviewed NE#1’s training and SPD’s expectations for emergency response driving. OPA collected training materials and interviewed TO#1, who instructed NE#1’s emergency vehicle operations course (EVOC) training in June 2020. OPA also interviewed AC#1, the assistant chief of patrol operations when the incident occurred.

1. Training Documents

OPA reviewed NE#1's training transcript. Before January 2023, the only EVOC training listed was SPD's "Post BLEA" EVOC course, offered on June 30, 2020. "Post BLEA" is SPD-specific training that new SPD officers attend after completing the Washington State Basic Law Enforcement Academy (BLEA) before field training. OPA reviewed the training's lesson plan and found nothing explicitly covering the RCW or SPD's emergency vehicle operations policy. The lesson listed the following "Performance/Learning Objectives:"



The image shows a document header for the Seattle Police Department Education & Training Section Lesson Plan. It features the Seattle Police Department logo on the left and the text "Seattle Police Department Education & Training Section Lesson Plan" on the right. Below the header, the section is titled "Performance/Learning Objectives:" and lists 11 bullet points detailing training goals for emergency vehicle operations.

**Seattle Police Department
Education & Training Section
Lesson Plan**

Performance/Learning Objectives:

Upon completion of this course, participants will have demonstrated knowledge of the following or be able to perform the following:

- Enhance officer safety through the use of proper driving techniques and to refresh their understanding of the vehicle's dynamics during different types of vehicle movements.
- Decision making as it pertains to the pursuit policy.
- Introduce new concepts and vehicle placement for tactical backing.
- Enhanced driving skills when involved in a pursuit (when all requirements are met per the department's pursuit policy).
- Safely perform a High Risk Vehicle Stop.
- Traffic stops/Use of force decision making
- Performing tactical objectives from patrol vehicle
- Introduce new concepts and vehicle placement for traffic stops.
- Safely deploy Stop Sticks
- Safely operate Anti-Braking system

2. Training Officer

#1 TO#1 was the lead tactics instructor for pre-BLEA and post-BLEA students. He has occupied this role since 2016 and was responsible for EVOC training when NE#1 attended post-BLEA EVOC training in June 2020.

TO#1 noted that during the COVID-19 pandemic, the training program did not offer field EVOC training. Instead, they went over SPD policies, as they existed at the time, in a classroom setting. SPD Policy 13.030 – Emergency Vehicle Operations has an "Original Effective Date" of March 1, 2018, and a "Revised Effective Date" of October 15, 2024. The policy in effect in both June 2020 and January 2023 was the March 1, 2018, version. TO#1 did not recall covering the RCW. TO#1 recalled using slides for the training but no training videos.

Concerning an officer's obligation to modify their response when the totality of circumstances indicated the risks outweigh the needs (SPD Policy 13.030-POL-3), TO#1 said he stressed the mantra "drive to arrive." He elaborated, "Make sure you're driving to get there to the scene because you're not doing anybody good, any good if you don't get there." TO#1 said he covered the importance of assessing weather, road conditions, and traffic. He said he discussed driving to "see what's coming up and deal with anything that comes up, as far as processing it and dealing with it." TO#1 noted that drivers have varying capabilities.

Concerning an officer's obligation to drive with due regard for all persons (SPD Policy 13.030-POL-5), TO#1 said he instructed officers to "make sure they're considering or taking that into consideration when they're making their decisions on how they're driving or how fast they're going."

Concerning an officer's obligation to use an audible signal when necessary (SPD Policy 13.030-POL-4), TO#1 said he emphasized using lights and sirens during emergency driving.

Finally, regarding the department's expectations for emergency response driving, TO#1 explained:

[I] believe back then, I would talk about, like, when I got hired, the chief I got hired by was a guy named Chief Fitzsimons, and he was big on driving, so he stressed really "no accidents." And I just would tell him, kind of my interview process with him, and how he was really big on, if you had a lot of accidents back then you were not going to get hired. So, stress driving [in] a way that you're not going to get in an accident.

3. Assistant Chief #1

OPA interviewed AC#1 about SPD's EVOC policy, expectations, and training. AC#1 was the assistant chief of the Patrol Operations Bureau on the incident date. AC#1 said that he oversaw SPD's precincts, bureau goals, patrol response, and other issues involving patrol in that role. AC#1 noted that staff reductions in 2020 impacted some training, including EVOC training.

AC#1 discussed SPD policies concerning emergency response driving, noting, "I've always articulated, when I met with new officers, you know, how the two biggest risk factors they have are, number one, the firearm, and number two, their vehicle." AC#1 discussed evaluating the level of incident priority, whether there was a life safety issue, and modulating a response based on the incident's significance. AC#1 recalled discussing these expectations with officers through informal conversations, formal counseling, disciplinary actions, and training.

AC#1 emphasized that officers have discretion for modulating emergency response driving but that "No matter what the emergency is, you're no good if you don't get there." AC#1 described "global" considerations, such as the nature of the call and weighing the risk of emergency driving. AC#1 said, "If we are able to provide some type of immediate life-saving intervention, then it probably certainly warrants a priority response by the police."

AC#1 discussed the policy requirement to drive with due regard for all persons, describing a need to mitigate the risk to the officer and others to ensure a safe arrival at the scene. AC#1 said,

“They have to be super mindful of that ... you’re driving safely enough based on your environment, your surroundings, and you can arrive there safely.” AC#1 discussed other environmental factors, such as time of day, weather, road conditions, and the nature of the area in the city, such as whether the road is an arterial, a side street, or a populated area.

AC#1 also discussed how response might vary for a low-priority call (priority 3) versus a high-priority call (priority 1):

Our department prioritizes one, two, and three, but we don’t tell you how to respond to those, right? We leave it to the [officer’s discretion] based on following department policy [regarding] emergency vehicle operations. Other departments are more prescribed. It’s like, “We’re sending you this call, and this is the way that you’re going to respond to that.” So, we leave it, again, [to] the officer’s discretion and to be in compliance with your training and department policy on how you drive the vehicle.

AC#1 said the presence of construction barriers in this case was a significant environmental factor, as were the crosswalks. He described “always” considering the “what ifs.” AC#1 elaborated, “So what if it’s a side street? Is something going to pull out, or [is] something going to step out in front of you? Or why is the construction barrier there?”

AC#1 declined to opine on whether driving around 74 MPH in this area was safe. Instead, AC#1 stated it would largely depend on the officer’s ability to articulate the need to drive significantly over the speed limit. However, AC#1 noted that, in this case, NE#1’s speed:

number one led to a tragedy, and number two made it so you couldn’t even arrive at the event that we’re asking you to go to. So, you know, that’s why, you know, get back to that sort of my reason before, about if, if you’re going in such a manner that it impacts safety or make[s] [it] so you can’t get there, then you know what was the reason for [] that speed to begin with.

AC#1 also discussed using sirens to clear intersections and alert traffic ahead. AC#1 said that the circumstances dictate whether using a siren is reasonable, noting, “I think certainly, constructions on a crosswalk, you know, my opinion would be that would be an appropriate time to be using the sirens.”

AC#1 said SPD aims to respond to Priority 1 calls within seven minutes, prioritizing safety over speed. AC#1 said, “You have to drive in a safe enough manner to make sure ... you get there.”

G. Washington State and Arizona License Information

A driver’s license check was conducted on NE#1 during the TCIS investigation. TCIS determined that NE#1’s Washington State driver’s license showed as “Surrendered Out of State” and that NE#1 had a valid Arizona driver’s license, issued October 9, 2022. OPA spoke with a Washington State Department of Licensing official, who wrote in an email, “If there is a surrender whether in-state or out of state, the WA license is not valid.”

OPA also contacted Arizona Department of Transportation officials, who referred questions to the Arizona Department of Transportation Office of Inspector General (ADOT-OIG). On October 21,

2024, an ADOT-OIG official responded to OPA via email. She wrote that NE#1's license was not renewed in October 2022; instead, a duplicate credential was acquired in October 2022. The ADOT-OIG official wrote that NE#1 originally had a "travel credential," with an eight-year term expiring in November 2029. The ADOT-OIG wrote that NE#1 acquired the "travel license" in November 2021. The Arizona DOT website notes that the Arizona Travel ID is "available as both a driver license and identification card." See Arizona DOT Website. However, the ADOT-OIG official wrote that since NE#1 "acquired a WA driver's license, the AZ credential was automatically canceled." Records emailed by the ADOT-OIG official showed that, in November 2021, NE#1 acquired an Arizona credential with a listed "Credential Type" of "Class D Driver License." A list of NE#1's identifications showed identical "Arizona DL Number" and "Arizona ID Number." The ADOT-OIG official wrote that the email used to complete the October 2022 transaction was a Gmail account containing a variation of NE#1's name.

At his OPA interview on October 10, 2024, NE#1 and his attorney presented OPA with a certified State of Washington Department of Licensing driving record showing that NE#1's Washington driver's license was issued in September 2021 and expires in June 2027. The driving record did not show any gaps or surrenders.

H. Prior Collision

On September 14, 2021, while working as an SPD officer, NE#1 was involved in a prior collision. OPA reviewed the Collision Review Board's (CRB) findings to determine their relevance to NE#1's prior counseling or training. The CRB chair signed those findings on March 23, 2022.

In that case, CRB found NE#1 was responding to a call with emergency lights activated but was not using his audible siren. CRB also found NE#1 failed to clear an intersection and caused a preventable collision. CRB indicated that NE#1's chain of command identified deficiencies in NE#1's "training, performance, equipment or policy." CRB noted that NE#1's then-lieutenant and then-captain wrote that NE#1's sergeant documented speaking with NE#1 about SPD policy 13.030 (Emergency Vehicle Operations), including "the importance of clearing intersections and using his siren."

I. Named Employee #1

OPA interviewed NE#1 on October 10, 2024. NE#1 said he has worked for SPD for about five years and was employed as a police officer in Arizona for about a year and a half before starting at SPD. At the time of the incident, NE#1 estimated he had been on patrol for about two to three years.

NE#1 said his only EVOC training with SPD was a half-day during either pre-BLEA or post-BLEA. NE#1 said the training included being "behind the wheel" but only included "basic stuff." He also said he received EVOC training when he attended the police academy in Arizona but said there was no EVOC training at BLEA.

NE#1 was also asked about the training he received after he was involved in the prior collision. He described this additional counseling and training as “a 90-second conversation of ‘drive better.’”

Specific to this call, NE#1 noted that he is a certified emergency medical technician (EMT) with training in assessing toxicological emergencies, including overdoses, and basic life-saving skills. NE#1 described priority 1 calls as emergent calls involving life safety and possible death. He said the potential for serious injury or death is a determining factor for whether he would drive in emergency response. NE#1 said he considered the time of day, congestion, and physical location when deciding whether to use a siren intermittently or continuously. NE#1 suggested that using a continuous siren at night has elicited complaints from the public and that using a siren downtown causes the siren to bounce off buildings.

NE#1 described his response to the overdose call. He recalled knowing the overdose was outside of his sector, but he volunteered to respond to the overdose call since he was a certified EMT. When OPA asked whether his analysis changed, knowing that the potential overdose victim called 9-1-1, NE#1 said it “doesn’t change anything. Someone believes they’re overdosing on drugs. That’s ... the assessment isn’t something I’m able to accurately determine until I do an EMT physical assessment [and] take the vitals. It’s a life-or-death situation.” When OPA asked what, as an EMT, he would do if he arrived at an overdose call, NE#1 described taking the overdose victim’s vitals and possibly administering Narcan. NE#1 did not recall whether SFD was dispatched to this call. However, NE#1 indicated that SFD sometimes waited for SPD to secure a scene before engaging.

NE#1 said that, at the time of the incident, he had worked patrol in the West Precinct for about two years and was “pretty familiar” with the roads in the area. NE#1 said he did not remember whether he knew, at the time, that there was road construction in the area.

OPA showed NE#1 his ICV and BWV. NE#1 described that, at the beginning of his emergency response, he was “feeling concerned” for the overdose victim. He noted the death toll of the fentanyl epidemic and its impact in King County and described knowing loved ones who had been impacted. NE#1 stated he started a “code run” and wanted to ensure people could see and hear him. NE#1 also described precautions he undertook, including slowing at intersections, chirping his siren, and observing pedestrians and other vehicles. OPA asked NE#1 about how he approached uncontrolled intersections. NE#1 responded, “I’m scanning, and I’m looking, looking for any movement. I’m looking for anything that might indicate to me that someone is entering.”

OPA reviewed NE#1’s ICV and BWV, which showed him driving north on Dexter Avenue. In NE#1’s OPA interview, both the OPA interviewer and NE#1 erroneously referred to Dexter Avenue North as “Denny.” Denny Way is an east/west arterial that intersects Dexter Avenue two blocks south of the collision site. NE#1 described seeing a “long, straight road” and stated he had a “clear line of sight.” NE#1 stated these conditions informed his decision not to use a continuous siren and, instead, to chirp his siren intermittently. NE#1 described this method as consistent with the policy requirement to use “the audible signal as necessary to warn others.”

Asked about his decision to drive at the speeds he traveled along Dexter Avenue, NE#1 stated that his eyes were “on the road and what’s in front of me, not what my dashboard is saying.” NE#1 described assessing his speed in a “qualitative manner” by looking out his window rather than at the speedometer. NE#1 also stated he modulated his speed “depending on what’s in front of me.”

NE#1 said as he approached the intersection of Thomas Street, he saw a clear roadway with no cross traffic. He said he could not remember blind spots or hazards, such as the construction barriers. When OPA asked how those items might have affected the visibility of his vehicle, NE#1 responded, “It enhances [people’s] ability to see me” due to the reflectors and his overhead lights. NE#1 stated he could not remember his specific reasons for chirping his siren before crossing John Street or again, four seconds later, at Thomas Street.

NE#1 described when he first observed CM#1. NE#1 said he had three thoughts: “First, she’s in a position of safety. Second, she’s obviously going to wait for me to pass since I have my red and blue lights flashing, and I hit the siren.” NE#1 also said he thought CM#1 would wait for him to pass and immediately cross the street behind him, which NE#1 said was a common pedestrian response. NE#1 said he could not remember how far away he was when he first observed CM#1. NE#1 described his driving speed as “fast enough to get to the call to address a medical emergency while also operating safely enough to be able to avoid a collision.”

OPA followed up on NE#1’s statement that he was operating in such a way as to avoid a collision. OPA noted the ACES conclusion that the collision could have been avoided had NE#1 traveled at 50 MPH or less. NE#1 described this as “hindsight” and stated, “If I had been doing 20 miles an hour, a collision wouldn’t have occurred, but that speed isn’t reasonable for someone who’s going to have brain damage in under five minutes because of an overdose.”

When OPA asked about the effect of the construction barriers, NE#1 suggested they increased pedestrian safety by creating a broader path on the shoulder. NE#1 said he did not know whether the construction barriers impacted his ability to see pedestrians. OPA asked NE#1 if he considered adjusting his speed as he approached the construction barriers. NE#1 described having a “clear view of the roadway” and noted the “safe shoulder.” NE#1 said that he quit accelerating as he approached the construction barriers and allowed his car to coast while using the audible air horn and scanning for movement. NE#1 said he could not remember when he started braking.

When OPA asked what factors, other than speed, prevented NE#1 from avoiding the collision with CM#1, he stated:

I think, I believe I understand the question, and that’s what makes this a tough question because I don’t think there’s any question as to--I mean, this, this, this hurt everybody involved. This destroyed me emotionally. And it is very unfortunate that [CM#1] is no longer with us. And I--I don’t want to put myself in a position where I’m making any negative attributes to people who have passed. That’s not something I enjoy. It’s not something I do, but as I’ve been ordered to answer the question, the other factors that contributed were very unfortunate—her inattention and the fact that she ran in front of my police car.

Regarding his Washington State driver's license status, NE#1 said he first got a Washington license around the time he was hired at SPD. When asked about surrendering his Washington license in October 2022, NE#1 said he did not recall renewing his Arizona license and that the situation was "probably as confusing for me as it is for you." NE#1 said he only recalled renewing his Arizona license after the accident when he considered returning. NE#1 said he learned his Washington license was surrendered through media reports.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

5.001 - Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy

It was alleged that NE#1's emergency vehicle operations and failure to secure a valid Washington State driver's license were unlawful.

Employees must adhere to laws, city policy, and department policy. SPD Policy 5.001-POL-2

The KCPAO declination memorandum explained that NE#1's emergency response driving to a Priority 1 call did not relieve him of his duty to drive "with due regard for the safety of all persons." See RCW 46.61.035(4). KCPAO and SCAO determined that the evidence failed to establish that NE#1 committed a crime, primarily citing the challenge of proving the requisite mental state, the high burden of proof, and NE#1's "contributory negligence/superseding intervening cause" defense.

The relevant felony and misdemeanor crimes require proving more than simple negligence. See RCW 46.61.522 (Vehicular Homicide) and 46.61.502 (Reckless Driving). The lowest relevant mens rea is found in the "disregard for safety of others" (DSO) element of vehicular homicide. The Washington State Supreme Court described it as "an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a more serious dereliction than the hundreds of minor oversights and inadvertencies encompassed within the term 'negligence.'" *State v. Eike*, 72 Wn.2d 760, 766-67 (1967).

Here, the evidence established that NE#1 drove at nearly 50 MPH above the posted speed limit after dark, in a dense urban area, on a narrow street partially lined with construction equipment and multiple uncontrolled intersections and crosswalks, without his siren continuously activated. However, NE#1 was responding to the highest-priority call while driving a marked police vehicle, with emergency lights activated and intermittently chirping his siren. Moreover, NE#1 slowed or stopped at controlled intersections, and his braking and limited evasive movements when CM#1 emerged in the traffic lane. Nevertheless, despite NE#1's driving nearly three times the posted speed limit on a narrow street with visible sidewalks, pedestrian crossing signs, and an obstructed view, felony charges were declined. Similarly, the TCIS Detective and Prosecutor #1 doubted there was even probable cause to charge a crime.

Nevertheless, NE#1's failure to drive "with due regard for the safety of all persons" as required by RCW 46.61.035(4) is irrefutable even if he did not possess the "aggravated kind of negligence or carelessness" required for criminal culpability. The TCIS Detective and ACES concluded that NE#1's high-speed driving under challenging conditions made the collision unavoidable. Likewise, the evidence established that NE#1's negligent driving violated SMC 11.58.005(C)(1). While OPA generally does not sustain conformance to law allegations based on traffic infractions, the immeasurable and irreparable harm caused by NE#1's actions starkly distinguishes it from a standard traffic infraction matter.

Finally, OPA considered whether NE#1 violated Washington State law by operating a vehicle with a surrendered license. See RCW 46.20.001 (requiring a Washington State driver's license to drive in Washington, with limited exceptions); see RCW 46.20.021 (requiring new Washington State residents to obtain a valid Washington driver's license within 30 days). Here, the evidence suggests that NE#1 possessed a valid Washington State license that was automatically "surrendered" in October 2022 when he requested a duplicate Arizona identification. Ultimately, the evidence does not establish whether NE#1 attempted to request a duplicate Arizona driver's license or travel identification only. Even if NE#1 tried to request a duplicate Arizona driver's license, it is unclear whether he knew his Washington State license would be impacted. See RCW 46.20.001(2)(c) (prohibiting the possession of more than one valid driver's license). OPA also recognizes that NE#1's certified Washington State driving record, dated March 13, 2024, reflects a valid Washington State driver's license from September 2021 through June 2027. Finally, OPA did not find an SPD policy expressly requiring SPD officers to have a Washington State driver's license. The only reference OPA located concerning a policy requirement to be licensed was in the "Qualifications" section of the SPD recruiting website. See <https://seattle.gov/police/police-jobs/how-to-apply/qualifications#driverslicense> ("An applicant must have a valid Washington State Driver's License prior to being hired.").

Accordingly, OPA recommends this allegation be Sustained, at a minimum, for NE#1 violating his legal obligation under RCW 46.61.035(4) to operate his vehicle "with due regard for the safety of all persons."

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #2

13.030 - Emergency Vehicle Operations, 13.030-POL-3. Officers Shall Modify Their Emergency Response When Appropriate (effective 03/01/2018)

It was alleged that NE#1 failed to appropriately modify his emergency response.

On the date of this incident, SPD Policy 13.030-POL-3 stated, "Officers shall modify their emergency response when appropriate." Officers were required to modify or terminate emergency driving in two scenarios: 1) when directed to do so by a supervisor or 2) "when the totality of the circumstances indicates that the risk of continuing the emergency driving outweighs the need." SPD Policy 13.030-POL-3 (effective 03/01/2018). "The officer's decision shall be reviewed based on the information available to them at the time." Id.

This allegation is sustained. There is overwhelming evidence that NE#1 failed to modify his emergency response when the totality of the circumstances indicated that the risk outweighed the need. The evidence established that NE#1 initially drove at relatively low speeds, slowing and chirping his siren at traffic-controlled intersections. He rapidly accelerated northbound on Dexter Avenue, chirping his siren before crossing John Street and shortly before striking CM#1. NE#1 nearly tripled the posted speed limit despite potential hazards: nearby construction barriers lining the narrow street and a posted traffic sign instructing drivers to yield to crossing pedestrians. NE#1 told OPA that he saw CM#1 but assumed she would yield to him. However, that assumption shifted his obligation to assess and account for risks onto CM#1 and others at the scene. Moreover, even if NE#1 saw CM#1 before the collision, he was driving too fast to avoid it. Finally, the need to respond to the overdose call did not outweigh the risk under the circumstances. Although NE#1 was responding to a high-priority call and could aid the overdosed subject, driving nearly triple the speed limit at that time and location was unjustified—particularly when speeding generally results in relatively negligibly faster arrival times. While OPA appreciates NE#1’s desire to reach and possibly aid the overdosed subject, endangering others to get there violated this policy.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #3

13.030 - Emergency Vehicle Operations, 13.030-POL-5. Officers Are Responsible for the Safe Operation of Their Police Vehicle (effective 03/01/2018)

It was alleged that NE#1 operated his police vehicle unsafely.

Officers are responsible for the safe operation of their patrol vehicles. SPD Policy 13.030-POL-5 (effective 03/01/2018). “Officers are not relieved of the obligation to drive with due regard for the safety of all persons.” Id. Moreover, “Officers will drive no faster than reasonably necessary to safely arrive at the scene.” Id.

This allegation is sustained. SPD’s policy at the time of this incident emphasized that “the preservation of life is the highest priority.” SPD Policy 13.030-POL-2 (effective date 03/01/2018). It also repeatedly emphasized the inherent danger of driving in a “manner substantially outside of a normal traffic pattern,” SPD Policy 13.030-POL-1 (effective date 03/01/2018), noting the need to balance the inherent risks against the government interest at hand. SPD Policy 13.030-POL-2 through POL-5 (effective date 03/01/2018). TO#1 and AC#1 translated in layperson’s terms SPD’s emergency vehicle operations standard: drive only as fast as needed to arrive at the scene safely.

Here, NE#1’s concern for the overdose victim did not justify driving at a relatively high speed down a street with pedestrians. In addition to CM#1, at least three other pedestrians were close enough to witness aspects of the collision. Moreover, the intersections at Dexter Avenue and Thomas Street had multiple crosswalks and multiple reflective signs indicating the possible presence of pedestrians crossing. To the extent NE#1 did not appreciate these factors or the

limited visibility due to construction barriers, this was most likely because he chose to drive at a speed that did not allow him to process and react appropriately. Ultimately, his failure to account for the foreseeable risk of a pedestrian unexpectedly crossing resulted in the tragic collision.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #4 1

3.030 - Emergency Vehicle Operations, 13.030-POL-4. Officers Use Emergency Lights for Emergency Response (effective 03/01/2018)

It was alleged that NE#1 failed to use audible signals while operating a vehicle during an emergency response.

On the date of this incident, officers were required to use emergency lights during emergency response: “Officers will use audible signals when necessary to warn others of the emergency nature of the situation.” SPD Policy 13.030POL-4 (effective 03/01/2018). This policy cited RCW 46.61.035, which exempts drivers of “authorized emergency vehicles” from specific traffic laws when responding to an emergency call but notes that these privileges “shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others.” RCW 46.61.035. The exemptions for emergency vehicles apply only when such a vehicle is making use of emergency lights and using “audible signals when necessary to warn others.” Id.

This allegation is sustained. Neither policy nor law expressly required NE#1 to use a continuous siren (as opposed to intermittent chirping) while emergency driving. That said, NE#1’s driving—around 74 MPH down a narrow arterial street with multiple crosswalks and pedestrian crossing signs—warranted continuous sirens to warn others of the inherent danger of NE#1’s driving outside standard traffic patterns. NE#1 told OPA that he intermittently pressed a center console button to activate his siren. So, NE#1 had to remove a hand from the steering wheel to intermittently manipulate the button while navigating an urban street at around 74 MPH. A continuous siren would have provided the best opportunity for CM#1 and other pedestrians to be notified of NE#1, recognize the danger, and—possibly—track NE#1’s proximity and direction of travel. Moreover, NE#1’s concern about continuous sirens generating community complaints is misplaced and significantly outweighed by the benefit of continuous sirens under the circumstances. It is difficult to imagine a more appropriate circumstance for using a continuous siren than the factors NE#1 faced.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #5

5.001 - Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional

It was alleged that NE#1's actions undermined public trust.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. "[Employees] may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. Id.

OPA finds this allegation duplicative since the other four allegations best covered NE#1's alleged misconduct. Accordingly, OPA removed this allegation.

Recommended Finding: **Allegation Removed**