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Killed by a Cop Car

The police department may be covering up yet another lethal mistake by its officers.

By **Tori Marlan**

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THEY ALL HEARD the boom—the drivers stuck in traffic, the cluster of people smoking in front of the rehab center, the detailer outside the car dealership waxing the hood of a car, the pedestrian who’d just scored a bag of heroin and helped himself to a few snorts. Some of them also saw what caused it: a gray Ford Crown Victoria slamming into a boy and girl as they crossed Grand Avenue.

The afternoon of May 19, 2004, was clear and dry and warm, about 78 degrees. The girl, 11-year-old Datondra Mitchell, had decided to go to the store after school. The boy, eight-year-old Gregory Jones, had asked if he could go with her. Datondra’s grandparents, Vanilla Jones Simmons and her husband, Bobby, had been raising Gregory and his younger half-brother for six years, since a beating Gregory’s stepfather had given him landed the children in state custody. Vanilla, who eventually adopted the two boys, watched Gregory turn from a fearful toddler who flinched at sudden hand gestures to a joyful child generous with smiles and hugs. Gregory had friends at school and in the neighborhood; but, Vanilla Simmons says, “she always wanted to be with Datondra.”

She thought twice about letting Gregory go—he’d passed out at school the day before and had spent the night in the hospital. But doctors hadn’t come up with a definitive diagnosis, he was feeling well, and a nurse had given him a dollar bill he was eager to spend. So Simmons allowed him to make the two-block trip to Dollar Day Plus, a trip the children had taken together many times before: north on Kildare, across Grand and North. The children left home a little before 3:30 PM.

Less than a mile away, 25th District gang officers Mark Del Boccio and Robert Jackson sized up 17-year-old Jeffrey Berkley and decided he was up to no good. The officers would later say they noticed the Orr High School student standing on the corner of Pulaski and Thomas shouting “rocks,” though Berkley would say he was simply waiting for a bus. The officers arrested him, handcuffed him, and put him in the backseat of their unmarked Ford Crown Victoria. Officer Del Boccio started driving toward district headquarters at 5555 W. Grand. No partition separated Berkley from the officers. He could hear whatever they said, and he had a clear view out the front and side windows.

Hector Soto, a mechanic heading home from Atilas Auto Service, noticed the unmarked police car behind him as he drove north on Pulaski and observed that it stayed on his tail as he turned northwest onto Grand. A few blocks later Soto hit bumper-to-bumper traffic—congestion typical of that stretch of Grand on a Wednesday afternoon. The police car was still behind him at that point, he’d recall under oath, but then it “all of a sudden just took off,” maneuvering around his car with the siren wailing and driving off with “all four wheels in the east lane.” The car cruised past the traffic and through an intersection, he said, continuing west in the eastbound lane.

At Dollar Day Plus, Gregory used the nurse’s money to buy himself a pack of gum. Datondra bought hair gel. Leaving the parking lot of the strip mall it’s in, they crossed North Avenue and walked a short block south on Kildare. When they came to Grand, parked cars lined the curbs on both sides of the street and traffic clogged the westbound lane, blocking the crosswalk. The eastbound lane was clear. Grand at that point runs diagonally. It’s 48 feet wide, with a dotted yellow line down the middle.

The children stepped off the curb and into the street, slipping between two vehicles that were stuck in traffic a little west of the crosswalk. Cynthia

Contreras, a passenger in a Hyundai Elantra, caught a glimpse of them on the yellow line as she turned around to talk to her friend's niece in the backseat.

Smokers on the south sidewalk outside the Gateway Foundation noticed Gregory and Datondra holding hands in the middle of the street, standing behind a van with five mattresses on its roof. Gregory was either a step in front of Datondra or standing to her left, looking both ways. He then leaned his head forward or took a step toward the smokers' right into the path of the unmarked police car in the eastbound lane.

“And then I heard *boom*,” Contreras later said in a sworn statement.

The driver of the van with the mattresses thought he'd been sideswiped: “My van shook.”

The force of the impact knocked Gregory onto the hood of the police car and then propelled his little body into the air. The car's side mirror smacked into Datondra, sending her spinning clockwise before she fell to the ground. She suffered a skull fracture and permanent hearing loss as well as contusions to her right ankle and left elbow. Gregory wasn't so lucky. The collision severed his spinal cord. He fell into a coma and died at Mount Sinai Hospital 25 hours later.

Police Superintendent Phil Cline stopped by the hospital the day Gregory died. “He came and gave me his condolences and said they would be investigating,” Vanilla Simmons says.

REQUIRED TO EXPLAIN why they'd skirted traffic, officers Del Boccio and Jackson told their superiors that as they were driving back to the station Jackson had witnessed an aggravated assault: a passenger in a black car turning from Keeler northwest onto Grand pointing a handgun out the front passenger window.

Del Boccio said that when Jackson told him about the gun he hit the lights and siren and tried to catch up to the black car, straddling the yellow line. The officers said they'd hoped to get close enough to read the car's license plate.

Mayor Daley appeared on TV later that day narrating how the gunman had aimed his weapon at people on the street. Superintendent Cline expressed sympathy for everyone involved, calling the collision a “tragic accident” that was “every parent's and every driver's nightmare.” A witness on TV, however, sounded angry: she complained that the police had been “speeding real fast, like they always do.”

She wasn't the only angry witness. A couple of people sought out the Simmonses to tell them what they'd seen: the police car tearing down the wrong side of the street. And what they hadn't: a gunman in a black car.

The police department insisted that nobody had done anything wrong. Spokesman Dave Bayless said the children had darted out in front of the officers, who were both now receiving counseling. Cline acknowledged reports that the police car was speeding, but claimed that the damage to it proved those reports false. But the department's own investigation into the collision, concluded ten days after the accident, determined that the police car had been traveling between 35 and 42 miles per hour in a 30-mile-per-hour zone.

Simmons wanted to know why the official word differed from what she was hearing on the street. The police didn't keep her informed, she says. “They weren't telling me anything. They weren't contacting me. I called, I got no answer.”

On her behalf, and on behalf of Datondra's mother, the firm Loevy & Loevy filed a lawsuit against the city and the officers involved in the accident, claiming the officers had been driving “in a dangerously reckless manner and at an excessive rate of speed” in the absence of “any exigent circumstances” that could have justified such behavior. The officers filed a response denying those allegations. (Through their attorneys, they have declined to comment for this article, according to Law Department spokesperson Jennifer Hoyle.)

Loevy & Loevy specializes in claims alleging police misconduct. “The department’s first response is always to say the officers did nothing wrong. No matter what, the officers did nothing wrong,” says Loevy attorney Amanda Antholt. But in this case, she says, “they have no justification for what they were doing. They were impatient with traffic and they wanted to get back to the district to get their arrestee processed.”

BECAUSE THE CITY recognizes the “potential for death and/or injury” during motor-vehicle pursuits, police may violate traffic laws only in cases of true emergency, when, according to department policy, “the necessity to immediately apprehend the fleeing suspect outweighs the level of inherent danger created by a motor vehicle pursuit.”

The police department requires officers to apply this balancing test and to notify dispatchers if they set off in pursuit. Supervisors must then decide whether to allow it to continue.

If Officers Del Boccio and Jackson were indeed chasing a car with a gunman on May 19, 2004, they did so without notifying dispatchers and with a suspect in custody, each a violation of police department policy. If the officers weren’t chasing the car, then it would appear they violated traffic laws without cause and made false reports.

Maria Maher, who was Area Five’s deputy chief of patrol at the time of the accident, spoke briefly with Del Boccio at the scene. In a deposition she gave for the lawsuit she said he looked distraught.

“As I walked up to him and he saw me, he was trying not to cry and he said, “Boss, I was only trying to get the plate.”

Maher said she met with a commander from the major accident investigation unit and asked him about the department’s rules regarding pursuits.

“I didn’t make it a pursuit,” she said in her deposition “a decision based mainly on the fact that Officer Del Boccio blurted out that they were only trying to get the license plate.”

Antholt, who was deposing Maher, was confused. “What defines a pursuit?” she asked. Maher responded, “It’s a good question. You know what, there’s a general order that says what it is and that’s probably where you need to go because I don’t recall it offhand.”

A little while later, Antholt tried again: “But they had on their lights and sirens.”

Maher: “That has nothing to do with a pursuit.”

Antholt: “And they were following the car.”

Maher: “They were attempting to get close to the vehicle to see the plate.”

Antholt: “So they weren’t following? They were attempting to get close?”

Maher: “That’s my interpretation of it, correct.”

Del Boccio and Jackson too claimed in their depositions they weren’t chasing the gunman, only trying to catch up to him. When asked to explain the difference, Del Boccio offered, “The people you’re chasing know that you’re behind them after them, and they’re taking off at a high rate of speed trying to get away from you and you’re on their butt.”

The officers'™ sergeant, Peter Fegan, agreed that no pursuit had taken place. In his deposition he said he believed the "car with the man with the gun did not know that the officers had seen them."

But that's not what police were saying at the time of the accident. According to the traffic investigation report, "the black car sped away" when Del Boccio turned on the police car's lights and siren. In a memo to her superior, Maher wrote that when Jackson saw the gunman, "Del Boccio immediately activated the lights and siren, causing the suspect to jerk his arm back into the vehicle and merge into traffic." The gunman had aimed his weapon at a man in his 20s, according to Maher's memo, and she later suggested to reporters that the officers'™ actions had ended up "saving a young man's life."

Two days after the accident, the *Tribune* reported that, according to the police department, the officers'™ actions "did not fall under police guidelines that govern a pursuit." But all accidents involving police cars go to the Traffic Review Board. The board disagreed with the officers, their sergeant, and the deputy chief of patrol and determined in October 2005 that, indeed, there had been a pursuit, and, because Berkley was in custody in the backseat it had violated the department's general order. Repeatedly asked since May 15 if either officer was punished for this infraction, police spokesperson Monique Bond had still not provided an answer by the time of publication.

"The children were crossing Grand toward the buildings on the left; the dollar store they'd just left; the nearby intersection of Grand and Kildare" A. Jackson

BY DECLARING THE officers'™ actions a pursuit, the police department finally admitted the officers had done something wrong. But the admission meant the department had accepted the officers'™ story about a gunman—a story that isn't supported by either witnesses or the known facts.

According to Del Boccio and Jackson, they were just east of Keeler and Grand when Jackson saw the gunman. Jackson said in his deposition, under oath, "I yelled out to him, 'Gun.' Then I said, 'Go westbound.' I go, 'They're in a black car. He has a gun.'" But Berkley said in his own deposition that he didn't hear either officer mention a gun and he didn't know why they'd turned on the siren and moved around traffic. He said he figured they were "in a hurry to get me to the station."

When officers have important information about missing or wanted people, a stolen car, or, as news affairs officer Marcel Bright puts it, "anything you need other officers to be aware of" they usually pick up the radio and request a "flash message," which sends the information out to other officers. A man with a gun falls into the category of information officers would usually share, according to Bright.

But the first and only radio communication about a man with a gun occurred at 4:13 PM—almost 40 minutes after the accident—when a sergeant at the scene contacted the dispatcher with a request for a flash to be sent out about a four-door, black, older-model American-made car seen in the vicinity of the 4300 block of Grand with "two male Spanish in it." The car, he said, had a man in it with "a black semiautomatic handgun."

Why didn't Del Boccio or Jackson pick up the radio and alert their fellow officers at the time Jackson saw the gunman? "There's hundreds of black cars in the area," Del Boccio said in his deposition. "Are they going to stop every black car?" Jackson said they would have needed more information to send out a flash, such as a license plate number or the make and model of the car. "All I had was a black car, a man with a gun," he said.

But the officers had more than that. They said in depositions they never lost sight of the car once they began following it. They said they knew exactly where the gunman was at all times—four or five cars ahead of them, heading west on Grand. "That would have been enough information to send out," says Richard Brzeczek, a former Chicago police superintendent.

Brzeczek doubts there would have been confusion about which black car to pull over. If the officers had the car in their line of sight, as they said they did,

then they would have been able to direct responding squad cars right to it. A flash would have been much more helpful at the time Jackson saw the gunman than at the point the message was actually sent, Brzeczek says. "What additional information did they acquire between the time they saw the car and the time the flash message went out 40 minutes later?"

After the flash went out, the department launched a search for a gunman. Officers canvassed the area around Grand and Keeler, looking for anyone who might have seen him. They also handed out flyers about the incident that said the Chicago police need your help. After two days the department suspended the investigation with no solid leads.

Police collected many eyewitness accounts of the traffic accident. It's not surprising that these accounts differed in some ways: regarding the speed of the police car, whether and when its sirens and lights were activated, and the exact point where it skipped out of traffic. What is surprising is that several witnesses said later that police got their stories wrong. And in some instances police got their stories wrong in ways that seemed to lend credence to the officers' account.

According to the official report of the accident, the suspect in the backseat claimed the police car "was not traveling very fast." But in his deposition, Jeffrey Berkley described the car as "speeding" and estimated that it had been traveling at least 45 miles per hour.

A police report also said a pedestrian saw an unmarked police car that appeared to be "following a dark colored vehicle" that had "gang members" in it. But when the pedestrian gave a deposition under oath, he said he "told police no such thing. He said in his deposition that not long before the accident he bought some heroin from a spot on Pulaski and Grand, and he was walking home with his head down, feeling a little high, when "a boom sound pretty loud" caused him to look up. "I saw a kid fly in the air, I freaked out, and I went home and told my parents." He denied seeing a dark-colored car with gang members in it, and he said, "I never saw the police chasing no one."

A detective interviewed a woman who lived near the accident and wrote, "Stated she heard on the street that a black car with 2 guys were looking to shoot somebody." But when the woman gave a sworn statement about the conversation, she said she told police that she "had heard about a car with a man with a gun, but not on the day of the accident." She also said, "I have no knowledge and have never heard from anyone that there was a man with a gun at the time of the car crash on May 19, 2004."

When city attorneys questioned Cynthia Contreras, who "caught a glimpse of Gregory and Datondra in the street before the accident, she pointed out ten errors in a detective's one-paragraph summary of her statement" everything from the kind of car she was in to observations that would appear to corroborate aspects of the initial police version of events, such as Gregory trying to run across the street (though in his own deposition, Del Boccio said Gregory was walking). The police report also attributed a sympathetic and exculpatory comment to her "there was no way that the police vehicle could have seen the victims" that she disavowed under oath by saying, "That's not true."

Hector Soto did say he saw the children running across the street. But his account of the accident differed from the officers' in one major way: Soto said the police pulled out of the westbound lane a little east of the intersection of Grand and Kildare "about two blocks northwest of where the police officers say they reacted to the gunman. Soto's account of the location is consistent with those of several witnesses who were standing on the sidewalk outside the Gateway Foundation.

Vernell Swanigan, who was a substance abuse counselor at the rehab center, witnessed the accident from the southwest corner of Kildare and Grand, where she was smoking with three coworkers. She said in her deposition that she saw the police car emerge from traffic near the Jimenez warehouse, half a block east from the Grand-Kildare intersection. She said she heard the car accelerate and heard the collision. The police report said Swanigan also heard a siren before the accident. "Did you tell those police officers that you heard the sirens on the police vehicle?" Antholt asked her.

"No, ma'am," Swanigan said. "I don't believe I did tell them that because the sirens didn't come on until after the impact."

Antholt also asked, "Did you at any point see another vehicle that the police car was chasing?"

"No," she said. "Traffic was at a standstill."

Karlid Lash, a rehab center client, said he saw the police car come out of traffic three or four cars east of the Grand-Kildare intersection. The police report said Lash, like Swanigan, heard a siren. And Lash, like Swanigan, says that's not true. Something he did hear, however, made him speak out in protest: the driver of the police car telling an official in a white shirt that he'd been following a man with a gun.

"I said that he was lying," Lash recalled. "He wasn't chasing nobody with no gun. There was nobody around."

Deandre Gavin said that from where he was standing outside the rehab center he saw the police car jump out of traffic. The boy and girl were standing on the yellow line, he said, "peeking like between cars," looking left and right. He remembered yelling to the children to stop and hearing others yell, "Don't cross yet." He said he then saw the kids take one step before being hit. "It happened right in front of us." He and some of the others he was with "inmates at a work release center" later arranged a memorial at the site where Gregory died. "We pitched in and we bought cards and candles and teddy bears and stuff like that."

If Soto, Swanigan, Lash, and Gavin are all wrong, and the police officers really did start following a black car 30 to 40 feet east of the Keeler and Grand intersection "as the officers said" why didn't they catch up to it? From the point at which they said they maneuvered around traffic to the point they hit Gregory and Datondra, the officers would have traveled about two-tenths of a mile, bypassing what Del Boccio himself called "every congested" traffic. The standard car length is 18 feet, which means that in the distance the officers said they traveled they would have passed approximately 58 stopped cars when they were only trying to pass four or five. Witness testimony "not to mention the fact that Datondra and Gregory were able to walk between stopped cars in the westbound lane" supports the idea that traffic was at a standstill when the accident occurred. And even if cars weren't at a complete stop for the entire two and a half blocks east of the collision, by all accounts "including the police officers" traffic was heavy. Del Boccio and Jackson were driving anywhere from 5 to 12 miles over the speed limit, and the other cars were, by the officers' own account, trying to pull over for them. Yet Jackson said in his deposition that they didn't seem to gain on the black car at all.

"It's one of the most far-fetched stories I've ever heard," says Brzeczek. "Not only should those two guys be punished, but other people involved in the investigation, including supervisors, should be punished for participating in the cover-up."

The official police reports paint Del Boccio's actions that day as commendable: he thwarted an aggravated assault and after the accident "immediately stopped the vehicle, got out and ran to assist the victims."

But several witnesses say no police officer tended to either of the children as they lay wounded on the pavement. Lash says in his deposition that Del Boccio just held his head and said, "Oh, no, oh no." Another witness remembered him saying, "Oh, God." Lash says he and others urged Del Boccio to do something. "We were saying, 'Help the kid. Help the kid.'" But Del Boccio didn't. "He just stood like he was in shock."

Other Good Samaritans tended to Gregory and Datondra. Cynthia Contreras said she got out of the car she was riding in and rushed to Gregory's side. She tried to comfort him, attempted chest compressions, and pressed a towel to his mouth to stop the bleeding. She also tried, unsuccessfully, to stop a driver trying to get around the scene from inadvertently running over Gregory's foot.

Maybe the officers were too broken up to take charge of the scene or to attend to the children. Brzeczek suspects something else was going on: "They needed time to get their stories straight."

Antholt calls the story they've ended up telling "patently unbelievable." She says, "The police department should not buy it and the public shouldn't buy it. The officers should have been punished and there should have been apologies to the families, and instead what they're doing is defending the case, they're fighting it, they're continuing on with their fabrication."

Law department spokesperson Jennifer Hoyle says it's impossible to calculate how much the city has already spent on the three-year-old lawsuit because it's being handled in-house.

The suit includes the city as a defendant because Loevy & Loevy alleges a conspiracy took place. "The police are just flat lying," says attorney Jon Loevy, "and that couldn't happen in a police department that was functioning properly." In Chicago, he says, police officers "know that when they're in a pinch and they need to protect themselves the department is not going to seriously investigate or discipline them and they're free to twist reality in any way that suits their purpose."

If a civilian violated traffic laws—say, sped down the wrong lane or even straddled the yellow line—and ended up killing someone, would the police look the other way? It's doubtful. In April a teenager tore through a red light at Ashland and Archer, apparently trying to beat an oncoming tractor-trailer that was turning at the intersection, and he struck and killed a traffic aide. He's now facing charges of reckless homicide.

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