

MEMORANDUM
Police Department



City of Bothell™

DATE: August 12th, 2022

TO: Susy Johnson, Deputy Chief, Bothell Police Department

FROM: Kendall Smith, Operations Captain, Bothell Police Department

SUBJECT: Pursuit Review Summary for case 22-11997

Call Summary:

On June 28th, 2022, at about 1940 hours, Officer S. Graham initiated a traffic stop on a vehicle that was possibly related to a Robbery that had just occurred. An adult male was by the 7-11 at 20801 SR 527, and pointed to a Toyota Tundra and told Officer Graham, "That's the truck involved with the robbery." Officer Graham attempted to catch up with the truck, that headed eastbound on Maltby Road, and asked Dispatch to confirm if there was a Robbery call at Thrasher's Pub.

Snohomish County Sheriff's Office (SCSO) were investigating a weapon(s) call at the Safeway parking lot, located at 20711 SR 527, that occurred at about 1935 hours. When Dispatch advised that SCSO did not need assistance with the call, Officer Graham terminated trying to catch up with the truck and headed back towards the scene.

As Officer Graham pulled up to the stop light at Maltby Road and SR 527, a female and a different male waved him down, pointed out a different truck, and said, "that black truck just robbed someone." The truck that was identified was a black GMC Sierra, and it was directly in front of Officer Graham.

At this time, Officer Graham stated that he had Probable Cause (PC) for Robbery. In his report he wrote, "Based on the witness information, and the previous call in the same area with Snohomish County Sheriffs, I determined probable cause for robbery. I was not able to determine what degree of robbery at the time I was notified of the trucks' involvement." The truck turned southbound onto SR 527, and Officer Graham followed and attempted a traffic stop in the 21400 block of SR 527. The truck did not comply, and began driving through the business park area in Canyon Park, with speeds topping off at about 60 miles an hour. The truck then went through the parking lot of the Fred Meyer's and over a curb with shrubs, before popping back onto SR 527. Ultimately, the truck went back onto southbound SR 527, and then onto the I-405 southbound exit ramp. It was at about this time that the on-duty supervisor, Master Patrol Officer (MPO) J. Wilson called for units to terminate the pursuit, and units complied. That directive coincided with an update from SCSO that they did not have PC.

At about 1956 hours, a citizen reported that they observed a truck matching the description of the suspect vehicle at the Beardslee Starbucks (18612 Beardslee Blvd., Bothell WA), and a plain clothed Kirkland Police Department (KPD) officer observed two females flee from the vehicle. Two juvenile females were located and admitted to being in the truck, but were not driving it. The mother of one of the girls had responded to the scene to assist her daughter, and she was later determined to have assisted in the escape of the subjects in the truck. The case was closed with a criminal citation for the mother, and charges forwarded to the Snohomish County Juvenile Prosecutor for a juvenile male identified through investigation.

Time and Distance of Pursuit:

Using Google Maps, the pursuit was determined to last about 4.4 miles, and according to the Computer Aided Dispatch (CAD) notes, it lasted about 4 minutes. (Per the CAD: 19:43:12 to 19:47:36.)

Reason for the Pursuit:

Based on the facts and the totality of the circumstances, the Officer Graham thought he had probable cause to believe that the vehicle was associated with a Robbery call. The Robbery had taken place outside of our boundaries and was being handled by Snohomish County Sheriff's Office (SCSO), thus there were delays in the relaying of information.

The officers were dressed in their full patrol uniforms, including Bothell Police Department shoulder patches, external vests with police patches and badges displayed. While attempting to stop the suspect they were in fully marked police vehicles, so it seems reasonable that the suspect driver should have known they were police officers.

Supervision:

MPO J. Wilson was the on-duty supervisor that night when this call occurred. Based on CAD entries and the 911 audio tapes it appears MPO Wilson terminated the pursuit as soon as Dispatch informed the officers that SCSO did not have PC.

Authorized Pursuit:

As the suspect vehicle took off from the initial scene, Officer Graham said that he had reached the threshold of PC, yet from reading his report it sounds like he had only reached the threshold for Reasonable Suspicion.

The basis for Officer Graham's PC is the proximity to the crime and two unverified witnesses telling him that the truck was involved. Officer Russell also states in his report that, "Due to the SCSO CAD notes and the witness information, I determined there was probable cause for Robbery 1st". Both officers based their decisions for determining PC off of assumptions, and this is not an acceptable manner to determine PC. Based on his report, I do not believe that either Officer Graham or Officer Russell had PC, but was more likely at the threshold for

Reasonable Suspicion, and thus out of policy. While the crime of Robbery would fall into the category of a Violent Offense, the policy dictates that Probable Cause be met first.

The CAD notes state that SCSO did not have PC for Robbery shortly after time that the attempted stop was initiated, although it doesn't appear that Officer Graham knew that information at the time. It is understandable that he may not have been reading the CAD in his car. Once Dispatch related that they, SCSO, did not have PC, MPO Wilson rightfully terminated the pursuit.

After listening to the 911 audio file, Officer Graham also failed to receive supervisor approval prior to engaging in the pursuit. His re-training in the pursuit policy should cover this vital piece of the policy.

Recommendation:

I reviewed all case reports and CAD for this incident (attached). The initial pursuit by Officer Graham was **out of policy**.

Per policy, a vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspect who is attempting to avoid apprehension while operating a motor vehicle by using evasive tactics such as increasing speed, extinguishing lights, violating a traffic control device, driving off a highway, turning suddenly, or any other evasive manner to elude the officer.

- **212.3:** It is the policy of the Bothell Police Department that pursuits are permissible only when the need for immediate capture outweighs the danger created by the pursuit itself. A police officer may only engage in a vehicular pursuit when the following criteria is met:
 - The police officer has probable cause to believe that a person in the vehicle has committed or is committing a violent offense, or sex offense as defined in RCW 9.94A.030, or an escape as defined in chapter 9A.76; or
 - There is reasonable suspicion a person in the vehicle has committed or is committing a driving under the influence offense under RCW 46.61.502. The impaired driving must have occurred independent of any attempt to stop the suspect and cannot be solely a result of the suspect's attempting to flee from the officer regardless of the activation of an officer's emergency lights or siren. **If pursuit of a suspected impaired driver results in the pursued driver displaying an increased level of dangerous driving, the pursuit shall be immediately discontinued, and**
 - The pursuit is necessary for the purpose of identifying or apprehending the person, and
 - The person poses an imminent threat to the safety of others and the safety risks of failing to apprehend or identify the person are considered to be greater than the safety risks of the vehicle pursuit under the circumstances, and
 - The officer has received authorization to engage in the pursuit from a supervisor and there is supervisory control of the pursuit.

I recommend Officer Graham and Officer C. Russell receive remedial training on our Pursuit Policy, with an emphasis on the need for supervisor authorization and to include a review of Reasonable Suspicion vs. Probable Cause. A copy of this review will be given to Sergeant Kumcur and Sergeant Rogers for the officers' performance files.

This document concludes the review of this pursuit.

A handwritten signature in black ink, appearing to read "Kendall Smith", followed by the number "0276".

Kendall Smith / Captain
Bothell Police Department / Operations