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Mayor

Department of Police · City of Chicago
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David O. Brown
Superintendent of Police

January 27, 2023

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL 60622

RE: Complaint Register Number: #2019-2605
Superintendent's Concurrence with COPA's proposed penalty with additional charges for:
Police Officer Jason Davis #1563
Superintendent's Non-Concurrence with COPA's proposed penalty with a recommendation for a
more appropriate penalty and additional charges for:
Police Officer Elyse Rodriguez #14262

Dear Chief Administrator:

After a careful review, the Chicago Police Department has identified additional charges relevant to COPA's investigation.

The Department concurs with the proposed penalty for Police Officer Jason Davis #1563 for a *one hundred and eighty (180) day suspension* with additional charges the Department has identified.

The Department, however, does not concur with COPA's penalty recommendation for Police Officer Elyse Rodriguez #14262, who was the passenger in the pursuing vehicle. The Department believes a penalty of **30 days** is a more appropriate penalty with the inclusion of additional charges the Department has identified.

I. Summary of the Facts

There is sufficient video of this incident from Beat 734's In Car Camera (ICC) to establish the actions of the officers during this pursuit.¹

On 10 July 2019 at 1640 hours, Officers Davis and Rodriguez were in uniform working Beat 734, a marked CPD Ford Explorer. Officer Davis was the driver and Rodriguez the passenger. The officers were traveling eastbound on 71st Street during daylight with moderate traffic in both directions and moderate

¹ Attachment 9 and 12 (Beat 734 ICC)

pedestrian traffic on the sidewalks. Just before reaching the traffic light at 71st and Racine (1200W), Officer Davis drove left of a Chrysler 300 sedan and three vehicles in front of the Chrysler.² A truck was already stopped at the light in the far right lane signaling a right hand turn onto Racine. Officer Davis pulled into the left turn lane and stopped. The view from the officers' ICC was forward and east along 71st Street. After the light turned green, three vehicles continued eastbound on 71st with the Chrysler 300 following behind. The officers did not turn left, but instead moved forward back into eastbound traffic on 71st Street behind a sedan behind the Chrysler 300.

The reason for this maneuver was because Officer Rodriguez stated she observed the Chrysler turn into the right lane at the intersection to make an attempt to overtake a white van also going eastbound on 71st Street.³ As the Chrysler passed Beat 734, Officer Rodriguez also observed the driver did not have a seatbelt. Officer Rodriguez told Officer Davis of the moving violation. Officer Davis did not see the moving violation, but did see that the driver was not wearing a seatbelt.⁴ Officer Davis drove the vehicle east on 71st Street in preparation for a traffic stop.⁵ Officer Davis caught up to the Chrysler just before a traffic light at Morgan St (1000W) and activated his emergency lights.⁶ Officer Rodriguez was able to see and run the Chrysler's license plate on the PDT.⁷ Officer Davis stated he saw at least three people in the Chrysler.⁸ The Chrysler drove across Morgan, pulled to the right, slowed down, and then sped away into the oncoming westbound traffic. Officer Davis estimated the Chrysler accelerated to 60mph.⁹ Officer Davis immediately notified OEMC the vehicle fled a traffic stop, but did not state why the vehicle was wanted. The Chrysler disregarded a stop sign at Peoria St (800W) and continued at a high rate of speed eastbound on 71st.

Officer Ortiz was driving Beat 733, also a marked unit driving east on 71st Street. Officer Vargas was the passenger in Beat 733. Officer Ortiz saw Beat 733 attempt the traffic stop on the Chrysler, but he stated he did not know why Beat 733 was stopping the Chrysler. Officer Ortiz observed the Chrysler slow down and then speed away eastbound on 71st Street. Officer Ortiz activated his emergency lights and followed Beat 734. Officer Ortiz saw the Chrysler driving on the wrong side of 71st Street at a high rate of speed.¹⁰ Officer Ortiz saw Beat 734 slow down and deactivate emergency lights near the viaduct at Lowe (632W). Officer Ortiz kept his emergency lights activated.¹¹

Officer Davis estimated his vehicle speed was about 45-50mph.¹² He estimated the Chrysler was traveling at 60-70mph.¹³ After pursuing for approximately ½ mile from Morgan St (1000W) to Wallace Ave (600W), Officer Davis deactivated his emergency equipment. At this point, the Chrysler was more than one block ahead of Officer Davis. Officer Davis stated he knew there was the possibility of pedestrian traffic further

² Attachment 9 at 34:15

³ Attachment 63 at 4:05 (Rodriguez) Officer Rodriguez described the Chrysler as having darted out in the far right hand lane on eastbound 71st into Racine Ave in an effort to overtake vehicles, but was unable to overtake the vehicle, so waited until three vehicles passed and then pulled back into eastbound traffic on 71st. Officer Rodriguez stated "the way he did it" was unsafe.

⁴ Attachment 50 at 31:15. (Davis statement)

⁵ *Id.* at 8:10.

⁶ Attachment 9 at 35:05

⁷ Attachment (Rodriguez) at 8:45

⁸ Attachment 50 at 13:30 (Davis)

⁹ *Id.* at 15:10.

¹⁰ Attachment 52 at 9:15 (Ortiz statement)

¹¹ Attachment 66. The CPD POD showed that Beat 733 (Ortiz) had emergency lights activated upon emerging from the viaduct at Lowe (632W).

¹² Attachment 50 at 22:20.

¹³ *Id.* at 23:55.

ahead and when the Chrysler “weaved” a second time into oncoming westbound traffic, Officer Davis determined the Chrysler “was doing unsafe things” that made the pursuit too dangerous to continue for the violation observed, so he terminated the pursuit.¹⁴ Officer Davis stated there was not time before the traffic crash for a supervisor to approve the pursuit.¹⁵ The ICC video confirmed that Officer Davis continued east on 71st while the Chrysler was more than one block in front of him.

Officers Davis and Rodriguez did not notify OEMC the pursuit was terminated and Beat 733 (Officers Cheryl Vargas and Alfredo Ortiz) continued behind Officer Davis with their emergency lights activated. A CPD POD camera captured the pursuit after the Chrysler emerged from a viaduct east of Wallace (600W).¹⁶ Officer Davis’ vehicle had emergency lights off while Beat 733 still had lights activated.

Approximately fifteen seconds after Officer Davis turned off his emergency lights, the Chrysler crashed into a Mitsubishi sedan making a left hand turn onto westbound 71st Street from Stewart. The Chrysler then struck a tree on the west side of 71st Street and flipped over onto 71st Street. Two women, [REDACTED] (23 year old) and her aunt, [REDACTED] (50 years old), were in the Mitsubishi. There is no indication that either of these women sustained serious injuries.

Officers Davis and Rodriguez notified OEMC of the crash. Officers Ortiz and Vargas also responded and requested EMS. Officers Davis and Rodriguez put handcuffs on [REDACTED] one of the four occupants in the Chrysler who crawled out of the vehicle.¹⁷ [REDACTED] was the only person in the Chrysler who exited on his own. [REDACTED] told Officer Rodriguez the people in the car were drunk and had two guns in the car.¹⁸

Beat 734’s ICC captured the EMS response. There were four men in the vehicle. [REDACTED] 23 years old, was killed. [REDACTED] exited on his own with injuries. [REDACTED] and [REDACTED] were extracted from the vehicle by CFD and hospitalized. [REDACTED] and [REDACTED] were arrested on unrelated warrants. The MAIU investigation ultimately identified [REDACTED] as the driver and he was arrested for Aggravated DUI and Reckless Homicide one year later in July 2020.

II. Legal Review

COPA sustained one allegation against each officer:

Allegation:

It is alleged that on July 10, 2019 at approximately 4:53 pm, Officer Davis and Officer Rodriguez initiated a motor vehicle pursuit in violation of General Order G03-03-01.

The Department does not believe this allegation provides a sufficient basis for discipline based on

¹⁴ *Id.* at 17:40.

¹⁵ *Id.* at 24:00 to 25:00

¹⁶ Attachment 66

¹⁷ [REDACTED] told Officer Rodriguez that his name was [REDACTED].

¹⁸ Attachment 4 (Rodriguez BWC)

COPA's conclusion that because the driver of the Chrysler had potential statutory defenses for the alleged traffic violation, the Chrysler could not be stopped for a "hazardous traffic violation," as required under Department Policy.

The hazardous violation Officer Rodriguez observed was "Overtaking on the Right." The state statute and city ordinance regulating this violation have the same language:

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following condition:

(3) Upon any roadway on which traffic is restricted to one direction of movement, where the unobstructed pavement is of sufficient width for two or more lanes of moving vehicles.

(c) The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety."¹⁹

Officer Rodriguez described the Chrysler as moving into the right hand lane near the crosswalk at 71st and Racine to get around a white van also traveling eastbound when the traffic light turned green. The Chrysler did not successfully complete this maneuver and waited for an opening to get back into eastbound traffic. Officer Rodriguez said the Chrysler's move was unsafe to do so, particularly at a crosswalk because there could be people passing in the cross walk and the driver of the Chrysler would not be able to see pedestrians with three cars ahead of him.²⁰

COPA concluded the maneuver was not illegal because 1) the Chrysler's attempt was unsuccessful, and 2) even if the Chrysler did successfully overtake the white van it would not have been illegal because statute provided a defense in circumstances where there was unobstructed pavement of sufficient width of two vehicles.²¹ The Department believes that this conclusion, correct or not, about the legalities of overtaking on the right was irrelevant to the Fourth Amendment analysis for the *reason for the traffic stop*. Officers Davis and Rodriguez have a defense for this specific allegation because the officers had the necessary *reasonable articulable suspicion* to justify stopping the Chrysler for violating the statute.

The Illinois Supreme Court has provided clear guidance establishing the reasons officers can stop vehicles for traffic violations under the Fourth Amendment. In *People v. Hackett*, an officer observed a vehicle commit lane violations, stopped the vehicle, and then arrested the driver for DUI. At trial, the officer failed to provide testimony that the lane violation was unsafe and failed to explain if there were road conditions (potholes) that required the driver to veer out of his lane. The appellate court found the officer had no reasonable basis to stop the vehicle because the officer's testimony did not establish the endangerment element in the statute.²² The Illinois Supreme Court reversed, holding that "[a] police officer can effect a lawful *Terry* stop without first considering whether the circumstances he or she observed would satisfy each element of a particular offense."²³ The Court found "a traffic stop may be justified on something less than probable cause"

¹⁹ 625 ILCS 5/11-704-c and MCC 9-36-020-b

²⁰ *Id.* at 6:40 and 13:30 (Rodriguez statement)

²¹ COPA SR VII-a (pg 17)

²² *People v. Hackett*, 943 N.E.2d 13, 17 (Ill. App Ct. 2010)

²³ *People v. Hackett*, 2012 IL 111781 ¶28

even when the officer could not provide testimony to satisfy all elements needed for a conviction.²⁴ The Court reasoned once the officer had the reasonable suspicion necessary under the Fourth Amendment, the officer could conduct an investigatory stop “to inquire further into the reason for the lane deviation.”²⁵

Illinois’ lane and overtake on the right statutes are virtually indistinguishable.²⁶ Each statute provides conditions where an otherwise prohibited maneuver may be allowed, but the prevailing, mandatory condition is safety. Drivers cannot veer from their lane unless it can be done safely. Drivers cannot pass on the right unless it can be done safely. When there is reasonable suspicion a motorist has violated either statute, officers may conduct a traffic stop.

In the present case, the Chrysler could not safely overtake the van using the right lane at the intersection of 71st and Racine under the conditions Officer Rodriguez described.²⁷ Like *Hackett*, even if the driver of the Chrysler had a relevant defense for the maneuver *and* even if Officer Rodriguez could not establish that the Chrysler’s maneuver met all of the elements of the statute; Officer Rodriguez still had reasonable articulable suspicion to stop the Chrysler for violating the statute.

The Department, therefore, believes the *initiation* of the pursuit was arguably allowed under Department Orders in effect at the time of this incident because the officers had reasonable articulable suspicion to stop the Chrysler for a hazardous traffic violation.²⁸

There were, however, additional violations of the pursuit order revealed through COPA’s investigation involving both officers:

1. Officer Davis violated G03-03-01-II-A when he continued the pursuit in violation of the Balancing Test when the Chrysler drove 60-70 mph into on-coming traffic because the inherent danger outweighed the necessity to immediately apprehend.
2. Officer Davis violated G03-03-01-III-C-2 when he continued a pursuit for a hazardous traffic violation *after* the Chrysler disregarded a traffic control device by driving through the stop sign at Peoria.
3. Both Officers Davis and Rodriguez violated G03-03-01-V-A-3 when they each failed to make a notification to OEMC of the facts concerning the pursuit.

²⁴ *Hackett*, 2012 IL 111781 ¶28

²⁵ *Id.*

²⁶ 625 ILCS 5/11-709, *Driving on Roadways Laned for Traffic* and 625 ILCS 5/11-704, *When Overtaking on the Right is Permitted*.

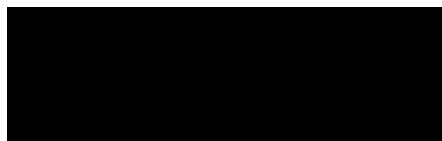
²⁷ It should be noted that the maneuver Officer Rodriguez described would also be violations of other city ordinances that would qualify as hazardous traffic violations: MCC 9-40-140-a, *Negligent Driving*: It shall be unlawful for any person to operate any vehicle upon a public way negligently, heedlessly and without due caution in a manner which endangers or is likely to endanger any person or property or to swerve within, between or across lanes of traffic in such a manner. MCC 9-40-120 *Obstruction of intersection or crosswalk prohibited*, Notwithstanding any traffic-control signal indication to proceed, no operator of a vehicle shall enter an intersection or crosswalk unless there is sufficient space beyond such intersection or crosswalk, in the direction in which the vehicle is proceeding, to accommodate the vehicle without obstructing the passage of other vehicular traffic or pedestrians. Any person who violates this section shall be subject to a fine of \$200.00 and may be required to perform reasonable public service.

²⁸ See G03-03-01-C-2-c

4. Both Officers Davis and Rodriguez violated G03-03-01-IX-B-1 when, after voluntarily terminating the pursuit, they both failed to notify OEMC of their location and **remain at that location** until directed by the supervisor.²⁹

The Department looks forward to discussing this matter with you pursuant to MCC 2-178-130(a)(iii).

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department

²⁹ (emphasis included in order)