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127 Kandahar Drive
East Aurora, NY 14042
December 2, 2016

Commissioner Daniel Darendia
Police Headquarters
74 Franklin Street
Buffalo, NY 14202

Dear Commissioner Darendia:

Re: Incident Involving B District Officers, Seneca Street, 12/1/2016

Description of the Incident

Pursuant to the procedures set forth on the Department's website, at page <http://www.bpdny.org/Home/Services/InternalAffairsDivision/ComplaintProcess>, I am writing to you relative to the incident referenced above.

On the evening of Thursday, December 1, 2016 at approximately 8:30 p.m., I exited Chef's Restaurant with my wife and proceeded across Seneca Street to reach the Chef's parking lot on the other side of the street. I checked both ways before proceeding and saw no vehicles in either direction. It was well after sunset and the street mostly was dark aside from street lights and nearby illuminated signage. As my wife and I reached the center of the street, I saw what appeared to be a large vehicle approaching rapidly down Seneca Street from my East. I had not seen this vehicle before. The front of this vehicle was dark in color and it had no headlights or even running lights to illuminate it. I took it to be either an SUV or a pickup truck, but I could only see its outline.

When I first saw this vehicle I would estimate that it was approximately 200 feet from my location. I immediately said to my wife "Watch out – he has no lights on," and I quickly ushered her to the safety of the curb on the opposite side of the street. As I continued to watch the oncoming vehicle, to my horror, two pedestrians stepped into the road to my East, approximately 100 feet away from me, directly into the path of this vehicle. From my vantage point I thought for sure that they were going to be struck by the unilluminated vehicle and that I was about to witness a very serious accident. Fortunately, the operator of the vehicle was able to brake to a stop without striking the two pedestrians, who froze helplessly in the westbound lane as the vehicle stopped within a few feet of their location.

After the vehicle came to a stop, it activated either its headlights or its hi-beams and flashed them at the pedestrians as if they were at fault. Angry at the driver's reaction and the fear that he had induced in me, my wife, and no doubt also in the other

pedestrians by driving after dark without his headlights activated, I called out to the driver "Turn your headlights on, asshole." At this time, I did not know that the vehicle I had seen driving without its headlights on was a B-District police SUV driven by Officer Todd McAllister, Badge No. 172871.

Seeing that the pedestrians were safe, and still unaware that the driver of the vehicle was a Buffalo Police Officer, my wife and I proceeded into the Chef's parking lot. Officer McAllister then pulled the SUV into the parking lot, rolled down the front passenger window, and advised me that I "could be arrested" for having called out to him as I did. At this time, for the first time, I could see that the vehicle was a Buffalo Police Department SUV, marked as vehicle number 525, and that its operator was a Buffalo Police Officer. I later learned that the officer was Todd McAllister of B-District.

I was astonished that Officer McAllister chose to pursue me into the parking lot merely for telling him -- after he had nearly killed two pedestrians -- to turn his headlights on. Apparently Officer McAllister was much more concerned with the fact that I had called him an asshole than he was about his unsafe driving and poor decisions. I explained to Officer McAllister that he should not be driving a vehicle down a city street after dark without his headlights, and that he had almost caused a vehicle-pedestrian accident. At that point, Officer McAllister became visibly angry, exited his SUV, and told me that I was detained, and asked to see my identification. I immediately gave him my attorney identification card, which is a government-issued, photo identification.

As Officer McAllister and I continued to discuss the situation, he advised me that the reason he was driving the SUV without its headlights activated was because it was "the Lieutenant's vehicle" that he was "taking for service" because the headlights were not operational. Officer McAllister apparently thought that this was a perfectly good explanation for his behavior, and that he was entitled to drive the vehicle with no headlights after dark and nearly cause an accident because he "was taking the vehicle for service." I advised Officer McAllister that his decision deliberately to drive the vehicle after dark knowing that its headlights were not operational was an even worse lapse of judgment than I originally had thought, and that he was not exempt from the Vehicle and Traffic Law just because he was a police officer and was driving "the Lieutenant's vehicle" to get it repaired.

Officer McAllister seemed to have no understanding that his decision to drive the SUV after dark without headlights was not only dangerous, but in violation of the law. When I reminded him that he had almost struck the two pedestrians, he responded by telling me that "they were jaywalking" -- as if it was their fault for not being able to see his vehicle and stepping into the road directly in front of his SUV. Officer McAllister's statements at the scene revealed to me that he had no understanding that his actions were wrongful, dangerous, in violation of the law, and that they very nearly caused two pedestrians to be injured or killed.

At some point Officer Nicholas Parisi of B District arrived at the scene. After Officer Parisi's arrival Officer McAllister again admitted several times in the presence of Officer Parisi that he had been driving the vehicle without its headlights on. He twice falsely accused me of saying "Turn your headlights on, you fucking asshole," which he then retracted once he was challenged for the embellishment. In fact, there was one and only one expletive directed at Officer McAllister or anyone else during the entire time until I left the scene, and at the time I uttered that single expletive, I did not know that the driver of the unilluminated vehicle was a Buffalo Police Officer – a fact that I repeatedly explained to Officer McAllister.

Officer McAllister continued to argue to me that he was in the right for driving the vehicle after dark with no headlights because it needed to be serviced. I asked Officer Parisi to issue a Vehicle & Traffic Law summons to Officer McAllister for his admitted violation of the law that had placed pedestrians in danger, but he declined to do so. I advised Officer Parisi that police officers were not exempt from the law and that Officer McAllister had admitted to the Vehicle & Traffic Law violation of which I complained in Officer Parisi's presence. Officer Parisi still refused to issue a citation to his fellow officer. With no explanation, Officer Parisi told me that it was not a violation for Officer McAllister to drive the vehicle after dark with no headlights. When I asked him what section of the Vehicle & Traffic Law exempted police officers from compliance when they were taking a vehicle in for service, he declined to do so. Officer McAllister continued to argue with me in the presence of Officer Parisi. At this point, Officer McAllister told me that he had apologized to the two pedestrians for almost striking them. He repeated this several times.

Thereafter, Officer McAllister told me that he needed to see my driver's license. I told him that he had my attorney photo ID, but he told me that he would detain me until I produced the license. I told Officers Parisi and McAllister that I no longer wished to be detained, but Officer McAllister made it clear that I would be detained until I gave him my driver's license. Unable to depart the area based on the officer's position, I gave him my driver's license and have my other identification returned to me.

Eventually Lieutenant Giallella arrived on the scene. I spoke to him briefly, telling him my side of the story and advising him that I wanted Officer McAllister cited for driving his vehicle on a city street after dark with no headlights. Lt. Giallella then left my presence to speak privately with Officers McAllister and Parisi. Shortly thereafter, Lieutenant Giallella returned and provided me with an Ordinance Violation Summons and returned my driver's license to me in silence. No further comment or explanation was provided to me at that time by Lt. Giallella, and I thereafter left the scene.

Summary of My Position

I believe that Officer McAllister made a series of very ill-advised decisions both before and during the incident. First, and most important,

Officer McAllister nearly caused a serious vehicle-pedestrian accident by driving a large-black-painted police SUV after dark without operational headlights. The officer seemed to have little or no understanding of the potential consequences of his decision in this regard. From my perspective, only luck allowed Officer McAllister to bring his vehicle to a stop without striking the two pedestrians. Because of Officer McAllister's actions, two people came very close to dying or being severely injured, and the City of Buffalo nearly was presented with a large liability exposure. Officer McAllister demonstrated no comprehension of these potential consequences.

Second, I do not believe that Officer McAllister showed good judgment by choosing to confront me about calling out to him as I did. I made one comment to the officer in the heat of the moment that I think was perfectly justified under the circumstances. Although I do not think it matters at all, I did not know that I had directed my comment to a police officer until I was able to see the side of the SUV, and I duly explained that to Officer McAllister after he confronted me. I do not think it matters who I directed my comment to because the comment was appropriate under the circumstances and police officers are not immune from criticism (or exempt from the rules of the road, for that matter). It is my understanding that the word "asshole" is in such common usage that it can be said on television these days. From my perspective, Officer McAllister chose to escalate the situation by pursuing me onto private property and threatening me with arrest because he was offended by my comment. Instead of examining his own negligent and inappropriate conduct, Officer McAllister became visibly flustered and angry at the scene, and did not demonstrate the kind of composure that I would expect from a Buffalo Police Officer. (Officer Parisi and Lt. Giallella at all times were composed and professional, as were other B District officers who appeared briefly and left the scene.)

Specific Complaints, Requests for Action, and Requests for Comment

Based on the above description, I raise the following issues for the Commissioner's consideration and make the following requests:

1) I would like to know the Department's position on Officer McAllister's decision to drive the SUV after dark without his headlights on. Is this acceptable to the Department? Who made the decision for Officer McAllister to do this? Did "the Lieutenant" tell him to take the vehicle for service after dark, knowing that the headlights were out? If so, was this appropriate? (By separate FOIL request, I will be asking that the GPS data from the SUV be produced to me. I also will be asking for any surveillance footage from the Department's service garage.)

2) Are the officers of the Buffalo Police Department exempt from the provisions of the Vehicle & Traffic Law in non-emergency situations? Should Officer McAllister have been issued a V&T Law citation for driving after dark without headlights? What is the procedure for citing an officer with a V&T Law violation in a non-emergency situation? What recourse does a citizen have against a police officer who

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has nearly caused an accident and thereafter caused a scene as a result of his own negligent driving? Are police officers above the law, as Officers McAllister, Parisi, and Lt. Giallella all seem to believe?

3) Did Officer McAllister follow Department policies and procedures when he followed me onto private property (the Chef's parking lot) to pursue me for telling him to put his lights on and calling him an asshole for driving without headlights and nearly causing an accident? Was this an appropriate decision for the officer to make? (I eventually was cited for a violation of Chapter 293, Section 4 and 7 of the Code of the City of Buffalo for calling out to the officer. This letter, however, is not about the citation that I received, and I offer the information here concerning it only for the sake of completeness.)

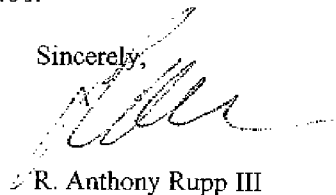
4) Given that I was a pedestrian at the time of this incident, did Officer McAllister follow Department policies and procedures when he detained me until I had produced my driver's license, after I already had produced a government-issued photo identification immediately upon his request?

5) Where was the SUV being taken for service? The SUV had already passed the Department's Seneca Street garage when the incident occurred. Did Officer McAllister tell me the truth about the reason he was driving down Seneca Street with no headlights? Why did Officer McAllister choose to drive with no lights on, instead of activating his hi-beams, which were operational? Why did the vehicle have to be taken for service after dark, instead of during daylight hours?

6) Why was I provided with no response to my complaints by Lt. Giallella? The Lieutenant came to the scene of the incident and I raised specific complaints and issues to him. Although Lt. Giallella was composed and respectful, my concerns and complaints were left entirely unanswered and unaddressed. Did Lt. Giallella follow Department policies and procedures by refusing to address my concerns and complaints and simply returning my license to me in silence?

Thank you for your assistance. I would be pleased to meet with you or an Internal Affairs investigator about this incident at any time. I also am available by telephone during business hours at 854-3400.

Sincerely,



R. Anthony Rupp III