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**Issued Date:** MAY 27, 2024

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

**Case Number:** 2023OPA-0520

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

- 1. Allegation #1:** 5.001 – Standards and Duties 10. Employees Shall Strive to be Professional (Effective March 1, 2018)  
**Finding:** Not Sustained - Unfounded
- 2. Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion  
**Finding:** Not Sustained - Lawful and Proper
- 3. Allegation #3:** .090 – Crowd Management, Intervention, and Control, 14.090-POL-5 The Incident Commander Will Use the Crowd Management, Intervention, and Control Concepts Strategies (CMIC) Matrix (Effective April 24, 2023)  
**Finding:** Not Sustained - Lawful and Proper

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### **Named Employee #2**

- 1. Allegation #1:** 5.001 – Standards and Duties 10. Employees Shall Strive to be Professional (Effective March 1, 2018)  
**Finding:** Not Sustained - Unfounded
- 2. Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion  
**Finding:** Not Sustained - Lawful and Proper
- 3. Allegation #3:** .090 – Crowd Management, Intervention, and Control, 14.090-POL-5 The Incident Commander Will Use the Crowd Management, Intervention, and Control Concepts Strategies (CMIC) Matrix (Effective April 24, 2023)  
**Finding:** Not Sustained - Lawful and Proper

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### **Executive Summary:**

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) coordinated SPD's crowd management response to an illegal street racing event, following which Community Member #1

(CM#1) was fatally shot. The Complainant—the attorney for CM#1's estate—alleged the named employees' failures contributed to CM#1's death.

### **Administrative Note:**

On April 29, 2024, the Office of Inspector General certified OPA's investigation as timely, thorough, and objective.

### **Summary of Investigation:**

#### **A. OPA Complaint**

On November 20, 2023, the Complainant filed a "Claim for Damages" with the City of Seattle, writing, "[CM#1] was shot after Seattle police failed to adequately disburse an unruly crowd, even after police was aware of [participants with guns]." On November 29, 2023, the Seattle City Attorney's Office forwarded the claim to OPA for review.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), in-car video (ICV), 9-1-1 audio recording, and training records. OPA also interviewed the named employees. The Complainant did not respond to OPA's requests for an interview.

#### **B. Computer-Aided Dispatch (CAD) Call Report and Body-Worn Video (BWV)**

On July 23, 2023, at 1:26 AM, CAD call remarks noted, "[REPORTING PARTY ADVISING] 50 SUBJ[ECT]S WITH OVER 20 VEH[ICLE]S REFUSING TO LEAVE – CAN HEAR LOUD LAUGHING AND YELLING IN THE BACKGROUND – NO WEAPONS SEEN."

NE#2, a lieutenant, responded to the incident location and activated his BWV, capturing the following:

Upon NE#2's arrival, several officers, patrol cars, and community members were present. BWV captured what sounded like vehicle burnouts. An officer told NE#2 that officers lacked protective gear. NE#2 announced officers did not need to engage the crowd since they lacked adequate gear, and the participants only did donuts. NE#2 radioed his intention to clear the roadways so the crowd could disperse. NE#2 directed officers to line up for a "show of force" but instructed against engaging the crowd. NE#2 instructed officers to avoid the crowd if the crowd approached. NE#2 continued coordinating their response as another officer used a public address (PA) system to order the crowd to disperse. Fireworks were visible and audible.

NE#2 and a sergeant briefed NE#1, a captain. The sergeant said the crowd grew aggressive when officers tried using their lights and sirens to disperse them. A responding officer's ICV captured the officer with his patrol car's lights and sirens activated attempting to disperse the crowd. A throng flipped off the officer, climbed on the patrol car to take selfies, and threw items at it. That officer reversed, but members of the crowd followed and continued throwing items at the patrol car, including a skateboard and metal pole. The sergeant reported no injuries and that the crowd only did donuts. NE#2 said officers created exit routes for the crowd. NE#1 said officers should not engage the crowd since they lacked the necessary tools but suggested pulling back and staging officers at different locations. NE#2 said there was no reason to "go in" but

expressed concern about their ability to prevent an incident if they were too distant from the crowd. NE#1 said there was nothing officers could do about that. NE#2 told officers to let the crowd organically disperse. NE#2 said, "We don't have the people or the equipment to go and clear them out without taking some injuries." NE#2 ordered officers to leave the area. NE#2 radioed that no officer should be in the crowd's vicinity. The named employees returned to the East Precinct's command post.

On July 23, 2023, at 3:53 AM, CAD call remarks noted, "[REPORTING PARTY] HEARD SHOTS AND HEARS [SUBJECTS] SCREAMING... HEARD OVER 20 SHOTS." CM#1 was fatally shot.

### **C. 9-1-1 Audio Recording**

The 9-1-1 audio recording was consistent with the evidence summarized above. OPA reviewed over three and a half hours of 9-1-1 audio from the incident, which captured the following:

At about 1:26 a.m., dispatch broadcasted a disturbance involving vehicles and subjects known to carry weapons, refusing to leave. OPA estimated the 9-1-1 audio recording times by comparison to time-stamped entries in the CAD call report. It may not be exact. At about 1:30 a.m., dispatch broadcasted that a subject threatened to shoot someone. Over the next five minutes, dispatch broadcasted that vehicles were doing donuts and subjects were igniting fireworks on a roadway. Around 2:47 a.m., dispatch broadcasted a male in the crowd pointing a handgun at others. Around 3:53 a.m., dispatch broadcasted a reporting party hearing over 20 shots and screaming. About thirty seconds later, dispatch broadcasted an unresponsive person with a gunshot wound to the head. There was no description of the shooter. Screaming was heard. About four minutes later, dispatch broadcasted that three people were down and coordinated an emergency response.

### **D. OPA Interviews**

#### **1. Witness Supervisor #1 (WS#1)**

On February 14, 2024, OPA interviewed Witness Supervisor #1 (WS#1), a Community Response Group lieutenant responsible for crowd management. WS#1 said a police response generally depended on crowd size and resource availability. WS#1 said he had no experience with street racing events, and SPD had no training in street racing. WS#1 believed the officers at this incident were unprepared to manage the crowd because they lacked experience, training, and equipment. WS#1 said crowd management for street racers presented safety risks to officers because street racers could use their cars as weapons. WS#1 described street racing events as dynamic and mobile. WS#1 said there was no feasible way to approach street racers on foot, and street racers were unlikely to hear PA system orders.

WS#1 categorized the incident as phase 5 under the crowd management, intervention, and control concepts strategies (CMIC) matrix due to the unlawful assembly and unpermitted traffic disruption posing an imminent threat of harm to the public. WS#1 did not know how to disburse the crowd safely. WS#1 said items being thrown presented a safety risk warranting a task force call, where officers would methodically move the crowd and make arrests. However, he cautioned that an effective police response depended on available resources. WS#1 suggested

letting the situation diffuse since officers could not safely enter the crowd. WS#1 said, generally, police responses to calls involving someone armed with a gun depended on what the person did with the weapon, the person's location in the crowd, and whether officers could safely approach that person. WS#1 believed that locating a suspect was unlikely under the circumstances due to the lack of a description and the crowd dispersing.

## **2. Named Employee #2 (NE#2)**

On March 14, 2024, OPA interviewed NE#2. NE#2 said he had no experience or training in handling street racing events. NE#2 said he approved a task force to respond to the chaotic scene. NE#2 said officers were outnumbered, roughly 20 officers to a crowd of 300 to 500 people. NE#2 said officers lacked protective gear, training, and other resources. NE#2 categorized the incident as phase 4 under the CMIC matrix based on isolated unlawful acts and property damage. Given limited resources, NE#2 believed officers could not enter the crowd to make arrests. NE#2 said he used a PA system and cameras to identify subjects for possible future arrests since making arrests at the time was unfeasible. NE#2 said he and NE#1 decided to leave the scene, believing their presence worsened the situation. NE#2 said he ordered officers to retreat beyond the crowd's sight, a tactic effective in prior protests.

NE#2 said he and NE#1 monitored the situation at the East Precinct. NE#2 said the crowd appeared to disperse, so he ordered officers to return to their respective precincts. NE#2 denied recalling the dispatch about an armed subject among the crowd and suggested, nevertheless, since Washington permits open carry, more information establishing a crime was necessary to warrant police action. NE#2 said police action is based on known factors, not what "may" happen. NE#2 believed that since the crowd was not riotous, officers were not required to act further. NE#2 said the deputy chief suggested the situation was "perfectly" handled. NE#2 indicated that more training was needed to implement the CMIC matrix. NE#2 also cited an OPA case he interpreted as recommending officers retreat when they cannot stop a large crowd's advancement.

## **3. Named Employee #1 (NE#1)**

On March 25, 2024, OPA interviewed NE#1. NE#1 said he was trained in crowd management. He said he looked for behavioral cues among the crowd. NE#1 suggested the CMIC matrix was geared towards protest-type crowds, not a spontaneous street racing event in an area where most people were celebrating block party events. NE#1 said rowdy street racers threw items as officers approached. NE#1 described the street racers as "rambunctious," meaning they would fight and drive recklessly had officers engaged them. NE#1 said officers had limited crowd control equipment. NE#1 concluded an appropriate response would be to clear the area and allow the crowd to dissipate since the officers were outnumbered, only minor crimes were observed, and there were no known life safety concerns. NE#1 said an East Precinct command post allowed officers to be close enough to respond if necessary and to respond to other calls. NE#1 said the plan appeared effective because the crowd began to dissipate.

NE#1 said a call about a person armed with a gun was not unusual since gun possession was not inherently unlawful. NE#1 recalled that officers did not locate a suspect. NE#1 said he had no legal justification to disperse the crowd, especially considering many were lawfully present and

did not participate in the street racing event. NE#1 said he exercised discretion by overlooking minor issues, backing off, preparing to handle life safety concerns, freeing up resources for other parts of the city, and addressing minor violations later.

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## **Analysis and Conclusions:**

### **Named Employee #1 – Allegation #1**

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

The Complainant alleged that the named employees failed to adequately disperse the crowd at the illegal street racing event, knowing a firearm was reportedly present.

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

Here, the named employees agreed to disengage the crowd. Several facts informed their decision. First, they were overwhelmingly outnumbered, approximately 20 officers compared to hundreds in the crowd. Second, the officers were ill-equipped to confront the crowd, given their lack of experience, training, and equipment. Third, some among the crowd aggressively responded when officers attempted to disperse them with their lights and sirens. They climbed on the hood of an officer’s patrol car, followed the officer as he reversed, and threw metal objects. Further engagement would have likely escalated the unmanageable scene. WS#1 also noted that the street racers posed a threat to officers because they could have used their cars as weapons. Fourth, before the shooting, no injuries or safety concerns were reported. Given the information known at the time, NE#2 thought it unwise and unnecessary to engage the crowd for doing donuts in cars. While there were reported gun sightings, the named employees noted that there was no actionable information warranting police intervention, and identifying and locating the armed person in an unruly crowd was unfeasible. Fifth, the named employees, relying on their training and experience in crowd management, believed the crowd would naturally dissipate if the police de-escalated and maintained distance. NE#2 also instructed officers to create exit routes for the crowd.

The named employees’ decisions reflected careful consideration of these facts during a rapidly evolving situation. Their choices also incorporated de-escalation measures to mitigate safety concerns. Their decision to disengage the crowd did not undermine public trust. Instead, the named employees exercised reasonable discretion based on the information they knew at the time.

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

Recommended Finding: **Not Sustained - Unfounded**

### **Named Employee #1 – Allegation #2**

#### **5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion**

The Complainant alleged that the named employees exercised unreasonable discretion.

Employees are authorized and expected to use discretion reasonably, consistent with the department's mission and the duties of their office and assignment. SPD Policy 5.001-POL-6. Discretion is proportional to the severity of the crime or public safety issue being addressed. *Id.*

The named employees exercised discretion, as articulated above. OPA finds their exercise of discretion to be reasonable and consistent with the department's mission and the employees' duties. Therefore, for the same reasons at Named Employee #1—Allegation #1, OPA recommends that this allegation be Not Sustained—Lawful and Proper.

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

### **Named Employee #1 – Allegation #3**

#### **14.090 – Crowd Management, Intervention, and Control, 14.090-POL-5 The Incident Commander Will Use the Crowd Management, Intervention, and Control Concepts Strategies (CMIC) Matrix (Effective April 24, 2023)**

It was alleged that the named employees failed to comply with the CMIC matrix.

Any public assembly of individuals or groups, lawful or unlawful, may require law enforcement support and/or intervention. SPD Interim Policy 14.090-POL-5 (effective April 24, 2023). Depending upon the situation, the law enforcement response can range from observation and/or crowd management strategies to crowd intervention and control strategies as outlined in the CMIC matrix. *Id.* The CMIC matrix guides the incident commander and allows for agility in police action in response to dynamic crowd events. *Id.* Such considerations may include the overall positioning of a crowd and whether it is static or mobile. *Id.* The CMIC matrix is intended to be read as a continuum. SPD Interim Policy 14.090 (effective April 24, 2023). Any police response available at a lower phase remains available as a response at higher phases. *Id.*

Police responses, at the named employees' direction, were consistent with those identified in the CMIC matrix through phase 5, even though the street racing incident could be categorized as phase 4. Based on the evidence summarized above, officers assessed and modulated their response as behavior changed (phases 1 through 5); minimized police presence observable by the crowd (phases 1 and 2); monitored and assessed the crowd's behavior (phases 1 and 2); used amplified sound to communicate intent or to gain compliance (phases 3 and 4); video recorded officers and law violators (phase 4); identified and tracked subjects for later arrest when it was not possible to make an immediate arrest (phase 4); issued a dispersal order (phase 5); and identified dispersal routes (phase 5). Thus, the evidence indicates that the named employees directed a police response that was compliant with the CMIC matrix.

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

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

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### **Named Employee #2 – Allegation #1**

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

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained –Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 – Allegation #2**

**5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion**

For the reasons at Named Employee #1—Allegation #2, OPA recommends that this allegation be Not Sustained— Lawful and Proper.

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

**Named Employee #2 – Allegation #3**

**14.090 – Crowd Management, Intervention, and Control, 14.090-POL-5 The Incident Commander Will Use the Crowd Management, Intervention, and Control Concepts Strategies (CMIC) Matrix (Effective April 24, 2023)**

For the reasons at Named Employee #1—Allegation #3, OPA recommends that this allegation be Not Sustained— Lawful and Proper.

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