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



Case Number: 2023OPA-0371

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion (Effective March 1, 2018)
Finding: Not Sustained – Lawful and Proper

2. **Allegation #2:** 16.090 – In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity (Effective March 7, 2019)
Finding: Not Sustained – Unfounded

3. **Allegation #3:** 13.030 – Emergency Vehicle Operations, 13.030-POL-5. Officers Are Responsible for the Safe Operation of Their Police Vehicle (Effective March 1, 2018)
Finding: Not Sustained – Unfounded

4. **Allegation #4:** 13.030 – Emergency Vehicle Operations, 13.030-POL-4. Officers Use Emergency Lights for Emergency Response (Effective March 1, 2018)
Finding: Not Sustained – Unfounded

5. **Allegation #5:** 13.031 – Vehicle Eluding/Pursuits, 13.031-POL-4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving (Effective March 1, 2020)
Finding: Not Sustained – Unfounded

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.

Executive Summary:

Named Employee #1 (NE#1), the patrol car driver, and Witness Officer #1 (WO#1)—NE#1's partner—recognized and followed Community Member #1 (CM#1), a suspect driving a stolen

vehicle. NE#1 activated the lights and sirens. CM#1 drove through a red light and struck another vehicle, killing the Complainant's parents. The Complainant alleged that NE#1 negligently and dangerously pursued CM#1 without activating lights and sirens. It was also alleged that NE#1 failed to record police activity.

Administrative Note:

On October 10, 2024, the Office of Inspector General certified this investigation as thorough, timely, and objective.

NE#1 separated from SPD on May 28, 2024. Accordingly, this case is not governed by a contractual 180-day timeline.

Summary of Investigation:

A. OPA Complaint

On August 25, 2023, the City Attorney's Office forwarded OPA the Complainant's lawsuit against the City of Seattle. It alleged that SPD officers negligently pursued CM#1 through major roadways at high speeds without activated lights. The complaint stated that officers activated their lights just before CM#1 drove through a red light, and the Complainant's father drove through a green light at an intersection. It alleged that the Complainant's parents "had little to no warning" about the "high-speed chase."

OPA investigated the complaint by reviewing the computer-aided dispatch (CAD) call report, in-car video (ICV), body-worn video (BWV), be on the lookout (BOLO) information bulletin, police report, and dispatch recording. NE#1 and WO#1—both were no longer employed by the department—declined to be interviewed.

B. Computer-Aided Dispatch (CAD) Call Report

On September 11, 2020, at 2:56 AM, CAD call remarks noted, "GOING [NORTHBOUND]."

C. In-Car Video (ICV), Body-Worn Video (BWV), and Police Report

ICV and BWV captured the following:

NE#1 drove his patrol vehicle in a residential area with WO#1 in the passenger's seat. The officers spotted a stolen vehicle to their left. The BOLO information bulletin displayed photographs of the stolen vehicle and CM#1. It stated that CM#1 was assaultive toward officers, had a history of eluding, and was a prolific auto thief. It noted that CM#1 stole this same vehicle five times in the prior two months. NE#1's police report also stated that he saw the BOLO and was familiar with CM#1, who he had arrested several months earlier:



NE#1 drove past the suspect vehicle, which turned right. After driving straight for about seven seconds, NE#1 made a U-turn. The suspect vehicle reached an intersection and turned right, traveling northbound on Martin Luther King (MLK) Jr. Way South. NE#1 accelerated toward that intersection and turned right.

The suspect vehicle's lights were not illuminated as it accelerated northbound on MLK Jr. Way during light traffic conditions. NE#1 followed the suspect vehicle and accelerated. NE#1's police report stated that he attempted to catch up so he could initiate a high-risk felony traffic stop. It said he could not close the distance due to the suspect vehicle's high speed. A Traffic Collision Investigation Squad (TCIS) detective estimated NE#1 drove an average speed of about 47 MPH. NE#1 passed a green-light intersection and activated his emergency lights and sirens. The TCIS detective estimated that NE#1 drove an average speed of about 69 MPH after activating his lights and siren. About five seconds later, the suspect vehicle passed a red-light intersection and struck the Complainant's parent's vehicle. NE#1's police report estimated he was about 1,000 feet away when the collision occurred. OPA used a Bing Maps measurement tool and estimated it was about 698 feet:



NE#1 parked behind the vehicles. WO#1 assisted the Complainant's parents. NE#1 assisted CM#1 and CM#1's passenger, who CM#1 claimed was his wife.

NE#1 and WO#1 screened the incident with a sergeant on the scene. WO#1 said that he and NE#1 saw the suspect vehicle, matching the car on the BOLO information bulletin. WO#1 described driving maneuvers consistent with OPA's ICV observations. The sergeant said he heard NE#1's patrol vehicle accelerating as they were radioing updates. The sergeant asked whether they were in pursuit. NE#1 and WO#1 replied no and mentioned their lights were not activated. NE#1 said they tried to catch up to the suspect vehicle. WO#1 said they saw the suspect vehicle pass the intersections "pretty fast." WO#1 said that when NE#1 activated the patrol vehicle's lights, the suspect vehicle was a "good distance" away. WO#1 again denied being in pursuit because the collision occurred shortly after light activation. WO#1 said the suspect vehicle was so far ahead that they could not see its license plate.

NE#1's police report was consistent with ICV and BWV observations. It stated that CM#1 and his passenger were arrested, that the Complainant's mother was pronounced dead on the scene, and that the Complainant's father was transported to a hospital but later succumbed to his injuries.

D. Dispatch Recording

A recording between dispatch and WO#1 captured the following:

WO#1 radioed dispatch that they would be diverting. Dispatch asked, "To what?" WO#1 told the dispatcher that an occupied stolen vehicle headed northbound on MLK Jr. Way South. The dispatcher asked for the cross streets. WO#1 responded that the suspect vehicle appeared on

the BOLO information bulletin. Engine revving sounds could be heard during WO#1's response. Dispatch again requested the cross streets. About nine seconds later, WO#1 notified the dispatcher about the collision.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion (Effective March 1, 2018)

It was alleged that NE#1 exercised unreasonable discretion by following CM#1.

Employees are authorized and expected to use discretion in a reasonable manner consistent with the department's mission and duties of their office and assignment. SPD Policy 5.001-POL-6 (effective March 1, 2018). Discretion is proportional to the severity of the crime or public safety issue being addressed. *Id.*

CM#1 posed a danger to the public and officers since he was known to elude or assault officers and steal vehicles. NE#1 spotted the suspect vehicle, featured on a BOLO information bulletin, and performed a U-turn to follow it. CM#1 immediately accelerated, deactivated the stolen vehicle's lights, and struck the Complainant's parents before NE#1 could catch up to initiate a pursuit. These events transpired in less than one minute during light traffic conditions late at night. Overall, NE#1 exercised reasonable discretion by following CM#1, given the BOLO warning and CM#1's decision to flee from the officers.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 – Allegation #2

16.090 – In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity (Effective March 7, 2019)

It was alleged that NE#1 failed to record police activity on his BWV.

When safe and practical, employees will record police activity, even if the event is out of the camera's view. SPD Policy 16.090-POL-1(5)(b) (effective March 7, 2019). Police activity includes, among other things, vehicle eluding or pursuits and arrests. *See id.* If circumstances prevent recording at the start of an event, the employee will record as soon as practical. *Id.* Employees will record the entire event to its conclusion unless specifically instructed otherwise by SPD policy. *Id.*

NE#1 did not activate his BWV upon arriving at the collision site. NE#1 activated it as he placed CM#1 in a patrol vehicle. NE#1's use-of-force statement noted that "BWV was not initially activated due to the rapidly evolving and chaotic events." NE#1 thought he activated it earlier but

realized he “must not have fully pushed the button.” NE#1 also noted that he informed his sergeant and dispatch after he realized his BWV was not activated.

OPA agrees with NE#1’s chain of command that NE#1 should be afforded “some leeway,” given the traumatic circumstances of the collision. Upon NE#1’s arrival, NE#1 immediately sought to assist CM#1 and CM#1’s passenger. As NE#1’s chain of command noted, the “dynamic nature of the scene and the immediate need for both aid and capture resulted in a slight delay in [BWV] activation.” Ultimately, NE#1 activated his BWV and notified his sergeant and dispatch about the delayed activation. A preponderance of the evidence shows NE#1’s attempt to comply with BWV policy under these circumstances did not constitute misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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 March 1, 2018)

The Complainant alleged that NE#1 dangerously operated his patrol vehicle.

Officers are responsible for safely operating their police vehicles. SPD Policy 13.030-POL-5 (effective March 1, 2018). Officers must drive with due regard for everyone’s safety. *Id.* Officers will drive no faster than reasonably necessary to arrive at the scene safely. *Id.*

ICV captured NE#1 performing a U-turn and accelerating through green-light intersections during light traffic conditions late at night. Although the evidence suggests that NE#1 sped for several seconds, averaging around 47 MPH, while traveling northbound on MLK Jr. Way South, NE#1 activated his lights and sirens immediately after passing the first green-light intersection on that roadway. NE#1’s acceleration after activating his lights and sirens was also reasonable since the suspect vehicle was far ahead. OPA found insufficient evidence suggesting NE#1 dangerously operated his patrol vehicle.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #4

13.030 – Emergency Vehicle Operations, 13.030-POL-4. Officers Use Emergency Lights for Emergency Response (Effective March 1, 2018)

The Complainant alleged that NE#1 pursued CM#1 without activating lights and sirens.

Officers must use emergency lights during an emergency response. SPD Policy 13.080-POL-4 (effective March 1, 2018). An emergency response is when an officer operates an authorized police vehicle in a manner that is substantially outside of a typical traffic pattern. SPD Policy 13.030-POL-1 (effective March 1, 2018). Officers will use audible signals when necessary to warn others about the emergency. SPD Policy 13.080-POL-4 (effective March 1, 2018).

NE#1 did not activate his lights and sirens after performing the U-turn since the suspect vehicle was nearly out of sight. NE#1 activated his lights and sirens about 10 seconds after turning northbound on MLK Jr. Way South—a point where he was in a better position to initiate a pursuit. OPA finds the timing of NE#1’s emergency light activation reasonable.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #5

13.031 – Vehicle Eluding/Pursuits, 13.031-POL-4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving (Effective March 1, 2020)

The Complainant alleged that NE#1 negligently pursued CM#1.

Officers will not pursue without articulable justification that the public safety need to stop the eluding vehicle outweighs the inherent risk of pursuit driving. SPD Policy 13.031-POL-4 (effective March 1, 2020). The circumstances justifying the decision to pursue an eluding vehicle must be articulable at the time the officer initiates the pursuit. *Id.* Officers will not engage in vehicle pursuits for traffic violations, civil infractions, misdemeanors, gross misdemeanors, property crimes, or the sole act of eluding. *Id.* Eluding is when an officer operating an authorized police vehicle issues by hand, voice, emergency lights or siren, and/or audible signal to a vehicle’s driver to stop and, after a reasonable time to yield in response to the officer’s signal, the driver increases speed, takes evasive action, or refuses to stop. SPD Policy 13.031-POL-1 (effective March 1, 2020). A pursuit is when an officer—to keep pace with and/or immediately stop or apprehend an eluding driver—drives in a manner that is outside of regular traffic restrictions. *Id.*

Here, NE#1 followed CM#1 but did not “pursue” him because CM#1 was not “eluding” the police, as defined under SPD policy. CM#1 struck the Complainant’s parents about five seconds after NE#1 activated his lights and sirens. That five-second period did not constitute a “reasonable time” for CM#1 to yield in response to NE#1’s lights and sirens. Absent the collision, if CM#1 had continued to increase speed, take evasive action, or refuse to stop for some reasonable time, CM#1 would have been eluding the police. Nevertheless, a “pursuit” did not occur because the collision happened immediately after NE#1 activated his lights and sirens.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**