

Mr. Spencer,

Attached, please find General Order 541.25 pertaining to Emergency Vehicle Operation and Pursuits; the applicable section under which this pursuit was evaluated can be found in Section IV C-I.

In determining whether this pursuit was consistent with this General Order, the following factors were considered; the danger to the public created by the actions of the suspect driver; the seriousness of the original offense; the relationship of the pursuit to the community (specifically the time of day); the location of the pursuit; the weather and road conditions; the presence of pedestrian and vehicular traffic; the officer's familiarity with the roadway; and the capability and quality of operational police equipment, to include radio communications.

In considering these factors, the officer's supervisor determined this pursuit to be consistent with departmental policy but highlighted two areas of concern. The first had to do with the sergeant's inability to be able to establish the basis for the stop and initial speed. In review of this incident, it was found that the radio traffic from other units prevented either the officer or the supervisor to get back on the air after the officer initially advised dispatch that the vehicle was failing to yield.

The second area noted by the reviewing supervisor was the speed involved. It is here where the aforementioned factors become most relevant.

The actual pursuit was about a minute in duration. A review of the video shows no pedestrian activity, presumably because it was nearly 2:30 am and the University was not in session due to the summer break. Additionally, there were few cars on the road and at all times during the course of the brief pursuit the officer had all emergency equipment operational. The officer remained in control of the vehicle, and the weather and road conditions were dry.

When the officer first observed the vehicle, which was headed eastbound on University Avenue, the vehicle was traveling at 42 mph according to the radar equipment. By the time the officer got turned around in an effort to initiate a stop, the vehicle was observed failing to stop for the red signal at University and Rugby, and proceeded through the intersection without even slowing.

The officer notified dispatch that the driver was failing to yield, and accelerated in an effort to catch up to the vehicle. This quick acceleration, or catch up speed, is typically intended to close the distance between the police vehicle and the suspect driver. Despite the officer's efforts, the suspect car remained approximately  $\hat{A}$  mile ahead, and the officer was never able to close that distance.

At one point, the officer actually lost sight of the car but later regained sight as the vehicle was approaching Preston Avenue.

By the time the officer's vehicle reached Preston Avenue, the suspect vehicle was nowhere in sight. It was at this point that the officer observed the fresh skid marks which alerted him to the path that led to the vehicle's discovery.

It is important to understand that when the officer first observed this vehicle, aside from the speed, he had no knowledge of what other criminal activity in which the subject may have been involved. As we later learned, the suspect had committed a nighttime burglary, entered an occupied dwelling while the owners were asleep, and stole the homeowner's car. This would certainly explain why the suspect quickly accelerated his pace after passing the patrol vehicle, and made a great effort in keeping as much distance between him and the officer as he fled down Rugby Road. In fact, by the time the officer reached the Rugby Road intersection, the suspect was in flight at a high rate of speed. The officer was then confronted with the decision on whether to allow the driver to continue to flee, therefore placing him (the driver) and others at risk, or attempt a pursuit in an effort to stop the driver. The officer, in due consideration of the factors set out above and outlined within our policy, chose to initiate a pursuit.

The suspect's driving behavior once he entered on to Rugby Road was far from cautious and controlled; he posed an immediate threat to anything that came within his path. The driver of that car placed himself and others at risk by unlawfully engaging in the risk of high speed flight. Others may have well been harmed had the officer did nothing.

In 2007, the Supreme Court decided a case that pertains to high speed pursuits (Scott v Harris, 550 U.S. 372). The facts of that case, particularly in how the pursuit ended, are distinguishable. Nonetheless, it highlights the reasonableness of an officer's action in a vehicle pursuit situation. Among the many arguments posed by the driver in that case was the following: *Couldn't the innocent public equally have been protected, and the accident avoided had the police simply not pursued?*

To that question the Court responded: We think the police need not have taken that chance and hoped for the best.

The officer made a decision, a decision that we afford him the discretion of making with due regard to the facts and circumstances in which he/she is confronted at the time. Unfortunately, due to the suspect driver's total disregard for his safety and the safety of others an accident resulted. By the Grace of God no one was injured.

I find the officer's actions to have been reasonable based on the totality of the circumstance in which he was confronted. Had this occurred at 2:30 in the afternoon when traffic conditions were different, I may not have come to the same conclusion.

Best Regards,

Tim Longo