

Public Report

October 20, 2019: Death/Serious
Injury IAB Investigation



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INCIDENT

On October 20, 2019, at 12:16 a.m., an individual (hereinafter identified by his initials “CM”) was struck by a Fairfax County Police Department (hereinafter “FCPD”) cruiser being driven by an officer (hereinafter “OFFC#1”) assigned to the Mason District police station. The accident occurred at the intersection of Arlington Boulevard and Graham Road. After being struck, CM was immediately taken to Inova Fairfax Hospital, where he was pronounced deceased at 1:00 a.m.

At the time of the accident, CM was crossing Arlington Boulevard in the pedestrian crosswalk. However, he was crossing during a red-light cycle, was wearing dark, non-reflective clothing, and had earbuds in both ears. OFFC#1 was traveling east on Arlington Boulevard and proceeding through a green traffic signal. He was in a marked patrol car and responding to a non-emergency call for service. Consequently, his police lights and siren had not been activated. OFFC#1 did not see CM until he struck him. He immediately activated his emergency lights and contacted the Department of Public Safety Communications (hereinafter “DPSC”). He then began rendering aid to CM until emergency medical personnel arrived.

INTERNAL ADMINISTRATIVE INVESTIGATION

Because of the death of the pedestrian, the FCPD’s Internal Affairs Bureau (hereinafter “IAB”) conducted an administrative investigation into the accident, which prompted my monitoring and review of that administrative investigation.¹

An administrative investigation was initiated immediately, with IAB investigators responding to the scene of the accident. The FCPD’s Crash Reconstruction Unit (hereinafter “CRU”) also responded and began its investigation. IAB personnel removed the Mobile Computer Terminal (hereinafter “MCT”) from the cruiser to determine OFFC#1’s computer activity prior to and at the time of the accident; the Inova Fairfax Hospital doctor who treated

¹ The Fairfax County Board of Supervisors created the Office of the Independent Police Auditor by approving Action Item 15 during its September 15, 2016, meeting, and agreed that “the Auditor shall review all investigations of death or serious injury cases conducted by the IAB.”

CM and pronounced him deceased was interviewed; businesses in the location that had surveillance cameras were identified; and the in-car video (hereinafter “ICV”) footage from OFFC#1’s cruiser was secured.

Subsequent investigation produced surveillance camera video footage from two businesses which captured the fatal accident. Additionally, the ICV in OFFC#1’s cruiser was activated by the impact of the cruiser striking CM, and automatically saved 30 seconds of footage prior to the activation. The video footage revealed that CM walked directly into the path of OFFC#1’s car and was not visible before being struck. ICV-recorded data reflected that OFFC#1’s highest speed during the 30 seconds captured was 52 miles per hour. The speed limit on Arlington Boulevard where the accident occurred was 45 miles per hour. Examination of the MCT revealed no computer-aided dispatch activity during the 30 seconds leading up to the accident. In an interview conducted by IAB investigators, OFFC#1 advised that he was not distracted in any way when he struck CM.

In December 2019, the medical examiner determined that CM had a blood-alcohol concentration of .20 at the time of the accident. In March 2020, a toxicology report from the Department of Forensic Science for the Commonwealth of Virginia stated that CM’s blood-alcohol concentration was .25 at the time of the accident.² As previously noted, he was wearing dark colored, non-reflective clothing, and had earbuds in both ears when he was struck.

Also included as part of the internal investigation were interviews with officers who responded to the scene, an interview with the FCPD Mason District supervisor the night of the accident, an interview with OFFC#1’s second-line supervisor, and confirmation that OFFC#1 was current on Emergency Vehicle Operation Training³ and that he had not been involved in any prior reportable vehicle crashes.

Based on the results of both the IAB and CRU investigations, the FCPD’s determination was that the October 20, 2019 incident involving OFFC#1 was a “non-preventable crash” and that there was “no improper action” on his part⁴ even though OFFC#1 had exceeded the posted

² For comparison purposes, a blood-alcohol concentration .08 or more constitutes Driving While Intoxicated in Virginia, as per Virginia Code § 18.2-266.

³ Last completed on March 19, 2019.

⁴ The CRU detective who investigated the accident presented the facts to the Office of the Commonwealth’s Attorney. No criminal charges were pursued.

speed limit just before striking CM. I believe the investigation into this incident was complete, thorough, impartial, and objective. While I agree that the crash was “non-preventable,” my opinion is that a policy violation did occur, which was not the conclusion of the FCPD.

CONCLUSIONS

FCPD General Order (hereinafter “G.O.”) 502.0, **NORMAL VEHICLE OPERATIONS**, sets forth that “[t]he safety of all people is of paramount importance in the operation of County-owned police vehicles or Department-leased vehicle [*sic*]. It is the policy of the Fairfax County Police Department that all departmental employees, while using normal driving, will operate County-owned police vehicles and Department-leased vehicles within the limits of state law and Fairfax County ordinances.” FCPD G.O. 502.1 defines “normal driving” as “[t]hat driving which relates to the maintenance of vehicle speed concurrent with the normal flow of traffic, the obedience to motor vehicle laws and requirements of posted vehicular control signs, and the practice of being a courteous, responsible driver.” FCPD G.O. 502.3 I. A. mandates that “[d]uring normal driving of County-owned police vehicles and Department-leased vehicles, all Department employees shall obey all motor vehicle laws.” As noted earlier, within thirty seconds of striking CM, OFFC#1 was going seven miles above the posted speed limit. However, the CRU detective who investigated this incident opined that driving seven miles per hour over the speed limit is typical when compared to the driving habits of the general public. Based on that opinion and other departmental policy provisions (examined below), the FCPD concluded that OFFC#1 did not violate its policy on “normal vehicle operations” when this incident occurred. Unlike the FCPD, however, I believe OFFC#1’s exceeding the posted speed limit constitutes a violation of G.O. 502.0, *et seq.*, in spite of the recognized allowance to maintain “*vehicle speed concurrent with the normal flow of traffic.*”⁵

Other sections of FCPD G.O. 502.3 state that “[a]ll department employees shall operate a County-owned or Department-leased vehicles [*sic*] in a reasonable manner,”⁶ and that “[d]uring normal operations of police vehicles, the police vehicle shall be operated with due regard to

⁵ FCPD G.O. 502.1 (*emphasis added*).

⁶ FCPD G.O. 502.3 I. C.

safety at all times.”⁷ The FCPD concluded that OFFC#1 satisfied the requirements of driving in a “reasonable manner” and with “due regard to safety at all times.” Therefore, the FCPD determined that the striking of CM was “non-preventable.” I agree with that conclusion.

RECOMMENDATIONS

While reviewing FCPD’s G.O.s on “normal vehicle operations,” I identified two grammatical inconsistencies noted by the usage of “[sic]” above. To resolve the inconsistencies, I recommend changing the first sentence of G.O. 502.0 to read: “The safety of all people is of paramount importance in the operation of County-owned police vehicles *and* Department-leased vehicles;” and, changing G.O. 502.3 I. C. so that it reads: “All department employees shall operate County-owned *and* Department-leased vehicles in a reasonable manner.” Additionally, the final four provisions of G.O. 502.3 are duplicative of earlier provisions. Therefore, G.O. 502.3 I. ¶¶ N, O, P, and Q should be eliminated as they are verbatim restatements of G.O. 502.3 I. ¶¶ F, G, H, and I.

⁷ FCPD G.O. 502.3 I. G.

