



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB09/0049 - September 9, 2009

THE SITUATION

On a late winter evening in 2009, a Boise Police Department (BPD) officer (Officer #1) spotted a pickup truck matching the description of one owned by a person wanted by the police for felony aggravated battery. This person had an extensive criminal record and was thought to be armed. After calling for additional police units to assist, Officer #1 attempted to make a traffic stop on the truck. A vehicle pursuit ensued that lasted approximately five and one-half minutes and covered more than four miles. The pursuit was ended when Officer #1 used a specific maneuver known as the Pursuit Intervention Technique (PIT). Following Officer #1's use of the PIT, the truck spun, jumped a curb, knocked down a street sign, light pole, and tree, and came to rest in the front yard of a residence. The falling tree caused structural damage to the residence. The driver of the truck, who was the wanted person, along with a passenger, was arrested at the scene.

THE COMPLAINT

The Complainant, the owner of the residence in whose front yard the suspect truck came to rest at the conclusion of the pursuit, contacted the Office of the Community Ombudsman and alleged that the speeds at which the suspect truck and the pursuing police cars were traveling were greater than was safe for the existing conditions. The Complainant further alleged that the PIT used by Officer #1 was done at a speed that was inherently unsafe and violated BPD policy. The Complainant contacted the ombudsman within 90 days of the event.

These alleged actions, if supported by the preponderance of the evidence, may have been violations of § 4.01.00 Vehicle Pursuits and/or § 4.01.12C Pursuit Intervention Technique (PIT) of the BPD Policy and Procedures Manual.

THE COMPLAINT INVESTIGATION

In the course of investigating this complaint, the following steps were taken:

1. Reviewed all materials and photographs presented by the Complainant.
2. Reviewed all related BPD records, reports, recordings, photographs, and other evidence.
3. Reviewed BPD training records regarding vehicle pursuits and the use of PIT.
4. Consulted with two BPD pursuit/PIT trainers.
5. Interviewed Officer #1.
6. Interviewed a witness officer who was a passenger in Officer #1's police car during the pursuit.
7. Interviewed two non-police witnesses.
8. Interviewed the driver of the suspect pickup truck.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence obtained and reviewed in the course of this investigation, I issued the following findings of fact.

1. BPD officers, including Officer #1, had probable cause to arrest the driver of the suspect pickup truck for aggravated battery and reasonably believed that he was armed with a handgun.
2. BPD officers, including Officer #1, had a detailed description of the suspect truck and reasonably believed that the wanted person was in possession of that truck.
3. Officer #1 saw the suspect truck and, after waiting for assisting units to arrive, initiated a traffic stop on that vehicle.
4. It was nearly 10:00 p.m. on a weekday evening. It was past dusk and dark outside. The outside air temperature was in the low 30 degrees Fahrenheit, but above freezing; and light snow was reported in the area. While the pavement may have been wet, there was no snow pack or ice on the roadways.
5. After initially stopping, the truck drove away with Officer #1 and other officers in pursuit.
6. The pursuit traveled over four miles on several streets and highways, and lasted approximately five and one-half minutes.
7. In the course of the pursuit, BPD officers attempted to block, stop, and intercept the travel of the fleeing vehicle using other patrol vehicles.

8. While driving in a residential neighborhood, the suspect truck made a right turn, accelerated for less than one block (approximately 300 feet), and began to slow for another right turn.
9. Officer #1 used the PIT maneuver as the suspect truck slowed to make a right turn at an intersection in a residential neighborhood.
10. As the police car being driven by Officer #1 made contact with the suspect truck, the driver of the truck lost control. The truck hit a curb. It then traveled across a grass strip, a sidewalk, and came to rest in the Complainant's front yard. As the truck traveled from the street to the yard, it struck a street sign, a street light pole, and a cedar tree. The tree, which was in the Complainant's yard, was knocked over and damage was caused to the Complainant's landscaping and residence.
11. Although the driver of the truck fled on foot, he was subsequently arrested in a nearby yard. A passenger in the truck was also arrested at the scene.

OMBUDSMAN'S ANALYSIS

The Pursuit

In this incident, BPD officers engaged in a vehicle pursuit over a distance of more than four miles. The person being pursued was wanted for aggravated battery in which a firearm had been used. BPD policy allows officers to engage in vehicle pursuits, providing that the pursuing officer has lawful authority to detain or arrest the person being pursued. Additionally, BPD policy § 4.01.00 requires that a pursuit be discontinued, "if the danger posed by the continued pursuit outweighs the danger to the public of allowing the suspect to evade immediate capture."

BPD policy §§ 4.01.02, 4.01.03, and 4.01.11 further direct pursuing officers to exercise due regard for the safety of life and property and to, “continuously weigh the gravity of the offense against the emerging circumstances and to discontinue the pursuit if it becomes apparent that the danger created by the pursuit does not justify immediate apprehension of the violator.”

The Complainant alleged that the pursuit speeds in her neighborhood were as high as 80-100 mph. She reported that she obtained these estimates from an eye witness to the pursuit. In the course of this investigation, two uninvolved, non-police witnesses were located. Each witness was in a position to judge the speed of the pickup truck and police vehicles. One witness reported he could not estimate the speed of the vehicles but felt that the pickup was going too fast to make the last right turn. This witness reported that, based on the engine sounds, the truck and pursuing police cars were accelerating as fast as they could from the previous right turn they had taken one block away. The second witness reported that the pickup truck was going “maybe 40.” Other than the vehicle belonging to this witness, the suspect truck, and the pursuing police cars, there was no other traffic on the roadway.

The driver of the suspect truck said that he was not looking at his speedometer and, at first, estimated his speed to be approximately 60 to 70 mph before he began to slow for the last right turn. However, he corrected himself and revised his speed estimate down to between 40 and 50 mph.

The preponderance of evidence does not support the allegation that the pursuit was conducted in an unsafe manner in violation of BPD policy. All pursuits entail risk, and BPD policy does not prohibit pursuits in residential neighborhoods. The character of the area in which the pursuit is occurring is only one of many factors officers should consider in deciding whether or not to continue a pursuit. Other conditions that should be considered include, but are not limited to: the number of other vehicles on the roads, the presence or absence of pedestrians, road conditions, weather, lighting, etc. There is no evidence in this case that

Officer #1 failed to consider these and other relevant factors in the course of this pursuit. Officer #1 continuously evaluated the conditions as the pursuit proceeded, and balanced the risk of the pursuit against the risk of allowing a person wanted for a violent felony to escape.

After consideration of all the evidence known to me from this investigation, I find that Officer #1 followed the requirements of BPD's pursuit policy. As a result, I have issued a finding of exonerated in connection with the allegation that Officer #1 violated § 4.01.00 of the BPD Policy and Procedures Manual.

The Use of the PIT

The PIT (Pursuit Intervention Technique) is a widely accepted method of ending pursuits used by law enforcement agencies throughout Idaho and the rest of the country. Some experts believe that the PIT is the safest way to stop pursuits. Many argue that the PIT involves less risk than other techniques, including the use of spike strips.

In order to use the PIT, BPD policy § 4.01.12C requires officers to be trained in the technique. Furthermore, they must be driving a standard marked police car, consider certain specified risk factors, and weigh the potential risks of using the PIT against the risks associated with the continued movement of the suspect vehicle. BPD policy § 4.01.12C permits the use of PIT up to 40 mph without prior authorization. Use of the PIT at speeds above 40 mph is also permitted if authorization is obtained from the Incident Commander (an uninvolved supervisor), who must weigh the various risks involved.

In the incident under review in this investigation, the suspect truck slowed as it made the first of two successive right turns. After the completion of this turn, the driver accelerated rapidly as he traveled approximately 300 feet towards the next cross street. The truck then began to slow as its driver prepared to make another right turn. As the truck began the turn and

reached the intersection, Officer #1 initiated the PIT on the right rear corner of the suspect truck.

The preponderance of the evidence does not support the conclusion that the suspect truck was traveling at a speed of more than 40 mph at the time of the PIT. Both Officer #1 and the officer who was a passenger in his police car, estimated the speeds of both vehicles to be below 40 mph. Neither of the other two witnesses felt that the truck was traveling at a speed much more than 40 mph. The only person who thought he might be traveling at a speed higher than 40 mph was the driver of the suspect truck; and even he was uncertain of his speed since he was not monitoring his speedometer at the time. In summary, there is no reliable evidence to show that the pickup's speed was in excess of 40 mph; clearly there is no preponderance of the evidence to support such a conclusion.

It is known however, that his speed was only going to increase as he continued to accelerate. Previous attempts to stop the suspect truck, including two other attempts to apply the PIT, spike strips, and intercept vehicles had been unsuccessful.

The use of the PIT in this situation was allowed by BPD policy. Officer #1 considered the safety of the public, the suspect, and involved officers. He considered the many risk factors present and made the decision to use the PIT, a decision that a reasonable officer could make under the same or similar circumstances. For these reasons, I have issued a finding of exonerated for the allegation that Officer #1 violated BPD policy § 4.01.12C Pursuit Intervention Technique.

OMBUDSMAN'S POLICY FINDINGS

Based on the preponderance of the evidence made available to me through this investigation, I have issued the following policy findings:

1. With respect to the allegation that Officer #1 violated § 4.01.00 Vehicle Pursuits of the BPD Policy and Procedures Manual:

EXONERATED

2. With respect to the allegation that Officer #1 violated § 4.01.12C Pursuit Intervention Technique (PIT) of the BPD Policy and Procedures Manual:

EXONERATED



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org