



Warner Norcross + Judd LLP

## MEMORANDUM

TO: Catherine P. Kaufman  
FROM: Brian P. Lennon & Madelaine C. Lane  
DATE: October 20, 2020  
  
RE: **Review of Mike Carroll Arrest and Response**

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### **ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED**

## INTRODUCTION

On August 27, 2020, Deputy City Manager Michael C. Carroll (“Mr. Carroll”) was pulled over by an officer with the Portage Police Department (“PPD”). He was driving southbound in the northbound lane of S. 12<sup>th</sup> Street. Mr. Carroll was subsequently arrested and charged with Operating While Intoxicated High Blood Alcohol Level (“OWI-High BAC”).

Counsel for the City of Portage engaged Warner Norcross + Judd, LLP to conduct an independent investigation of the incident. Specifically, we have been asked to review: 1) whether proper protocols were followed in the traffic stop and arrest of Mr. Carroll and; 2) what, if any, disciplinary actions should Mr. Carroll face as a result of this incident. As part of our investigation, we reviewed police reports regarding the August 27<sup>th</sup> arrest, text messages from Portage officials regarding the incident, video of the traffic stop and booking of Mr. Carroll, and applicable PPD policies.

This memorandum summarizes our investigation’s findings. We have determined that the City of Portage and PPD followed proper procedures in the traffic stop and arrest of Mr. Carroll. Because Mr. Carroll appears to have tried to use his position in city government improperly during the traffic stop, we are recommending that Mr. Carroll be placed on a last chance employment plan in lieu of termination.

## FACTUAL FINDINGS

### **I. Portage Police Department Acted Appropriately and in Accordance with Written Policies**

#### ***Position and Relationship with Mr. La Margo***

Mr. Carroll is the Deputy City Manager of the City of Portage. Messrs. La Margo and Carroll previously worked together in Illinois prior to their employment with the City of Portage. Our investigation found no evidence of any bias or improper action by Mr. La Margo with respect to this incident involving Mr. Carroll.

## *Traffic Stop*

Just prior to 11:00 p.m. on August 27, 2020, Mr. Carroll was pulled over by a PPD officer after Mr. Carroll was observed driving the wrong way down the street. Mr. Carroll was driving a gray Lincoln MKZ with a large scratch down the side. The video shows that Mr. Carroll pulled over in a timely manner after the PPD car flashed its lights and siren. The PPD officer approached the driver's side door and spoke to Mr. Carroll. The officer asked Mr. Carroll where he was coming from but never received a specific response. The police report notes that the officer observed Mr. Carroll's eyes to be glazed over, his speech to sluggish and sometimes slurred, and the officer smelled the odor of intoxicant "coming from [Carroll's] facial region."

The officer asked for Mr. Carroll's license and insurance. Mr. Carroll initially handed over his driver's license and a credit card, which the officer returned. He appeared to have difficulty finding his proof of insurance, at one point handing the officer his health insurance card. Later, Mr. Carroll placed his City of Portage employee badge over the driver's side door. This card identified him as a Deputy City Manager. The officer took the card, read it, and placed it on top of Mr. Carroll's car. The police report does not reflect that Mr. Carroll showed the officer his City badge<sup>1</sup>, but it is clearly visible on the bodycam footage.

Mr. Carroll was asked to exit the vehicle and step to the back of the car. He admitted to drinking "four Miller Lights" within the last hour. He made no further statements.

At this point, per written PPD policy, the officers on the scene contacted supervisors who eventually contacted Deputy Public Safety Director John Blue. The PPD Department of Public Safety Director Nick Arnold was out of town. Deputy Director Blue consulted with officers on the scene but did not speak with Mr. Carroll and did not actively participate in the investigation or arrest.

Once they confirmed the suspect (Mr. Carroll) was a Deputy City Manager, PPD officers contacted the Kalamazoo County Sheriff's Department ("KCSD") to assist with the traffic stop and arrest. The purpose of the KCSD's involvement was to remove any appearance of impropriety or bias from the process given Mr. Carroll's position with the City of Portage. Once the KCSD officer arrived, Mr. Carroll refused to participate in the standard field sobriety tests. Similarly, he refused to take a Preliminary Breath Test and he later refused to take a Chemical Breath Test. Accordingly, there was nothing for the KCSD officer to do. Rather, the original PPD officer who conducted the traffic stop arrested Mr. Carroll on suspicion of OWI.

Because Mr. Carroll refused to take a Chemical Breath Test, in violation of Michigan's implied consent statute, a warrant was obtained allowing PPD to obtain a blood sample for analysis. This warrant was signed and the blood test was taken, four hours later, at a local hospital. The delay was caused by technical difficulties in getting the warrant to the magistrate judge. Mr. Carroll's blood alcohol level was 0.221 grams of alcohol per 100 milliliters of blood. Accordingly, he was charged with OWI-High BAC which is the typical charge for first-time OWI offenders

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<sup>1</sup> In the future, police should include this information in the report. Although not relevant to the OWI-High BAC charge, any actions which could be seen as seeking favor from police should be noted in police reports.

with a blood alcohol content of 0.17 or higher. The criminal case against Mr. Carroll is currently pending.

The review of the police reports, applicable PPD policies, and video footage revealed that police followed proper procedures from the decision to stop Mr. Carroll through the charging referral. First, there is no evidence that Mr. Carroll was given any special treatment. Indeed, the video confirms that once Mr. Carroll's position was known, PPD took the appropriate steps to make sure there was no appearance of bias or impropriety. Through their chain of command and pursuant to policy, officers on the scene contacted supervisors and a neighboring police department to come to the scene and assist officers with the arrest. Portage Department of Public Safety Policy and Procedure Order 200-19 (April 2018) Sec. IV(A)(2) requires immediate notification of a supervisor when there is a crash involving a City employee. During the stop, officers observed a large scratch with yellow paint on the side of Mr. Carroll's car. The PPD officer noted that scratch, and the potential that Mr. Carroll may have just been involved in a car accident, as one of the reasons for the traffic stop.

Second, although the bodycam microphone of a PPD officer is turned off on a few occasions, this was only when the officer spoke with Deputy Director Blue and/or the responding KCSD officer. This is consistent with Portage Department of Public Safety Policy and Procedure Order 200-16 (August 2018) Sec. IV(C)(1) which prohibits recording communications with other police personnel without permission of the Public Safety Director or designee. Importantly, the bodycam is recording during all contact with citizens (here, Mr. Carroll), consistent Order 200-16 Sec. IV(A)(4).

Third, the stop itself appears to have been conducted with probable cause. The follow-up steps taken by officers to investigate the incident were appropriate and thorough. And finally, the charge was both appropriate and the most serious readily provable offense given the facts of this case.

## **II. Mr. Carroll Appears to Have Attempted to Use His Position Improperly**

While the criminal case against Mr. Carroll is on-going, based on our review of the evidence the prosecution's case against Mr. Carroll is overwhelming. However, even if Mr. Carroll is convicted of either High BAC or the reduced charge of OWI, this alone should not be the basis for an adverse employment action against him.

Rather, the more troubling finding is not that Mr. Carroll drove while drunk, but that a reasonable person viewing the video could conclude that Mr. Carroll sought to use his position as a Deputy City Manager to convince police to treat him more favorably than similarly situated drunk driving suspects. There was no rational reason for Mr. Carroll to show the PPD officer his employee badge but for to curry favor with the officer. Mr. Carroll was under the influence of alcohol and could have been confused. This is one potential explanation. However, the more plausible explanation is that he showed his badge in the hopes that the officer on the scene would treat him more favorably, which, as noted above, was unsuccessful.

For this reason, we recommend that Mr. Carroll be placed on a last-chance employment agreement in lieu of termination. This agreement should stay in place for 12 to 24 months. We also recommend that it include provisions for alcohol counseling, and if appropriate other mental health counseling. The agreement should also state that any future criminal conviction and/or credible allegations of abuse of Mr. Carroll's authority will result in Mr. Carroll's termination.

MCL/BPL