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David O. Brown
Superintendent of Police

June 28, 2022

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

RE: Superintendent's Partial Concurrence & Non-concurrence with COPA's Investigative Findings and Proposed Penalties
Complaint Register Number: #2019-0005064
Officer Gregory Smith, #8823 and Officer Betty Whitfield, #7235

Dear Chief Administrator Kersten,

Officer Gregory Smith ("SMITH"), the driver officer, and Officer Betty Whitfield ("WHITFIELD"), the passenger officer, were working Beat 513R on December 12, 2019 when their license plate reader notified them that a vehicle ("Jeep") was stolen. They initially lost sight of the vehicle so they began a search for it without their lights and sirens activated. Once they located the vehicle, they activated their emergency equipment and attempted to curb the vehicle, but it fled. They followed it. After the vehicle disregarded two stop signs, SMITH stated he was terminating the pursuit. A few seconds later, the vehicle crashed into a residence at the above address. The driver of the vehicle was fatally injured, and two passengers were taken to the hospital for treatment.

SMITH was the driver of the squad car, and WHITFIELD was the passenger. COPA has made allegations against SMITH regarding his BWC usage, a firearm pointing incident, the failure to initially activate emergency lights and siren as they searched for the vehicle, the failure to drive with due regard for the safety of all person, and his continuation of the pursuit after the vehicle disregarded the first stop sign. COPA's allegations against WHITFIELD involve her BWC usage, her continuation of the pursuit, and her failure to activate the emergency lights and siren.

COPA recommended that SMITH be suspended for a period of 180 days up to and including separation for the following allegations:

1. On the above date/time, near the above location, he failed to comply with Special Order S03-14 by failing to activate his BWC in a timely manner, in violation of Rule 6.
2. On the above date/time, near the above location, he failed to comply with Department Notice D19-01 by failing to notify OEMC that he had pointed a firearm at or in the direction of the occupants of the Jeep, in violation of Rule 6.

3. On the above date/time, near the above location, he pointed a firearm at or in the direction of the occupants of the Jeep without justification, in violation of Rule 38.
4. On the above date/time, near the above location, he failed to comply with General Order G03-03-02 in that he failed to activate the emergency roof lights and/or siren when engaged in nonpursuit emergency vehicle operations, in violation of Rule 6.
5. On the above date/time, near the above location, he failed to comply with General Order G03-03 in that he failed to drive with due regard for the safety of all persons, in violation of Rule 6.
6. On the above date/time, near the above location, he failed to comply with General Order G03-03-01 by continuing pursuit of a reportedly stolen vehicle that disregarded traffic control devices, in violation of Rule 6.

The Department concurs with allegations 1 through 4 and 6, but does not concur with allegation 5. The Department recommends a 30 day suspension.

COPA recommended that WHITFIELD be suspended for a period of 180 days up to and including separation for the following allegations:

1. On the above date/time, near the above location, she failed to comply with Special Order S03-14 by failing to activate her BWC in a timely manner, in violation of Rule 6.
2. On the above date/time, near the above location, she failed to comply with General Order G03-03-01 by continuing pursuit of a reportedly stolen vehicle that disregarded traffic control devices, in violation of Rule 6.
3. On the above date/time, near the above location, she failed to comply with General Order G03-03-02 in that she failed to activate the emergency roof lights and/or siren when engaged in nonpursuit emergency vehicle operations, in violation of Rule 6.

The Department concurs with allegation 1, but does not concur with allegations 2 and 3. The Department recommends a 5 day suspension.

Summary of COPA's Investigation

According to police reports, Beat 513R provided the following information: A Jeep with plate BT28537, which was confirmed stolen by their license plate reader, was traveling northbound on Wentworth at a high rate of speed when the driver lost control and crashed into a single family dwelling. The driver, [REDACTED] was fatally injured. Two passengers, [REDACTED] and [REDACTED] were transported to the hospital and were in stable condition. (Atts. 2, 62)

Arrest Reports for [REDACTED] (M/16) and [REDACTED] (F/17) state the following: Beat 513R, Officers SMITH and WHITFIELD, arrested these subjects on the above date for Criminal Trespass to Vehicle. The Narrative states the following: The officers were on routine patrol when Illinois plate [REDACTED] resulted in a stolen vehicle (Jeep) from LEADS. The officers attempted to curb the vehicle, the vehicle fled, and then the vehicle crashed into a residence at the above address. DAVIS and BOOTH were passengers in the vehicle. They were

released without charges after the victim refused to prosecute. (Atts. 3 and 4)

OEMC records show that on December 12, 2019, at 19:19:47 hours, Beat 513R reported (possibly a female voice) that a car took off on them at 107th and Wentworth. She gave a plate number and stated the vehicle contained two male blacks. She also stated they are going northbound on Wentworth. In the background, you can hear a siren. Then you hear a voice (possibly a male voice) state: “we are going to terminate – going to terminate – he’s at 103rd and Wentworth – just past – we terminated - he just crashed.” (Att. 26)

In Car Camera video of the officers’ squad car shows the following: It initially appears to show the squad car driving through a stop sign while making a right turn. (Note there is no indication the squad car’s blue lights are on and the other vehicle is not seen in the video at this point.) The squad car continues to drive, making several turns. At one point, there is a vehicle approximately a half block in front of the squad car, and it appears the blue lights go on and there is audio – a siren can be heard. It appears that a vehicle, possibly a Jeep, pulls over as if it is going to stop, but then it continues on. It does this several times in the video. This vehicle does not have its lights on. The vehicle makes a left turn and starts driving on the wrong side of the road. The vehicle stops twice, while on the wrong side of the road; the second time it stopped, the squad car is right next to the vehicle and you can hear a male voice inside the squad car say, “Freeze!” The vehicle takes off again, with the squad car in pursuit. Both the vehicle and the squad car go through two stop signs, and it appears that the vehicle is accelerating away from the squad car. After the second stop sign, the male voice in the squad car states they are going to terminate – he’s at 103rd and Wentworth. The vehicle is approximately a block in front of the squad car at this point, approaching a traffic signal. Just after the male voice stated they were going to terminate, the male voice stated he just crashed. At this point, the squad car was coming to a stop at a red light. The squad car proceeded through the red light and drove to the scene. The male voice could be heard asking for more units – he drove into a house. (Att. 66)

WHITFIELD’s BWC shows, in part, the following: At one point, the vehicle and squad car stop, with the vehicle to the left of the squad car. At this point, the driver of the squad car does something with his right hand – he reaches across his body and does something by the driver’s side window, where the offender’s vehicle is located. There appears to be something in the driver’s hand. (Att. 31) (See also SMITH’s BWC, att. 30) (Note that one of the allegations is that SMITH pointed his firearm at the Jeep.)

A POD camera at 103rd and Wentworth shows flashing lights in the distance, a vehicle go through a red light at this intersection, and the vehicle crash into a house. The vehicle was on Wentworth and the time was approximately 7:20 pm. (Att. 27)

Two cameras from Hughes School show parts of the pursuit: Attachment 35, which in my determination appears to be located around 104th and Wentworth, shows, at 7:20:31, a vehicle go through the intersection without stopping, followed by another vehicle with flashing lights. Attachment 36, which in my determination appears to be located around 103rd Place and Wentworth, shows, at 7:20:34, one vehicle followed by a second vehicle with flashing lights. The vehicles seem to be further apart in the second video (Att. 36) than they were in the first video (Att. 35).

GPS records for Unit 513R on the above date show their vehicle went from 0 to 55 MPH on 108th Street, between State and Perry Avenue, at 19:18 hours. At 19:20 hours, their vehicle was going 42 MPH, northbound on Wentworth, between 105th and 106th Streets. (Att.16)

██████████, one of the passengers in the Jeep, provided, in part, the following information to COPA: On the above date, she and ██████████ got into ██████████ car. It was a Jeep. ██████████ did not know whose car it was. ██████████ was the driver. They were going to get some food when the police started chasing them. She thought they were around 107th and State when they saw a police car parked, with its lights off. They kept driving, and then the police made a U-turn and started chasing. She stated the police had their lights on but no siren. After a short time, the police ended up getting on the side of them – the passenger side of the Jeep. The police then put a gun to the window, pointing at them. She yelled, “Hold on. They gonna shoot. They fitting to shoot us.” It was a black gun. After a couple of turns, they were driving real fast. They then hit a pothole or something, he lost control, and the Jeep crashed into the house. While the statement was not clear, it seemed that ██████████ was referring to the driver of the squad car during her testimony. (Att. 72)

██████████ the other passenger in the Jeep, provided, in part, the following information to COPA: As it proceeded into a chase, the police got on the passenger side of them and pointed a gun at the window. It was the driver officer who pointed the gun. ██████████ was in the passenger seat of the Jeep so when the officer pointed the gun, it was directed at ██████████. It was a black gun. The officer was driving and holding the gun with one hand. Regarding the squad car’s blue lights, the officers did not turn them on right away. They waited until they got closer to their vehicle and then they turned them on. When the officer pointed the gun, the lights and siren were on. The lights were on until the Jeep crashed into the house. (Att. 73)

Accused officer WHITFIELD was interviewed by COPA twice. In her first interview, she provided, in part, the following information to COPA: On the above date, she was assigned to Beat 513R, and her partner was SMITH. WHITFIELD was the passenger in the squad car. Shortly after 7 pm, she encountered the Jeep. She explained their squad car had a license plate reader, which stated that a plate was stolen. She then ran the plate on her PDT, which stated there was a stolen car – they did not know at this point how the vehicle was stolen (e.g., straight steal, vehicular hijacking, etc.). When the officers got the hit on the plate, they were pulled over on the side of the road - on State Street, around 107th Street. Her partner then made a U-turn, but they did not see the vehicle. They started looking for the vehicle. They made several turns. At one point, she saw tail lights a block or two down, but she couldn’t see the plate on the vehicle. Eventually, when they got to a dirt path right before the train tracks, she could see the plate and a gray Jeep. Up until this point, there was no communications with OEMC because they did not know where the car was located. They were looking for the car. They were not in pursuit of the car. When they were looking for the car, their emergency lights and sirens were not activated. When WHITFIELD said to SMITH, “That’s the car,” SMITH turned on the lights and siren. WHITFIELD proceeded to get on the radio to tell OEMC they were going to do a traffic stop because the car had stopped – but then the car pulled off. WHITFIELD lets dispatch know the car had taken off on them. A short time later, the Jeep stopped and took off again. After the Jeep turned left onto Wentworth (at 107th and Wentworth), he stopped again. He stopped in the middle of the street and the officers pulled next to the Jeep, on the right side of the Jeep. It takes off again, and there may have been another short stop before the Jeep makes an evasive movement by a stop sign – to get around a car. Her partner started saying to OEMC that they were going to terminate. As the officers start to slow down around 104th Street, WHITFIELD could see the car hit a dip and then she heard the noise of it hitting the house. (Att. 60)

When SMITH was following the Jeep initially, WHITFIELD stated that she does not think that he ran any stop signs. Around the time that her partner was saying they were terminating, WHITFIELD heard the dispatcher say the Jeep was a “straight steal,” meaning that someone could have just left the keys in the vehicle. When asked if at some point she observed SMITH draw his weapon, WHITFIELD stated that she thinks he

drew it around the third stop. She explained that she thinks you can hear the click of his holster but she did not see him point his weapon at the vehicle. She does not know if SMITH pointed his firearm at or in the direction of the occupants of the Jeep. She thinks that he might have said, "Freeze" around the third stop, when they were right next to the car. (Att. 60)

Regarding BWC, WHITFIELD stated she was assigned one on the above date. She stated she did activate it during the incident. When asked when she activated it, WHITFIELD stated that she could not remember exactly, but she remembers hitting her body camera after they got out of the car – at the scene of the crash. When asked if there was a reason why she did not turn it on sooner, she stated there was a lot of things going on at once. (Att. 60)

In her second interview with COPA, WHITFIELD responded to the second and third allegations that she received after her first interview. She stated, in part, the following: Regarding the allegation that she continued the pursuit of the stolen vehicle that had disregarded traffic control devices, she stated that they did the balancing test after the Jeep committed a hazardous traffic offense, and they determined they would not pursue the vehicle. The hazardous traffic offense the driver committed was that he did an evasive movement while blowing the stop sign. Regarding the allegation that she failed to activate the emergency lights and/or siren while engaged in nonpursuit emergency vehicle operation, she stated at that point, they did not see the vehicle to put their lights on. She explained they had not yet confirmed the plate on the Jeep – once they confirmed this information, they activated their emergency equipment. She further stated they cannot turn on their lights because then everyone would start stopping in front of them and they had not confirmed the vehicle was on the street they were on. They had not yet located the vehicle. She stated that she and her partner were not driving in an unsafe manner – low vehicular traffic, no pedestrians, and well-lit street. When asked if it was necessary to activate the emergency equipment to alert others of the approach of their squad car, WHITFIELD said no and explained they were just driving down the street looking for the vehicle– they don't drive around with their lights on just patrolling the neighborhood. She and her partner did not have a conversation about turning on the lights. In response to another question, WHITFIELD stated that it was not a pursuit until he made the evasive movement and committed the hazardous violation – before that it was a traffic stop – the car kept stopping – they kept assuming that it was going to be a traffic stop. (Audio is att. 79 – no transcript provided.)

Accused officer SMITH provided, in part, the following information to COPA: On December 12, 2019, he was assigned to Beat 513R with WHITFIELD as the passenger, and SMITH was the driver of their squad car. At approximately the above time, he was parked on State St., facing southbound, at approximately 109th St, and the Jeep was traveling northbound. After the license plate reader ("LPR") hit on the stolen vehicle, SMITH made a U-turn. He explained that it is best to get behind a vehicle to verify the plate because sometimes the LPR misreads a word or number. After making the U-turn, SMITH kind of lost sight of the vehicle. He proceeded to try to catch up to it so that he could verify that it was a stolen vehicle. After 106th Place, near some train tracks, SMITH caught up to the vehicle. The vehicle turned onto 107th Street, and then SMITH activated his lights and siren. At this point, the vehicle started to slow down and pull over, like a normal traffic stop. But the vehicle took off. The vehicle stopped again and took off again. It then turned onto Wentworth – the traffic signal was green at 107th and Wentworth. Between 106th Pl. and 107th St., on Wentworth, the vehicle stopped again, this time he stopped in the middle of the street. SMITH stopped his squad car on the passenger side of the Jeep, and he can see the occupants moving around inside the vehicle. At this point, his thinking is that they might have a weapon inside of the vehicle because he has had previous encounters where people are moving around inside a vehicle, especially a stolen vehicle, to try to reach for or hide a weapon. But the vehicle took off again and then stopped a short time later. SMITH stated this second

stop on Wentworth occurred between 105th Place and 106th Street. (Note this was the final stop.) The vehicle stopped quickly, so SMITH stopped right next to the passenger side. SMITH already had his weapon out. He was trying to get out, and he yelled, "Freeze." He grabbed and opened the door – the car was in park, and they took off again. The vehicle blew a stop sign – he believes that it was at 105th and Wentworth. (SMITH also ran that stop sign.) SMITH started thinking about the balancing test. SMITH then sees the vehicle go through the stop sign at 104th and Wentworth. (SMITH could not remember if he stopped at this stop sign, but the In Car video shows that he did not stop at it.) At this point, the vehicle was driving real fast because he was pulling away from SMITH. SMITH decided to terminate the chase. SMITH started slowing down. SMITH states that per the order, after terminating, he was supposed to pull over, turn off his lights, and wait for his sergeant. When asked if he did these things, SMITH stated that he did not get a chance to come to a complete stop because – he had just turned off his lights – he saw the vehicle hit a dip, jump in the air, and go into the house. He couldn't just sit there and wait for his sergeant. (Att. 61)

At the beginning, after making the U-turn, SMITH estimated he was traveling 30 to 40 MPH, and the normal speed limit is 30 MPH. At this point, he had not activated his car's emergency lights and sirens. He did not activate this equipment because he had to verify the vehicle but had lost sight of it. He stated that he was not going to just drive down the street with lights and sirens on if he didn't even have a vehicle in front of him. (Att. 61)

When asked what he meant when he stated he had his weapon out, SMITH stated that it was unholstered. He stated he had unholstered when he saw the occupants moving around inside – it was a stolen car and they did not know how the vehicle was stolen at that point and whether a weapon was used. He explained that he had his gun in his right hand – he had it on his chest and was about to exit out of the vehicle. His gun was facing down, towards the door. SMITH yelled, "Freeze" and the vehicle took off. When asked if he ever pointed his firearm at or in the direction of the occupants of the Jeep, SMITH stated he could not recall. (He did not deny it.) After a break, SMITH stated that he never intentionally pointed the gun at the occupants of the vehicle. When asked, SMITH stated that he did not notify OEMC that he pointed his firearm at the occupants of the Jeep. (Att. 61)

Regarding BWC, SMITH was wearing a BWC on the above date. He stated he did activate his BWC for this incident. When asked when he activated it, he said, "When it was feasible. So I believe I activated when I was getting out for the accident." Upon further questioning, he stated that he activated it once the accident happened. SMITH also stated that "when it was feasible" means that he never had the opportunity during the stop because he was focused on what was going on at the time. He activated when it was feasible to activate. Regarding when he is required to activate his BWC, he stated that you're supposed to activate to record a traffic stop or when trying to make a traffic stop. (Att. 61)

Regarding the allegations, SMITH responded as follows: For failing to timely activate his BWC, he stated when the Jeep was about to make the first stop, SMITH was about to exit the vehicle and about to activate his BWC – but he did not know if he tapped it or not. He didn't realize it wasn't on until he saw the accident and looked down at his BWC. For failing to activate his emergency lights and siren when he was initially trying to catch up to the Jeep, SMITH stated that he did not want to pull over someone who might have been innocent – he wanted to verify the vehicle first – before turning on his lights and sirens. He explained that it would not be feasible to just ride around with your lights and sirens on and he doesn't even know if that's the vehicle. When asked, he stated that he did not recall going through a stop sign before he turned on his emergency equipment. For continuing a pursuit after the Jeep disregarded a traffic control device – the stop

sign at 105th Street, SMITH stated that once the Jeep blew through the stop sign, he started thinking about whether he should continue the pursuit, and he was deciding this question in his mind when the Jeep blew the second stop sign. At that point, he knew that they didn't need to continue it. He went over the air and decided to terminate. (Att. 61)

One of the Case Supplementary Reports states that at the crash location, on Wentworth Ave., there are no posted speed limit signs, but the regulated speed limit is 30 MPH, per ordinance. (Att. 62)

COPA's Findings Against Officer SMITH

COPA recommended that SMITH be suspended for a period of 180 days up to and including separation for the following allegations:

1. On the above date/time, near the above location, he failed to comply with Special Order S03-14 by failing to activate his BWC in a timely manner, in violation of Rule 6.
2. On the above date/time, near the above location, he failed to comply with Department Notice D19-01 by failing to notify OEMC that he had pointed a firearm at or in the direction of the occupants of the Jeep, in violation of Rule 6.
3. On the above date/time, near the above location, he pointed a firearm at or in the direction of the occupants of the Jeep without justification, in violation of Rule 38.
4. On the above date/time, near the above location, he failed to comply with General Order G03-03-02 in that he failed to activate the emergency roof lights and/or siren when engaged in nonpursuit emergency vehicle operations, in violation of Rule 6.
5. On the above date/time, near the above location, he failed to comply with General Order G03-03 in that he failed to drive with due regard for the safety of all persons, in violation of Rule 6
6. On the above date/time, near the above location, he failed to comply with General Order G03-03-01 by continuing pursuit of a reportedly stolen vehicle that disregarded traffic control devices, in violation of Rule 6.

The Department concurs with allegations 1 through 4 and 6, but does not concur with allegation 5. The Department recommends a 30 day suspension.

Regarding Allegations #5, General Order G03-03 states the provisions of Illinois law that allow emergency vehicles to engage in emergency driving "do NOT relieve Department members from the responsibility of driving with due regard for the safety of all persons."

In support of this allegation, COPA just stated (in their Summary Report) that facts of the case support this allegation, but it's not clear what facts COPA is referring to – are they talking about his nonpursuit vehicle operations or his pursuit vehicle operations. Moreover, it is not clear from the allegation whose safety was endangered by SMITH's driving. The In-Car Camera video shows the vehicular traffic was light and there were very few pedestrians. (Att. 66) In addition, SMITH's vehicle did not strike anyone, and he was not involved in

the traffic crash. Because the allegation does not contain specific facts as to how SMITH violated General Order G03-03, COPA has not supported a sustained finding of this allegation by a preponderance of the evidence.

COPA's Findings Against Officer WHITFIELD

COPA recommended that WHITFIELD be suspended for a period of 180 days up to and including separation for the following allegations:

1. On the above date/time, near the above location, she failed to comply with Special Order S03-14 by failing to activate her BWC in a timely manner, in violation of Rule 6.
2. On the above date/time, near the above location, she failed to comply with General Order G03-03-01 by continuing pursuit of a reportedly stolen vehicle that disregarded traffic control devices, in violation of Rule 6.
3. On the above date/time, near the above location, she failed to comply with General Order G03-03-02 in that she failed to activate the emergency roof lights and/or siren when engaged in nonpursuit emergency vehicle operations, in violation of Rule 6.

The Department concurs with allegation 1, but does not concur with allegations 2 and 3. The Department recommends a 5 day suspension.

Regarding Allegation #2, WHITFIELD stated that after the Jeep committed a hazardous traffic violation – blowing the stop sign, she and her partner did the balancing test and they determined they would not pursue the vehicle. She also stated it was not a pursuit until he committed the hazardous traffic violation; otherwise, it was a traffic stop. The Jeep kept stopping, and they assumed that it was going to be a traffic stop. (Att. 79)

In their Summary Report, COPA stated that WHITFIELD actively participated in the pursuit in violation of Department rules. The problem with COPA's analysis is that WHITFIELD was the passenger in the squad car so they literally had to combine multiple rules in order to create a duty on a passenger officer involved in a pursuit. The rules that COPA combined were Rules 2 and 3, along with the policy in General Order G03-03-01 which states that "[a]ll members" involved in or supervising a motor vehicle pursuit must be prepared to justify their actions.

COPA's creation of a duty on passenger officers does not give passenger officers fair notice of conduct that is forbidden. In the Jamie Jawor case, the Police Board addressed an issue involving due process and fair notice. The Police Board said, "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. The consideration is whether the general order, standing alone or as construed, made it reasonably clear at the relevant time that the conduct was prohibited." See Police Board Case 20 PB 2978, 15 July 2021, at 8 (citations omitted).

In addition, other language from the pursuit directive can be quoted to argue that it does not put a duty on passenger officers. For example, G03-03-01 states that a "motor vehicle pursuit" involves an active attempt by a "sworn member operating an authorized emergency vehicle." Based on this language, there is a strong argument that it is the driver of the squad car who engages in a pursuit, and as a result, it is their duty, not the passenger's duty, to discontinue a pursuit when required by the directive.

Because General Order G03-03-01 does not clearly establish duties on passenger officers to discontinue pursuits, the evidence cannot justify a sustained finding by a preponderance of evidence.

Regarding Allegation #3, General Order G03-03-02 states, in part, that when engaged in nonpursuit emergency vehicle operation, the “operator” of a marked vehicle will activate the emergency-roof lights and activate the siren in advance of encountering any traffic obstruction or to alert others of the approach of his or her vehicle. (Att. 68) Because WHITFIELD was not the operator of the squad car, COPA has not met its burden by a preponderance of evidence.

For the above referenced reasons, the Department concurs with allegations 1 through 4 and 6, but does not concur with allegation 5 for SMITH and recommends a 30 day suspension. Further, the Department concurs with allegation 1, but does not concur with allegations 2 and 3 for WHITFIELD and the Department recommends a 5 day suspension.

CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department