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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE,)	
Employee)	OEA Matter No. 1601-0051-19
)	
v.)	Date of Issuance: September 30, 2022
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	ERIC T. ROBINSON, ESQ.
)	SENIOR ADMINISTRATIVE JUDGE
_____)	
Marc Wilhite, Esq., Employee Representative)	
Nicole Lynch, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 29, 2019, the Metropolitan Police Department (“MPD” or the “Agency”) served the Employee, who was then serving as a Lieutenant, with its Final Agency Action advising him of the Metropolitan Police Department’s intention to reduce his rank from Lieutenant to Sergeant and transfer him to another assignment. The proposed action against Employee arose from an allegation that he violated General Order Series 120.21, Attachment A, Part A-26 (failure to obey orders or directives issued by the Chief of Police). In particular, the January 14, 2019, Notice of Proposed Adverse Action (NPAA) alleged that Employee provided information to the Watch Commander of the First District that resulted in subordinate members participating in an unauthorized vehicular pursuit, which was allowed to continue without being continually assessed.

On May 28, 2019, Employee filed his Petition for Appeal with the Office of Employee Appeals contesting MPD’s adverse action. On May 31, 2019, a letter from the OEA Executive Director was sent to the MPD requiring it to submit its Answer to Employee’s Petition for Appeal no later than July 1, 2019. MPD timely complied. This matter was assigned to the Undersigned on September 17, 2019. On October 1, 2019, the Undersigned issued an Order Convening a Prehearing Conference set for November 5, 2019. It was held as scheduled and as part of the

process, the parties submitted opposing briefs as to whether the instant matter should be decided procedurally due to a supposed violation of the MPD's 90-day rule. In a nutshell, I find that this matter proceeded in a timely matter due to the administrative delay that is allowed while the US Attorney slowly conducted a criminal investigation that was eventually declined.

Unfortunately, the holding of an Evidentiary Hearing in this matter was further delayed due to constraints imposed by the District of Columbia State of Emergency caused by the Coronavirus Covid-19 pandemic as well as an extension of time in order to ascertain whether this matter should be decided procedurally *vis a vis* a perceived violation of the 90-day rule. Eventually, the Hearing was held on July 15 and 27, 2021. After some delay, the parties submitted their closing arguments. After careful review of the record, the Undersigned has determined that no further proceedings are required. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUES

Whether the Agency's adverse action was taken for cause. If so, whether the penalty was appropriate given the circumstances.

STATEMENT OF THE CHARGES

On January 14, 2019, the Metropolitan Police Department issued the Notice of Proposed Adverse Action ("Notice") against the Employee, which sets forth the following charges:

Charge No. 1: Violation of General Order Series 120.21, Attachment A, Part A-26, which states, "Failure to obey orders or directives issued by the

Chief of Police”.

Specification No. 1: In that, on December 23, 2016, **you authorized** and/or provided information to the Watch Commander that resulted in subordinate members participating in **an unauthorized vehicular pursuit** of a vehicle that you believed had been taken in an armed robbery on December 21, 2016. At the time of the pursuit, you were aware that the vehicle had been stolen two (2) days prior however you had no additional information to indicate that the suspects in the vehicle posed an immediate threat of death or serious bodily harm to the members and others if not immediately apprehended. Your misconduct is further described in General Order 301.03, Part VI.E.2, which reads, “The Field Supervisor shall: Determine whether the pursuit was initiated in accordance with the provisions of this order.”

Specification No. 2: In that, on December 23, 2016, you authorized and/or provided information to the Watch Commander that resulted in subordinate members participating in an unauthorized vehicular pursuit of a vehicle that you believed had been taken in an armed robbery on December 21, 2016. At the time of the pursuit, you were aware that the vehicle had been stolen two (2) days prior; however, you had no additional information to indicate that the suspects in the vehicle posed an immediate threat of death or serious bodily harm to the members and others if not immediately apprehended. Despite not having this information, **you allowed the pursuit to continue and failed to direct members to terminate the pursuit**. The fleeing vehicle eventually struck two (2) vehicles operated by non-involved citizens, resulting in the fatality of one of the drivers. Your misconduct is described in General Order 301.03 (Vehicular Pursuits), Part IV.A.9, which states, “**A vehicular pursuit shall be continually assessed to determine whether it should be continued**, taking into account the associated risk it presents to the member and the public. A decision to continue or terminate a pursuit may be made by the primary unit, the monitoring field supervisor or the Watch Commander. This does not replace the obligation to adhere to a lawful order given by an official.”

Summary of Relevant Testimony

Agency Case-In-Chief

Sylvan Altieri (“Altieri”) Tr. Vol 1 pp 44 – 278

Altieri testified in relevant part that he is presently employed by the MPD as an Inspector with the MPD's 6th patrol District. He is also an Assistant Commander reporting to Commander Habeebullah. His current duties include overseeing his subordinates daily patrol routine deployments and dealing with the community. Altieri's career with MPD included varied positions but most relevant to the present matter was his multiple stints as an Agent with Internal Affairs. On December 23, 2016, Altieri was working as an Agent on-call and was alerted to a vehicle accident. He collaborated with other Department members that responded to the scene and he collected the Body Worn Camera ("BWC") footage from the officers involved for further review. Altieri noted that at this time, BWC usage and review was a relatively new concept with MPD. The familiarity that exists today did not exist at the time of the incident in question. Altieri revisited this matter in 2018 when the United States Attorney for the District of Columbia issued a letter of declination with respect to Employee. I was also during this time frame that Altieri was deposed in a wrongful death suit that stemmed from the vehicle accident in question. Altieri acknowledged that Employee was not interviewed the night of the incident due to logistical concerns as to whether this matter might have an officer involved criminal component. The decision to prosecute is left to the discretion of the United States Attorney's office.

Altieri admitted that he did not author the report that arose from the fatal vehicle chase and circumstances leading up to same. However, he did review it prior to its release and in preparation for the instant Hearing. Altieri noted that on December 21, 2016, a lady was the victim of an armed carjacking and as a result, her Lexus IS 250 was stolen. The investigation noted that three African American males participated in this crime. On December 23, 2016, Employee's colleagues in the Crime Suppression Unit ("CS") spotted, what was described, as the same vehicle that was reported stolen two days prior. This unit consisted of four members who were following said vehicle in an unmarked Chevrolet Malibu. Altieri noted that on the night in question, the weather conditions were clear and unseasonably warm at around 40 degrees. It was noted that the license plate tag displayed on the stolen Lexus was Virginia AEK8436. According to Altieri, Employee's unit followed the Lexus for a time in and around the vicinity of Robert F. Kennedy ("RFK") stadium. But when the stolen Lexus sped away, the CS unit turned on its emergency lights and sirens and began a high-speed pursuit. The pursuit started on East Capitol Street and as the Lexus sped away out of sight, the Malibu was unable to stay within a short distance due to the stark disparity in the horsepower of a Lexus IS 250 versus a Chevrolet Malibu. During the pursuit, the officer lost sight of the Lexus as it went through the Whitney Young Bridge. The CS unit noted that as they approached the Benning Stoddert Recreation Center and the Fort Chaplain Apartment complex, they saw smoke and debris where the Lexus was involved in a multiple vehicle accident. It had struck a Honda Fit and pushed it into a Ford Expedition; a Nissan Altima also lost control and struck a nearby tree. All of these other vehicles were civilian owned and occupied. Altieri noted that in the Malibu, two of the officers had their BWC turned on while the other two did not turn on their BWC. Further, at the time of the incident, the Malibu was not equipped with a dash camera. The BWC footage from these officers noted that towards the end of the vehicle chase, they called over the radio for a "10-50" on East Capitol Street, which indicates that a vehicle accident has occurred. Altieri clarified that none of the officers saw the actual collision nor did their BWC capture the accident in progress, only the aftermath. Altieri estimated that the entire chase lasted between one to two miles for approximately 40 - 46 seconds. He explained that this was based on statements from the officers involved and that he could not be sure of the accuracy of the time and distance of the chase. During this incident, Employee was in a separate vehicle

from the officers in the Malibu and during the high-speed chase was some distance behind them. When the vehicle chase ended in an accident in the area of East Capitol Street and Texas Avenue, the officers in the Malibu proceeded to chase the Lexus carjackers on foot. Altieri noted that the Lexus had black box data (since it crashed) and that this data shows that it was going in excess of 75 mph when it crashed.

Altieri was asked to explain MPD General Order 301.13, which indicates that a vehicle pursuit is only authorized to attempt to apprehend a fleeing felon. He elaborated that a vehicle pursuit would not be authorized for someone who committed a misdemeanor. Relating to the instigation of the pursuit, Altieri explained it was determined that a vehicle pursuit should not have been authorized since there was no definite indication that this car and these persons were the same vehicle and persons involved in the carjacking two days prior to the incident. While it is uncontroverted that it was later determined that this Lexus was in fact the one stolen, MPD in its Internal Affairs investigation is laser focused on the circumstances of the moment. Altieri also noted that the General Orders authorize a vehicle chase to cease when a Field Supervisor or Watch Commander orders it or if the pursuing officers lose sight of the vehicle. These Orders are in place to preserve life and minimize risk to the surrounding community. A Field Supervisor is subordinate to the Watch Commander. At the time of the incident, Employee was the Field Supervisor, and the Watch Commander was Michelle Ridlehoover. Altieri noted that the Internal Affairs investigation found that Employee did not adhere to the General Orders when he authorized pursuit. It was determined that Employee did not continually monitor radio transmission to ascertain whether the initiation or continuation of vehicle pursuit was justified.

Altieri further noted that Employee asserted that he was in constant contact with Ridlehoover and that he told her that the vehicle being pursued was from the aforementioned armed carjacking. Altieri admitted that both Ridlehoover and Employee stated that she had authorized continued pursuit but there was no corroborating radio transmission. Altieri explained that this missing transmission may be due to Ridlehoover's transmission being "stepped on" where it was blocked from recording due to other overriding radio transmission traffic. Altieri noted that the investigation uncovered that neither Employee, or anyone else, positively identified any of the Lexus carjackers as the ones responsible for the felony prior to instigation of the pursuit. Altieri further explained that another reason the pursuit should not have been authorized is that the license plate tag had changed from the time it was first reported stolen. Failing to surely corroborate that this Lexus was the same one that was stolen should have been another factor against authorizing pursuit.

During cross examination, Altieri admitted that he only personally interviewed two of the civilian crash victims. He further elaborated that he was not personally involved with any of the MPD personnel interviews either as an interviewer or co-interviewer. Altieri further elaborated that the Internal Affairs Department ("IAD") Agent Eams was the lead investigator in this incident and that Eams conducted a majority of the internal affairs investigation in this matter including conducting interviews and gathering recorded transmissions and other evidence. Altieri noted that Eams' investigation uncovered that the officers in the Malibu canvassed the surrounding area silently following the suspect Lexus for a period of time before activating their lights and siren in a failed attempt to effectuate a traffic stop. The officers did not turn on their BWC while they were canvassing so it was uncorroborated how long the officers were canvassing/following the suspect

Lexus. Altieri's review of the BWC footage notes that he was unable to determine what traffic maneuvers were being executed because of the unsavory vantage point of the BWC's while the vehicle pursuit was ongoing. Altieri also admits that Ridlehoover disclosed to IAD investigators that she had authorized the instant pursuit, although recorded radio transmissions did not capture her command.

At the end of the vehicular pursuit, one of the suspects attempted to flee on foot but was captured. A search of his person yielded evidence gleaned from his cell phone; text messages where he admitted to stealing a Lexus on December 21, 2016. Ultimately, this suspect plead guilty to manslaughter for his involvement in the accident. Altieri also admitted that a review of the IAD investigative record does not show a recorded transmission where Employee personally authorized the pursuit.

Altieri explained that pursuant to the general orders, the instant circumstance did not present an emergency that would justify authorizing a vehicular pursuit. He also noted that the Watch Commander typically is not in the field but rather is at the office and will provide direction based off the information given to her by the personnel that are in the field. However, it was also noted that the officers in the Malibu turned on their lights and sirens at their own discretion (when the Lexus sped off) and never received a command from anyone to start or stop the vehicular chase. It was further noted that Employee was in a separate vehicle some distance behind the officers in the Malibu. The entire vehicular chase was approximately 46 seconds long.

Altieri elaborated that given the circumstances continuing a vehicular chase should not have been authorized at any point (pursuant to applicable MPD General Orders) because no threat of death or serious bodily harm was imminent even if in hindsight it was discovered the Lexus caused two separate accidents with three vehicles and one civilian death.

Winkle Hobie Hong ("Hong") Tr. Vol 1 pp. 278 - 345

Hong testified in relevant part that currently he is the Director for the Disciplinary Review for MPD. Hong is responsible for overseeing all aspects of MPD personnel discipline. Hong confirmed that Employee was cited for initiating the vehicular chase in question and failing to continually assess the situation. Hong characterized the discipline imposed as a failure to supervise.¹ Hong also noted that the instant matter was not the first sustained misconduct against Employee. This was an aggravating Douglas Factor (past disciplinary history) in Employee's case. Hong opined that the discipline imposed was appropriate given Employee's disciplinary history and the fact that the imposed penalty of demotion to sergeant was significantly less than the original proposed penalty of demotion to officer and 16 days suspension.

During cross examination, Hong explained that his tenure with MPD started March 2019. He was not present when the instant matter was first investigated by his predecessor, Inspector Michael Goddard. Hong further admitted that he first reviewed this matter in 2021, in preparation for a related wrongful death suit.

¹ Tr. Vol. 1 p. 282.

Employee Case-In-Chief

Brian McCarthy ("McCarthy") Tr. Vol. 2 pp 8 – 89

McCarthy testified that he is currently employed with MPD as a Detective with the 1st District ("1D"), Criminal Investigations Division - Detective's Unit. At the time of the incident in question, he was an Officer in 1D working with the Crime Suppression Unit. At the time, he took a statement from the armed robbery/carjacking victim. As part of the interview, the victim described to McCarthy some of the other miscellaneous items that were stolen along with her vehicle. At that time, McCarthy and other 1D MPD officers, were well aware of a string of armed robberies/carjackings that had recently occurred in the area. They had specific instruction to be on the lookout for the robbery perpetrators. McCarthy was in the aforementioned Malibu that participated in the vehicular chase in question. His group was alerted over the radio that the stolen Lexus was in the vicinity and that it was being tracked via GPS. McCarthy and his colleagues stationed themselves along a presumed route that the Lexus was thought to be taking and waited for it to appear. Eventually, it did appear, and they proceeded to follow it around the general vicinity of RFK stadium. Initially, they did not turn on their lights and sirens and were following far enough behind to keep tabs on the Lexus' movements. They relayed its whereabouts to Falcon, which was the helicopter dispatch for aerial surveillance. For a time, they were able to follow discretely but noted that there was a temporary tag on this vehicle that differed from the stolen vehicle tag that was originally on this vehicle. After a short period of time, the Lexus sped away. In immediate response, McCarthy, who was driving the Malibu, initiated a vehicular chase with lights and sirens activated. During the vehicular chase, McCarthy noted that the Lexus was being driven at very high speeds with erratic handling. Moments later, they lost sight of the Lexus and in a matter of seconds, they came across the first accident scene. McCarthy testified that when he initiated his pursuit, he was of the understanding that said pursuit was authorized given the facts and circumstances known at that time; including the apparent crime spree that was occurring in that area.

Almost two years later, on December 12, 2018, McCarthy was directed by an IAD agent to create a vehicle incident report detailing the incident in question. In this report, he noted that authorization for the chase came from Captain Pulliam, Ridlehoover and Employee. He clarified that since Ridlehoover was the on-duty Watch Commander, her authority superseded Employee. As for the factors leading through the chase, McCarthy asserted that he was trying to effectuate a traffic stop but that he never got close enough to the Lexus to do it. McCarthy also explained the Malibu was a base model 4-cylinder and that a large amount of the path taken was uphill. He also noted that the entire chase lasted only for a few seconds before he encountered the first accident. He also noted that for a good period they had lost sight of the Lexus and first reacquired it after it had crashed. At this point, the Lexus occupants tried to escape on foot and the officers gave chase on foot. In his report, he noted that he did not turn on his BWC and attributed that miscue to equipment malfunction.

During cross examination, McCarthy noted that Employee was relaying real time information about the vehicle while the surveillance and pursuit were ongoing. During redirect examination, McCarthy noted that they had authorization from Employee to continue pursuit and that Ridlehoover copied that authorization over the radio giving implied approval. Tr. Vol. 2 pp

81 – 83. During the second redirect, McCarthy noted that because the vehicle was known to be stolen and the unsafe evasion being used by the Lexus, these two facts would justify a pursuit. *Id.* p. 87.

Michael Pulliam (“Pulliam”) Tr. Vol.2 pp. 88 – 140

Pulliam testified in relevant part that he has been with MPD for over 17 years. During the incident in question, he was a Captain with 1D. Ridlehoover and Employee were subordinates under his command. During the time period in question, he was on limited duty due to a knee injury and related surgery. He recalled discussing a BOLO (“be on the lookout” which is an internal MPD document) with Ridlehoover and Employee involving the stolen Lexus prior to the vehicle chase and noted that it had been involved in other crimes in the District of Columbia and Maryland. During the instant surveillance and chase, Pulliam was stationed at 1D behind a desk due to his limited duty status. During the surveillance and chase, Ridlehoover went to Pulliam and informed him that she just authorized a vehicular pursuit of the stolen Lexus. She then left 1D so that she could go to the scene and participate in the chase and possible apprehension. He also asserted that authorization to pursue flows from the Watch Commander (Ridlehoover). Pulliam was also asked about Employee’s most recent performance evaluations and it was noted that Employee received high marks in his evaluation.

During cross examination, Pulliam confirmed that it was Ridlehoover’s discretion to approve or deny the vehicular pursuit. He also noted that Employee was the one that informed him that the subject Lexus that was being pursued was the stolen a few days prior and had been involved in multiple robberies since. He also clarified that a field supervisor, like Employee in this instance, would have the authority to terminate a previously authorized ongoing pursuit.

Brian Bray (“Bray”) Tr. Vol 2 pp 140 – 150

Bray testified in relevant part that he had worked with Employee for a period of time in 2016 and that he had a high regard for Employee’s judgment, crime pattern recognition and work ethic.

Michelle Ridlehoover (“Ridlehoover”) Tr. Vol 2 pp 149 – 199

Ridlehoover testified in relevant part that she presently works for Viotech, a privately held company based in Norristown, Pennsylvania. Prior to her eventual departure from MPD, she had attained the rank of Inspector. During the incident in question, she was a Lieutenant with the MPD. Ridlehoover recalled that in the weeks leading up to the date in question, that a series of armed robberies/carjackings had occurred. She recalled that on the date in question, she was the designated Watch Commander. She was immediately aware of when the Lexus was first spotted and officers under her command began surveilling its movements. While she was monitoring radio traffic, she requested assistance from Falcon and simultaneously she was on the phone with Employee getting other data from him. She further asserted that this incident was over within seconds. Employee was the one who provided confirmation that the subject Lexus was the one that was stolen days earlier. She was tasked with reviewing the evidence collected in this matter and she noted that the vehicular pursuit ended when the officers in the Malibu lost sight of the Lexus.

R. Vol 2 pp 169 – 175. As part of the internal investigation, Ridlehoover was also subjected to discipline. The discipline meted out to her was a 15-day suspension. During cross examination, Ridlehoover reiterated that her decisions were based on the information provided to her by Employee.

Employee Tr. Vol 2 pp 199 – 380

Employee testified that he served as a Lieutenant with MPD from approximately April 2016 through April 2019. The bulk of that time he served as Lieutenant with the Crime Suppression Team in 1D. The CS was tasked with looking at crime patterns in order to thwart future criminal activity. Recognizing criminal activity patterns takes into account that most perpetrators do not recognize the actual boundaries drawn up by MPD and other neighboring jurisdictions. Regarding the incident in question, Employee was sure that the stolen Lexus was the one that was being surveilled because prior to the chase, a GPS unit had been affixed to the vehicle by the Washington Area Vehicle Enforcement team (“WAVE”). This group is a federally led task force comprised of members from surrounding law enforcement agencies with the goal of eradicating vehicle theft. By the time the instant pursuit occurred, the vehicle had been tagged by WAVE in Prince Georges County and Employee was able to concretely identify that this was the same vehicle from the robbery despite the vehicle tag discrepancy. Tr. Vol 2 pp 214 – 233. Employee further noted that the WAVE GPS unit was mated with the 17-digit Vehicle Identification Number (“VIN”) and did not track with the original license plate (which is more easily disguised). Tr. Vol 2 pp 270 – 277. Employee also clarified a point of Ridlehoover’s involvement, in that when Ridlehoover was asked if she wanted to discontinue pursuit, Employee interjected noting that the suspects had bailed out of the Lexus and were being pursued on foot. He further explained that the entire sequence of events happened so quickly that the ordinary chain of common protocols did not have enough time to coalesce. He noted that the Chief of Police arrived on the scene and asked to be debriefed by Ridlehoover. According to Employee, Ridlehoover indicated to the Chief of Police that she was being constantly relayed pertinent information by Employee and with that knowledge she authorized the vehicular pursuit. Tr. Vol 2 pp 240 -242.

During cross examination, Employee testified that the authorization of a pursuit depends on the circumstances at that given time. Employee was asked about the statement that he gave to IAD officials regarding this matter. He noted that he told them about the WAVE GPS but now sees that they seemed to be unaware of the import of that information. Concerning the instant matter, he further reiterated that this situation evolved in a matter of seconds. Further, he would not have characterized this incident as a pursuit given that it started and finished so quickly.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

On December 21, 2016, a grey Lexus IS 230 with a Virginia license plate number of AEK-8436 was stolen in an armed robbery in the 1400 block of A street, Northeast, Washington, DC. On December 23, 2016, Employee was assigned to the First District’s Crime Suppression Team (CST) as a Lieutenant, and then Lieutenant Michelle Ridlehoover was the Watch Commander. During the hearing, Employee testified to the robbery spree that was taking place in 1D at that time:

And this spree, what we had was we had a series of robberies all happen[ing] in PSA 108. They were all happening roughly in the 14 – 1500 block of A Street through C Street. They were usually anywhere from 7:00 to 10:00 at night, via double-parked car, delivery car. They come up with one car, let out a couple of robbers, the robbers would grab somebody on foot, take their car, dump the car they came in, so we'd recover the car in the same area where the next car would be taken. They drive that car around for a couple of days doing other robberies, the[n] ... they'd dump the car again and move onto the next one. Tr. Vol. 2 pp 210-211.

As testified to during the hearing, the Employee had been told to stop this spree of robberies. It was a top priority that flowed down from the Patrol Chief and the Commander of the First District.

It has been noted that MPD has several rules and regulations that dictate how a vehicular chase should ensue from start to finish. In its closing argument, MPD cited to the pertinent portion of these rules as noted below:

1. General Order 301.03 Vehicular Pursuits, which has been in effect since the early 2000s, gives specific rules about when a member of MPD is permitted to engage in a vehicular pursuit and how it may continue. [MPD Ex. 7]. Some of these criteria include:

A. Members may use deadly force to apprehend a fleeing felon ONLY when every other reasonable means of affecting the arrest or preventing the escape have been exhausted **AND**,

1. The suspect fleeing poses an immediate threat of death or serious bodily harm to the member or others; **OR** (CALEA 1.3.2)
2. There is probable cause to believe the crime committed or attempted was a felony which involved an actual or threatened attack which resulted, or could have resulted, in death or serious bodily harm; **and**
 - i. There is probable cause to believe the person fleeing committed, or attempted to commit, the crime; **AND**
 - ii. Failure to immediately apprehend the person places a member, or the public in immediate danger of death or serious bodily injury; **AND**
 - iii. The lives of innocent people will not be endangered if the fleeing felon is pursued.

E. Members shall immediately terminate a pursuit when ordered by a Department official. (CALEA 41.2.2.h)

F. Members are prohibited from pursuing a vehicle for the purpose of affecting a stop for a traffic violation.

A. The initiation of a pursuit must be based on the conditions cited in Part

IV, Rules, Section A, 1 & 2 of this order. Members shall weigh whether the immediate danger the pursuit presents to the member(s) and the public is less than the immediate or potential danger the suspect presents to the public should the suspect remain at large. (CALEA 41.2.2.a) D. Members shall immediately notify the dispatcher and discontinue the pursuit when unsafe conditions exist or it becomes apparent that the vehicular pursuit could result in an accident, property damage or injury to citizens. (CALEA 41.2.2.h)

10. Conditions under which a vehicular pursuit shall be terminated include, but are not limited to, the following: (CALEA 41.2.2.a & h)

- a. When it becomes apparent that the vehicular pursuit could lead to unnecessary property damage, injury to citizen(s) or member(s) of the Department; or
- b. The pursuit is in close proximity to school(s) and hospital(s) and other locations with high pedestrian or vehicular activity; or
- c. When the distance between the pursuing member and the violator's vehicle is so great that the pursuing member loses sight of the violator and it becomes futile to continue the pursuit; or
- d. The violator is identified so that a warrant can be obtained for his/her arrest, and failure to apprehend does not pose an immediate threat of death or serious injury to another person; or
- f. When the time of day and locations are heavy with vehicular and pedestrian traffic.

E. The Field Supervisor shall: (CALEA 41.2.2. f)

1. Immediately begin monitoring a vehicular pursuit involving a member of their assigned organizational element;
2. Determine whether the pursuit was initiated in accordance with the provisions of this order;
3. Approve or disapprove pursuits that enter into another jurisdiction and ensure that units are in compliance with inter-jurisdictional pursuit agreements and the law;
4. Continuously monitor radio transmissions to determine whether the pursuit should be continued or terminated;
5. Approve the assignment of additional backup units to assist the primary and secondary units and secure the location where the pursuit terminates, in order to assist with the preliminary investigation, in the event the incident turns into a foot pursuit;
6. Respond to all scenes where injury and property damage occur as a result of the vehicular pursuit...²

Employee has vigorously asserted that he did nothing wrong, and that the punishment meted out was unjust. Agency asserts the opposite and asserts that Employee should have issued

² MPD Closing Brief pp. 2 – 3.

a command to end the alleged pursuit. The individual charge and specifications shall be discussed below.

Charge 1 Specification 1

MPD contends that Employee authorized and provided misleading information that led his subordinates into initiating a vehicular pursuit. Employee answers by noting that he did not directly tell McCarthy and the other members in the Malibu to chase the stolen Lexus. Employee further notes that the WAVE GPS unit conclusively indicated that the Lexus being surveilled was in fact the stolen Lexus that was taken by gun point a couple of days earlier. He also further contends that an actual chase (as contemplated by the applicable MPD General Orders) did not take place.

During the Evidentiary Hearing, the Undersigned noted that MPD, during its Case-in-Chief, failed to present an official that had first-hand knowledge of the subject events or the investigative actions that were contemplated just after the incident in question. Rather, Altieri only reviewed the notes and evidence gathered by others in anticipation of litigation for a wrongful death suit that was filed as a result of the Lexus' erratic and dangerous driving. Employee credibly testified that he was sure that the stolen Lexus was the one that was being surveilled because prior to the chase, a GPS unit had been affixed to the vehicle by the Washington Area Vehicle Enforcement team ("WAVE"). As stated previously, this group is a federally led task force comprised of members from surrounding law enforcement agencies with the goal of eradicating vehicle theft. Prior to the instant pursuit, the vehicle had been tagged by WAVE in Prince Georges County and Employee was able to concretely identify that this was the same vehicle from the robbery despite the vehicle tag discrepancy. I find that Agency failed to provide a credible testimonial rebuttal to this assertion.

I also take into consideration that Employee was able to garner the support of the assigned Watch Commander (Ridlehoover) and Pulliam who consistently testified that it was Ridlehoover who authorized the instant pursuit. It should be further noted that even though they shared the same rank at the time of the incident, Employee was clearly Ridlehoover's subordinate due to her being assigned the duty of Watch Commander.

I also find that I cannot deem the brief pursuit that ensued to be a pursuit that would dictate constant assessment and reassessment as to whether it should be discontinued. The collective testimony of Altieri (through his review of the investigative materials), McCarthy and Employee (their first-hand knowledge) indicate that the stolen Lexus was being quietly surveilled while MPD attempted to marshal its forces to assess the situation. Following quietly for a time, McCarthy, in the unmarked Malibu, then noticed the Lexus drive off at a high rate of speed. I find that McCarthy then sped up in a futile attempt to catch up with the Lexus with his lights and sirens activated. The Lexus had a clear advantage in horsepower and was able to flee to the point of McCarthy losing sight of the Lexus as it sped away. They caught up to the Lexus due to its erratic driving that resulted in multiple accidents with civilian vehicles and tragically the death of a civilian. Ultimately the Lexus was incapacitated, and the occupants bailed out on foot. The entire sequence of the alleged vehicular pursuit lasted approximately 46 seconds.

I find that since the Lexus sped away BEFORE the Malibu's lights and sirens were activated and that the chase vehicle lost sight of the Lexus almost immediately after it activated its lights and sirens that a chase (as contemplated by the General Orders in question) did not in fact occur. Had the Malibu's siren been on before the attempted getaway or had the Malibu had been able to keep pace, I may have reached a different finding. Assuming *arguendo* a chase did in fact occur, I further find that the sequence of events happened too quickly to assign blame to Employee as contemplated by the instant charge. Employee did not actively participate in the chase, McCarthy attempted to pursue the Lexus. Employee did not see the erratic driving before the Lexus initiated multiple car accidents; he had to rely on the information provided by the members in the chase vehicle. Moreover, the entire vehicular pursuit lasted approximately 46 seconds. Regrettably, a tragic result occurred but I find that the facts and circumstances surrounding it do not warrant meting out the punishment contemplated by the charge and specifications in question. In coming to this determination, I find the collective testimony of McCarthy, Pulliam, Ridlehoover and Employee more credible than Altieri and Wong, given that the witnesses in Employee's case-in-chief were credible and physically present during the events in question. Accordingly, I find that MPD did not meet its burden of proof with regard to Charge 1 Specification 1.

Charge 1 Specification No. 2

This specification alleges that Employee provided false or faulty information to encourage initial authorization and continuation of the instant pursuit. Agency further contends that Employee failed to ascertain whether the Lexus' occupants were the same persons involved in the Armed Robbery/Carjacking that occurred two days prior to the chase. Because of this alleged failure, it further asserts that the vehicular pursuit should have been discontinued by Employee. This specification also notes that as a result of Employee's inability to timely act that he should shoulder some of the blame of the accidents (and death) that resulted from the Lexus' attempted getaway. Employee denies these contentions and asserts many of the same explanations that were provided in the other specification.

I hereby incorporate by reference the reasoning provided *infra* and reiterate that this incident from the time that McCarthy in the Malibu activated his lights and siren to the point where the Lexus occupants bailed from their non-functioning vehicle was approximately 46 seconds. I further note that Employee had confirmation, via WAVES, that this was the same vehicle involved in the carjacking. Employee did not initiate this vehicular chase; he was unable to keep the Lexus within his line of sight; had to rely on information being relayed to him by McCarthy; and received a command from the Watch Commander (his superior) to have him (and his team) continue pursuit.

Agency contends that according to the General Orders, Employee had a personal duty to stop the chase, despite authorization from Ridlehoover. But this neglects the fact that Employee did not have any personal knowledge of what was transpiring during the pursuit except what was relayed by McCarthy and the other officers in the Malibu. And it also neglects the fact that this situation unfolded in a matter of seconds. In coming to this determination, again I find the collective testimony of McCarthy, Pulliam, Ridlehoover and Employee more credible than Altieri and Wong, given that the witnesses in Employee's case-in-chief were credible and physically present during the events in question. Taking all of this into consideration, I find that MPD did not meet its burden of proof with regard to Charge 1 Specification 2.

Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the undersigned.³ This Office may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.⁴ When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.⁵

In the matter at hand, I find that Agency failed to prove its charge and specifications against Employee. Therefore, I further find that Employee's demotion from Lieutenant to Sergeant must be overturned. I do take note that Employee was also reassigned to a different unit and had sought to be returned to his former unit. Weighing the fact that the distribution of manpower is generally left for Agency's discretion, I will allow MPD to use its discretion and assign Employee wherever it determines his talent, as a Lieutenant, are most needed.⁶

CONCLUSION

As noted above, I CONCLUDE that MPD did not meet its burden of proof in this matter. Considering as much, I further CONCLUDE that Employee was improperly demoted.⁷

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of demoting Employee from Lieutenant to Sergeant is **REVERSED**; and
2. Agency shall reimburse Employee all back-pay and benefits lost as a result of his demotion; and
3. Agency shall file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Eric T. Robinson
ERIC T. ROBINSON, Esq.
Senior Administrative Judge

³ See *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

⁴ See *Id.*

⁵ See *Id.*

⁶ See *Id.*

⁷ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tinto Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").