



Office of the Bronx District Attorney

Darcel D. Clark

Report of the Investigation into the Shooting of Luis Manuel Monsanto

March 4, 2025

Public Integrity Bureau

STATEMENT FROM BRONX DISTRICT ATTORNEY DARCEL D. CLARK

The shooting of 18-year-old Luis Manuel-Monsanto by an NYPD Officer during a car stop on March 6, 2022, left him with life-altering brain injuries from which he will never recover. This devastating tragedy demands a thorough investigation to provide answers to his family and to the Bronx community at large.

I believe in transparency to ensure public trust, especially in matters that involve police shootings.

This report provides details of the steps taken in our investigation, our review of police procedures, and an examination of the evidence that leads to our conclusion that the events culminated in a justified use of force where there is no criminality on the part of the officers.

As shown in the video, the vehicle Mr. Monsanto was driving headed towards a police officer, quickly closing a very short distance, nearly hitting one officer. Each officer made a split-second decision, and four shots were fired.

After careful review of the law concerning justification, an in-depth review of video, and extensive interviews of witnesses, the officers' conduct meets the elements of justification under the law.

I hope this report will shed light on the incident and the diligent efforts made by my office to analyze the facts and circumstances that led to these somber moments for Mr. Monsanto's family.

I pray for Mr. Monsanto, and I am sorry his loved ones must endure such hardship.

Four months after this tragic event, the New York City Police Department released a revision of their patrol guide concerning Vehicle Pursuits, stops and roadblocks that reflects a more conservative approach. I hope the new provision will serve to inhibit future situations where vehicle pursuits quickly escalate into danger.

Executive Summary

On March 6, 2022, near Boston Road and East 165th Street in Bronx County, New York Police Department officers shot 18-year-old Luis Manuel Monsanto while he was driving a Jeep towards one of them as officers were trying to conduct a traffic stop of the Jeep. Tragically, one bullet struck Mr. Monsanto in the head, and he will never fully recover from his injuries.

The moments and events that preceded the discharge of two officers' firearms will be discussed in detail in this report. Surveillance and witness accounts depict the Jeep operated by Mr. Monsanto cross the double yellow line on Third Avenue to go around cars stopped at the red light at the intersection of Third Avenue and E 163rd Street. The Jeep then went through another red light before stopping at the intersection of E 165 and Boston Road. It is at this intersection where Officer Rodriguez positioned his police vehicle in front of the Jeep and the second police vehicle approached the Jeep from behind.

When the police car pulled in front of the Jeep, the Jeep initially lurched forward before reversing and hitting the police car behind it. From there, the Jeep accelerated and turned its wheels in the direction where Officer Rodriguez was standing a few feet away by the double yellow line bisecting Boston Road. Officer Rodriguez discharged his firearm once at the Jeep and Officer Moriarty fired three times, for a total of four rounds in the span of approximately two seconds. They stopped shooting as soon as the Jeep passed Officer Rodriguez and immediately summoned aid for Mr. Monsanto.

This report explains, after studying the body worn camera and video surveillance footage, interviewing witnesses, and considering the most pertinent penal law crimes and defenses, that we have concluded that we cannot prove beyond a reasonable doubt that the officers committed a crime by firing at a car that was accelerating towards one of them on a busy city street.

The Bronx District Attorney's Report of the Investigation into the Shooting of Luis Manuel Monsanto

Overview Of The Investigation

On March 6, 2022, at 8:00 p.m., members of the New York Police Department (“NYPD”) shot Luis Manuel Monsanto in the head as they were attempting to stop the black Jeep Compass Mr. Monsanto was driving at the intersection of East 165th Street and Boston Road, in Bronx County. The NYPD Force Investigation Division (“FID”) notified the Bronx District Attorney’s Office (“the Office”) and within an hour, Assistant District Attorneys arrived and began investigating.

The Office thoroughly investigated the events leading up to and including the shooting and its aftermath. Interviews were conducted, directions for obtaining video surveillance and preserving evidence were given, and search warrants for the Jeep and its black box recorder were prepared. The investigation also involved the issuance of grand jury subpoenas, interviews of the Jeep’s passengers and the officers who stopped it (including the two who fired their weapons), analysis of hundreds of pages of documents, review of surveillance video footage from several locations, review of body-

worn camera footage and audio recordings, and the retention of medical and other experts.¹

There were very few discrepancies among the various accounts to begin with, and video evidence clarified them. Given the robust evidence, there is very little that remains unknown, or that could potentially be disputed, about what happened. Thus, if this Office were to seek and obtain an indictment, and to conduct a trial, the facts developed during this investigation comprise the evidence that would likely be proved to a jury. After careful review of this evidence, the Office has produced this report detailing the results of the investigation.

As will be discussed in more detail below, on Sunday evening, March 6, 2022, Luis Monsanto was spending time with his friends Alvaro Gutierrez, Luis Felix, and Omar Santo. The men were driving around in Gutierrez's father's car, a black Jeep Compass ("the Jeep"), and sometime before 8:00 p.m., Mr. Monsanto took a turn driving.

Around 8:00pm, Mr. Monsanto drove across a double-yellow line, into oncoming traffic, and then through a steady red light at the intersection of Third Avenue and Boston Road. Police officers who happened to be in two unmarked cars saw the infractions and pursued the Jeep to the intersection of East 165th Street and

¹ The video links in this report to the relevant clips of video. The links show the pertinent parts of the video, not the video in its entirety.

Boston Road, where it had come to a stop at a red light. Officer Will Rodriguez pulled his car in front of the Jeep at an angle that prevented it from driving forward, while the second police car approached from behind. Rodriguez activated his police lights just before he stopped.

As Officers Rodriguez, Lauren Moriarty, and John Batule got out of Rodriguez's car to speak with the Jeep driver, Mr. Monsanto began driving forward but had nowhere to go. Instead of stopping, however, Mr. Monsanto abruptly reversed just as the second police car was arriving, also with its lights activated, and he struck it. Mr. Monsanto then began driving forward again, towards Officers Rodriguez and Moriarty, and both drew their firearms. As Mr. Monsanto accelerated directly toward Rodriguez, Rodriguez fired once at the driver's side of the windshield. Almost simultaneously, Officer Moriarty fired her weapon three times as the Jeep continued forward, and Rodriguez nimbly dodged it. Mr. Monsanto was struck in the head by one of the bullets, and the Jeep came to rest by crashing into a nearby building. The officers on the scene immediately removed the passengers from the Jeep. Once they were able to remove Mr. Monsanto, they quickly began to render medical aid and summoned an ambulance that arrived less than five minutes later.

The incident occurred in an instant—less than five seconds transpired from the moment the officers exited their car until the final bullet was discharged. In the end, Mr. Monsanto suffered a gunshot wound to the head that caused a significant brain

injury from which he will never fully recover. The tragic details of the encounter are more fully discussed below.

Results of the Investigation²

We begin with a brief background of the occupants of the Jeep and the officers involved in the confrontation. We continue with a mostly chronological summary of the events leading up to the shooting, the shooting itself, and the information gathered after the shooting from the investigation. We end with an explanation of our conclusion that we cannot prove beyond a reasonable doubt that the officers committed a crime.³

1. Background

a. Luis Manuel Monsanto

Luis Manuel Monsanto could not be interviewed, due to the serious injuries he sustained because of this incident, but his family described him as a calm person who was shy, yet fun. In March 2022, Mr. Monsanto was 18 years old and a student at Cardinal Hayes High School, a Catholic school in Bronx County. He and his family had previously lived in the Bronx near the school, but they had since moved to Clifton, New Jersey. Mr. Monsanto was family oriented, was always willing to help out, and was

² Parenthetical citations to military times, unless otherwise specified, are based upon the timestamps in the NYPD body-worn camera footage.

³ There is no indication from the backgrounds of the men in the Jeep or the officers that any of them harbored any criminal intent that evening before the tragic confrontation.

stepping into the role of “man of the house” to help his wheelchair-bound father. Mr. Monsanto liked working with his hands and was interested in mechanics.

On March 6, 2022, Mr. Monsanto had a Class D driver’s permit. He had no arrest record and no known altercations with the NYPD. He had no disciplinary incidents at school, no gang connections, and no drug or alcohol issues. He had school and neighborhood friends and a girlfriend. Members of his community are saddened and praying for him and his family.

b. Alvaro Gutierrez

Alvaro Gutierrez was 18 years old at the time. He was seated in the front passenger seat of the Jeep, which belonged to his father. Gutierrez had known Mr. Monsanto for about two years, since Mr. Monsanto’s family had moved to Clifton, New Jersey. His account is incorporated into the factual summary below.

c. Luis Felix

Twenty-eight-year-old Luis Felix was seated in the back seat of the Jeep on the driver’s side. Felix was placed into custody because he had an active warrant for Theft of Services relating to an October 2016 arrest, and he spoke with Assistant District Attorneys the night of the incident. His account is incorporated into the factual summary below.

d. Omar Santo

Seventeen-year-old Omar Santo was in the rear passenger seat of the Jeep. Santo was interviewed by FID in the presence of his parents. Santo declined to say anything

during the interview, but his parents confirmed that they were from Clifton New Jersey, and that Santo knew Mr. Monsanto and Gutierrez from the neighborhood. Santo and Gutierrez had known each other since they were very young, while Santo and Mr. Monsanto had been friends for about two years, since Mr. Monsanto had moved to the neighborhood. Santo's mother did not know Luis Felix and she did not understand why he was socializing with Santo, Mr. Monsanto, and Gutierrez, who were much younger than him. Assistant District Attorneys repeatedly attempted to speak with Santo and his parents, but they declined to be interviewed again.

e. Police Officer Will Rodriguez

Police Officer Will Rodriguez, who fired one shot, was interviewed by this Office on March 28, 2022. Officer Rodriguez has been a police officer since 2017. By March 2022, he had close to five years of experience. Officer Rodriguez has been assigned to the 42nd Precinct his entire career and has been assigned to Public Safety since May 2021. He had received nine medals, two for Meritorious Police Duty and seven for Excellent Police Duty.

Officer Rodriguez's administrative history consists of eight incidents. Only two were substantiated: one for loss of identification and another for an invoice discrepancy. Two allegations of Failure to Respond were exonerated in 2018, and an allegation of Failure to take Police Action was unfounded in 2020.

f. Police Officer Lauren Moriarty

Police Officer Lauren Moriarty, who fired three shots, was interviewed by this Office on March 28, 2022. Officer Moriarty has been a police officer since 2016. In March 2022, she had close to six years of experience. She had been assigned to Public Safety in the 42nd Precinct since July 2020. Officer Moriarty began her career as an Officer working patrol in the 42nd Precinct. For approximately a year and a half, from March 2019 through July 2020, Officer Moriarty was assigned to the Citywide Traffic Bureau and Anti-Congestion Reduction. During her career, she has received six medals for Excellent Police Duty. Officer Moriarty stated she became a police officer because she wanted to one day work on policy but wanted to make sure she had experience first. Prior to entering the NYPD Academy, Officer Moriarty obtained her bachelor's degree and MPA at John Jay College. She also worked at the Food Network and did a fellowship at the Bronx Defenders, a local public defender's organization in Bronx County.

Officer Moriarty has seven incidents in her administrative history. Two were substantiated: one for failure to come to court and one for an invoice discrepancy. One force allegation was marked for Information and Intelligence⁴ and a search incident was exonerated.

g. Police Officer John Batule

⁴ The term "Information and Intelligence" is used by NYPD if an allegation does not call for a full investigation and/or the content of the investigation is being filed for future reference.

Police Officer John Batule was interviewed by the NYPD on March 7, 2022. Officer Batule did not fire his weapon, but he was in the car with Rodriguez and Moriarty and broke a passenger side window of the Jeep with his baton. Officer Batule was appointed in 2017 and spent five years at the 42nd Precinct. He was assigned to Public Safety in May 2021. During his career, he has been awarded two medals for Excellent Police Duty.

There are ten incidents in Officer Batule's administrative history. Three incidents were substantiated, for Failure to Notify Supervisor of Accident, Returning Vehicle without the Proper Paperwork, and threatening to arrest someone. There are three force incidents all exonerated or marked for Information and Intelligence.

An administrative hearing was held for both Officer Rodriguez and Officer Moriarty as a result of this incident. At the conclusion of the administrative hearing, both officers were found guilty of wrongfully discharge of service firearm at a moving vehicle and each received a disposition of 30 suspension days without pay, the loss of 60 vacation days, and one year dismissal probation.⁵

2. Factual Summary

On March 6, 2022, Alvaro Gutierrez drove his father's black Jeep Compass from Clifton, New Jersey, to New York City to pick up his sister. Luis Monsanto, Luis Felix,

⁵ Should the officers face discipline on another matter within the next year they can be terminated immediately.

Omar Santo, and Omar's brother Amir were in the car. Gutierrez first dropped Amir off in Queens at his father's house, but Gutierrez's sister was not yet ready to be picked up. With some time to kill, the group stopped at a liquor store on East 161st Street and Morris Avenue and bought nips of alcohol. They planned to drink and smoke in Claremont Park, about a mile from where they were eventually stopped, and then to drive back to New Jersey.

Just before 7:30 p.m., after driving by Mr. Monsanto's old house near Cardinal Hayes High School, Gutierrez let Mr. Monsanto take the wheel. Gutierrez recalled that Mr. Monsanto wanted to "show off" his driving in his old neighborhood. When asked what he meant by "show off," Gutierrez reported that Mr. Monsanto was driving faster than 35 to 40 mph (where the speed limit was lower), and he was treating red lights as stop signs. Gutierrez said that he told Mr. Monsanto to "calm down," but Mr. Monsanto responded that "they would be fine." He recalled that the windows were closed, and music was playing in the car.

a. The Initial Stop Of The Jeep

At 7:59:40 pm, two unmarked police cars were headed southwest on Boston Road toward its intersection with Third Avenue.⁶ Officer Will Rodriguez drove one car,

⁶ Third Avenue is a major north-south roadway that comes up from Manhattan and runs from the southern portion of Bronx County to its terminus at Fordham University. At East 163rd Street and Boston Road, Third Avenue is comprised of three lanes on the northbound side, the eastern-most of which is a bus-lane, and three lanes on the southbound side, the western-most of which is used for parking. The roadway is bisected by a solid double-

(Continued...)

with Officer John Batule in the front passenger seat and Officer Lauren Moriarty seated in the rear, behind Rodriguez. Officer Murray was driving about five car lengths behind Rodriguez's car, and Officer Peralta was seated in the front passenger seat, while Sergeant Aguilar was seated in the rear passenger seat. All the officers were headed back to the stationhouse, having just purchased food for their meal break. All were in uniform and equipped with body-worn cameras ("BWC").⁷

At the same time, Mr. Monsanto was driving the Jeep northbound on Third Avenue, just north of East 163rd Street. As the Jeep approached the intersection of Boston Road, several cars were stopped ahead of it at a steady red light. The Jeep swerved left around the stopped vehicles and across the double yellow line, proceeding the wrong way in the southbound lane. The Jeep drove around the vehicles stopped at the light, drove through the steady red light, and its tires screeched as it turned right onto Boston Road.

yellow line. Third Avenue intersects with Boston Road in a three-way junction (referred to as a "Y intersection" or "Y-junction"), at which Third Avenue continues generally north and southbound, with Boston Road heading in a northeast or southwesterly direction. There is a stop light at the intersection, and a concrete pedestrian island on Boston Road. To merge onto Boston Road heading northeast, a vehicle must be in the middle lane of traffic to turn right.

⁷ Pursuant to NYPD Patrol Guide 212-123, all uniformed members of the NYPD are assigned a BWC which they must retrieve at the start of their tour, inspect to ensure it is functioning, and affix to their outermost garment before they begin their shift to ensure that the camera captures an optimal field of view. While in an off position, the BWC constantly records and overwrites video footage, storing 60 seconds of footage with no audio prior to being turned on. Once an officer activates the BWC by depressing a button at the center of the device, the camera records video and audio footage.

Seeing and hearing this, Officer Rodriguez thought to himself, “who drives like that?” and Officer Moriarty heard one of her colleagues exclaim, “oh shit, look at that!” Rodriguez immediately made a “U” turn around a pedestrian island, heading northeast on Boston Road in pursuit (19:59:45). Murray followed suit but had to conduct a broken “U” turn based on his position (19:59:45-57).

The Jeep, heading northeast on Boston Road, approached East 164th Street. Again, Mr. Monsanto proceeded through a steady red light (19:59:50). The Jeep continued on Boston Road toward the next intersection at East 165th Street. Both police cars pursued the Jeep, Rodriguez’s in the lead, although neither had yet activated their lights or sirens, and they remained some distance behind the Jeep. The Jeep stopped at the steady red light on Boston Road at East 165th Street, with its wheels turned slightly toward the right (19:59:55).⁸

Officer Rodriguez approached the Jeep at the intersection of Boston Road and East 165th Street. He drove past the driver’s side of the Jeep and pulled in front of it at an angle so as to cut it off, stopping in the middle of the crosswalk traversing Boston Road, with the passenger side of the police vehicle closer to the Jeep (20:00:00-03). As

⁸ At its intersection with East 165th Street, Boston Road is a four-lane roadway bisected by a solid double-yellow line, with one lane of traffic in each direction and a parking lane on each side. East 165th Street extends eastward, but stops at Boston Road, creating a “T-junction.” There were three functioning streetlights at the intersection—one on each corner of East 165th Street, as well as one on the west side of Boston Road across from its southeast corner with East 165th Street.

Officer Rodriguez passed the Jeep and before the car fully stopped, he activated the turret lights (20:00:01).

Before Rodriguez's car completely stopped moving, Officer Batule opened the front passenger door (20:00:02). At that point, the Jeep moved forward approximately two feet and then abruptly stopped, causing it to rock back and forth slightly (20:00:03). Batule jumped out from the passenger side of Rodriguez's car, facing the Jeep head on, approximately half a car length from the front headlights (20:00:04). Officer Batule saw Mr. Monsanto "looking over his shoulder...as if he was attempting [to] reverse and evade us." Batule commanded the occupants of the Jeep to "let me see your hands." At the same time, Officer Moriarty also began to exit the car from the rear driver's side of the car, holding a cellphone in her right hand (20:00:04). Meanwhile, Officer Rodriguez put the car in park (20:00:04) and began to get out, his cellphone also in his right hand (20:00:05).

As the officers emerged from the car, Officer Murray's car approached from behind, and he activated his car's turret lights from about five car lengths away (20:00:03). Officer Batule walked toward the front passenger side of the Jeep, at which point the Jeep began moving backward, increasing distance from Batule but closing the distance with Murray's car as it approached (20:00:05-06).

Officer Moriarty turned back to Rodriguez's car and dropped her phone back into it (20:00:06-09). Officer Rodriguez then moved around Moriarty and toward the Jeep, walking in the middle of Boston Road near the double yellow line (20:00:07-09).

At that same time, a white sedan entered the intersection from East 165th Street and turned left onto Boston Road, coming very close behind where Rodriguez was approaching the Jeep from the middle of the road (20:00:07-09).

On the other side of the Jeep from Rodriguez, Batule kept pace until the back of the Jeep slammed into the front of Murray's approaching car (20:00:07-08). With the Jeep momentarily stopped, Officer Batule was able to close the distance toward the front passenger side, and as he did so, he drew his baton and extended it (20:00:08). Officer Rodriguez continued on foot toward the Jeep's driver's side. He passed the rear of his own car, with the double yellow line about one foot to his right and the white sedan still moving behind him on the other side of the double yellow line (20:00:07-08). Rodriguez drew his firearm and continued moving toward the Jeep (20:00:09). Officer Moriarty was standing by the rear passenger car door of Rodriguez's car, facing the Jeep, with Rodriguez a car length ahead of her (20:00:09).

b. The Shooting

The Jeep then began accelerating forward and to its left, away from Officer Batule but turning toward Officer Rodriguez (20:00:09-10).⁹ With the Jeep approximately one car length in front of him, Officer Rodriguez extended his firearm, held it with both hands and pointed it at the Jeep (20:00:09).

⁹ Surveillance footage of the car stop at 165 Street and Boston Road

Officer Peralta and Sergeant Aguilar simultaneously exited Murray's car from the passenger side (20:00:09),¹⁰ and Officer Batule struck the rear passenger side fly window of the Jeep with his baton, shattering the glass (20:00:10). Batule yelled to "stop the car" and "show me your hands," and Rodriguez heard Felix urge Mr. Monsanto through the Jeep's open window, "dude, just stop." Rodriguez and the Jeep were now both moving toward one another, with Rodriguez just to the left of the double yellow line and the white sedan behind him and to his right (20:00:10).

But the Jeep did not stop,¹¹ and Rodriguez heard the engine rev before he saw its headlights closing in on him. Rodriguez felt that he "had nowhere else to go"; he was afraid he was going to die. He aimed his firearm at the driver side windshield, discharged it once, and then reflexively put up his right palm and dodged the Jeep as it as it nearly missed hitting him (20:00:10). By this point, Officer Rodriguez had crossed the double yellow line into the lane where the white sedan was driving (20:00:11).

During the same second or two that led to Rodriguez's firing his shot, Officer Moriarty also heard someone yell to stop, followed by the engine revving and the Jeep turning directly toward Rodriguez; she, too, thought Rodriguez was about to be killed. Almost immediately after Rodriguez's single shot, Officer Moriarty, from near the rear driver side door of Rodriguez's car, quickly fired three rounds as the Jeep narrowly

¹⁰ Officer Murray, the driver, did not exit the vehicle for another nine seconds (20:00:18).

¹¹ Gutierrez believed Mr. Monsanto was attempting to make a "U" turn.

missed Officer Rodriguez and continued forward and to the left (20:00:10-12). As Officer Batule recalled and the video evidence appears to confirm, the four shots were fired “all in row” and “pretty fast”—all within about two seconds or less.¹² A bullet-sized hole becomes visible on the driver side of the Jeep’s front windshield during this two-second period (*e.g.*, 20:00:11).

The Jeep then continued moving forward, nearly perpendicular to the flow of traffic, towards the curb (20:00:12). As the Jeep passed Rodriguez, Mr. Monsanto is visible in the driver seat, his window open, and the rear passenger is also visible, his window also open (20:00:11).

Officer Rodriguez was the first to activate his BWC, which he did just after the Jeep had passed him (20:00:13).¹³ The Jeep continued over the curb and onto the sidewalk, where it collided with a church on the west side of the intersection (20:00:14).

¹² The precise moment that Rodriguez fired his gun appears to be 20:00:10, or 10 seconds after 8:00 pm, based upon Rodriguez’s March 28, 2022, interview with this Office and on BWC footage. BWC footage at 8:00:10 shows that his firearm appears to recoil and that a small amount of white smoke then appears at the front windshield of the Jeep. None of the six officers had yet activated their BWC. As a result, although there is video footage from the relevant BWCs of these events (because the 60 seconds before activation are preserved, but without sound), there is no audio recording of the officers firing their weapons.

¹³ NYPD Patrol Guide 212-123 requires police officers to activate their body worn cameras prior to engaging in a variety of actions, including interactions with persons suspected of criminal activity and vehicle stops. *See* P.G. 212-123 (e) & (g). The Patrol Guide provides that vehicle operators can wait to activate their cameras until it is safe to do so, and that should officers encounter “an unanticipated or exigent circumstance, [they should] activate the[ir] BWC as soon as it is feasible and safe to do so after taking necessary police action to preserve human health and safety. At no time should proper tactics be compromised to begin a recording.”

Officer Rodriguez moved towards the driver side of the Jeep while holstering his firearm and used his department radio to notify NYPD, “Central, shots fired. 165 and Boston Road. 165 and Boston Road” (20:00:15-18).¹⁴ Officer Moriarty and Officer Peralta both activated their BWCs and ran towards the passenger side of the Jeep, with their firearms extended, both repeatedly directing the occupants to “[g]et out the car” (20:00:15). All three Jeep occupants other than Mr. Monsanto put up their hands as the officers continued to shout commands (20:00:20).

Officer Murray exited his car and approached the Jeep; he warned, “he has a gun,” and repeatedly cautioned his fellow officers about “crossfire” (20:00:19 - 28).¹⁵ Officer Batule ran toward the driver side of the Jeep, activating his BWC (20:00:20). Both driver’s side windows of the Jeep were down, and there was damage to the driver’s side rear fly window (20:00:20). Loud music blared from inside the Jeep (20:00:20). The car engine revving loudly, and Mr. Monsanto turned toward Officer Rodriguez, who was attempting to open the driver’s door (20:00:23). Felix, in the rear driver’s side seat, held his hands up, and Officer Batule issued commands to “stop moving” (20:00:23-

¹⁴ Within one minute of Officer Rodriguez’s radio call, dozens of police officers from the 42nd precinct and PSA-7 began to respond to the scene and assist the initial six officers (20:01:10).

¹⁵ No gun was recovered from the Jeep or its occupants. In Officer Murray’s interview with this Office, he explained that he issued the warning because “he did not know if anyone in the Jeep had a firearm” but feared they might, based on Mr. Monsanto’s aggressive driving.

30). At this time, Officer Batule had his NYPD radio in his left hand and his metal baton in his right; he never drew his firearm.

Mr. Monsanto was slowly moving the Jeep's steering wheel back and forth, and he repeatedly wiped blood from his face, clearly dazed (20:00:23-31). Officer Rodriguez issued commands for Mr. Monsanto to "stop moving," and Mr. Monsanto slumped forward (20:00:33). Officer Batule unsuccessfully attempted to open the driver side door (20:00:33-34). At this point, there was already substantial blood on Mr. Monsanto's hands, head, and face (20:00:35).

On the other side of the car, Officers Peralta and Moriarty had their firearms drawn and pointed as they issued commands to the Jeep's occupants (20:00:18-25). Officer Peralta opened the front passenger side door with his left hand while he held his firearm in his right, and Gutierrez came out of the Jeep with his hands up and went onto the ground (20:00:21-23). Officer Peralta relocated Gutierrez several feet away from the car, and again directed him to "get down" (20:00:25-30). Officer Moriarty attempted to open the rear passenger side door, pulling on it with her left hand while still pointing her firearm with her right, but she was unable to open it (20:00:23-30).

Santo then opened that door from inside, and Officer Moriarty ordered him at gunpoint to get on the ground; he complied (20:00:30-36). Felix then slid slowly out from the same side of the Jeep, directly to the ground (20:00:36-40). The officers placed Gutierrez, Felix, and Santo in handcuffs and kept them on the ground (20:00:31-20:01:02).

Officer Peralta then used his NYPD radio to report, “42 Public Safety Central, shots fired, 165 and Boston” (20:00:47-51). Santo told the officers to “chill” and said that he “didn’t know what the fuck just happened” (20:01:05-25). Felix asked the officers if he had been shot (he had not) (20:01:30-32). Felix, Gutierrez, and Santo were then searched; they assured the officers that they had “nothing on [them],” and no weapons or contraband were recovered (20:01:30-38). They were then removed from the scene; Felix was detained for a misdemeanor warrant, and the others were released (20:01:50-20:03:30).

Meanwhile, Officer Rodriguez was still trying to open the driver side door by repeatedly pulling on the handle, shouting “I can’t” (20:00:35-53). During this time, Rodriguez used his NYPD radio to request a “bus forthwith” (20:00:50-55).¹⁶ The Jeep’s engine continued to rev (20:00:50-55), and a significant amount of smoke began to appear from the front tires’ friction against the sidewalk (20:01:00-07). Officer Peralta shouted, “Yo, shut the power off” (20:00:57). Officer Rodriguez then leaned into the Jeep’s open window, unlocked the door from the inside, and successfully opened the driver side door (20:00:57-20:01:00).

Officer Rodriguez moved both of Mr. Monsanto’s legs, taking them off the Jeep’s pedals (20:01:04), and leaned into the car to unfasten Mr. Monsanto’s seatbelt

¹⁶ A “bus” is NYPD slang for an ambulance. Officer Rodriguez was the first officer to request medical assistance.

(20:01:10-12). Officer Moriarty, standing at the passenger side of the Jeep, asked Officer Rodriguez, “you got him?” (20:01:08) but then began to choke from the smoke (20:01:13). Officer Rodriguez began to pull Mr. Monsanto out of the Jeep telling him to “stay with me” (20:01:18). At this point, Mr. Monsanto was bleeding heavily from his head and was not responsive to Officer Rodriguez (20:01:18).

Sergeant Aguilar radioed, “Central let me a get a Level One¹⁷ over here. Let me get some units and let me get a bus over here forthwith, Central.” (20:00:10-16). Officer Peralta shouted, “Sarge, yo help the guy at the car. Help him out. He’s bleeding. Help him out. Help him out the car” (20:01:20-24). Officer Peralta then radioed to “rush the bus” (20:01:27).

Officer Moriarty ran to the driver side of the Jeep to help Rodriguez; looking for her radio, Moriarty asked “Where’s my...” (20:01:20). Before finding her own radio, Moriarty grabbed Rodriguez’s radio from his belt and broadcast, “Central, I need a bus, I need a bus forthwith. 165 and Boston, I got a male shot” (20:01:23-28). At the same time, Officer Rodriguez pulled Mr. Monsanto the rest of the way out of the Jeep and onto the sidewalk, where other officers began to render medical aid (20:01:20-28). Officer Moriarty again radioed, “Central I need a bus forthwith. I got a male shot” (20:01:36-39).

¹⁷ A “Level One Mobilization” is a call for a borough-wide task force response, which generally would require the notification and response of numerous senior officers, including the on-duty Inspector.

Another officer sought to help Mr. Monsanto and asked Officer Rodriguez to give him light, and Officer Rodriguez shined his flashlight on Mr. Monsanto for several seconds (20:01:31-38). Officer Rodriguez then utilized the flashlight to inspect the front seat of the Jeep before being instructed to shine his light back onto Mr. Monsanto (20:01:40-43). As other officers rendered medical aid, Officer Rodriguez walked toward a nearby wall and punched it with his left hand (20:02:00-02).

Officer Moriarty informed her fellow officers, “He’s shot, he’s shot.” (20:01:50-54). Officer Moriarty turned to Officer Rodriguez on the sidewalk and asked him “are you good?”; he did not respond (20:02:09-10). Sergeant Aguilar approached Officer Moriarty and asked, “that was you?”; she nodded (20:02:38-40). Aguilar then directed her to turn off the BWC and “go back to the base.” (20:02:42). Officer Moriarty responded, “And Will [Rodriguez]?” Aguilar nodded “yes.” (20:02:42-44). At that point, Rodriguez and Moriarty deactivated their BWCs and reentered Rodriguez’s car (20:02:45), but Aguilar directed them to leave that car where it was and go another way, so they did (20:03:00-05).

Several officers repeatedly radioed Central to “rush the bus,” and Sergeant Aguilar and others issued commands to clear the route for the ambulance (20:02:18-20:06:00). At the same time, several officers rendered medical aid to Mr. Monsanto, including conducting chest compressions (20:02:04). A New York City Fire Department (“FDNY”) ambulance arrived on scene approximately 4 minutes and 30

seconds after Officer Rodriguez first requested one (20:06:25), and the FDNY personnel immediately took charge of Mr. Monsanto and rushed him to the hospital.

c. Crime Scene Unit

Soon, the Crime Scene Unit (“CSU”) arrived to gather evidence.¹⁸ CSU Detective Eric Meza recovered three shell casings from Speer 9MM Plus cartridges, found in the center of Boston Road near where the Rodriguez car was diagonally parked. Each shell casing was marked with an orange cone and yellow markers from 1-3; one was in the center of the street near the double yellow lines and the other two were closer to the driver and rear driver side doors of Rodriguez’s car. Additionally, Detective Meza identified bullet fragments at the scene—one in the front passenger side tire of the Jeep and another on the street opposite 1015 Boston Road.

Detective Meza further inspected the crime scene and identified six “potential” bullet impact marks (“BIMs”). BIM #1 was on the top left of the driver side door of a white Mercedes Benz that had been parked on the east side of Boston Road. BIM #2 was on the exterior of the passenger side front windshield of the Jeep. The windshield glass at this location had not been penetrated but was damaged. The third and fourth BIMs were on the front passenger side tire of the Jeep. BIM #3 was on the tire’s valve stem, and BIM #4 was on the rim. BIM #5 was on the lower part of the same car door as BIM #1. BIM #6 was on the rear driver side window of the Jeep. In addition,

¹⁸ Crime Scene Unit Run 2022-123.

Detective Meza located a single bullet hole, labeled “BH #1,” at the driver side of the front windshield of the Jeep. This, Detective Meza believed, was where a bullet likely entered the Jeep.

On March 10, 2022, after the Office obtained a search warrant, Detective Meza searched the Jeep at the CSU Garage in the 105th Precinct. He removed paint scrapings from the left rear upper and lower bumpers, labeled EM1 to EM4, which may have been damaged when the Jeep struck the Murray car. He also determined that the rear passenger side window and the rear driver side quarter (or fly) window had been broken.

The Office interviewed Detective Meza on April 22, 2022. Meza said that he believed BIM #2 was likely caused by a bullet that skimmed off the windshield glass but did not penetrate it. Additionally, Meza determined that BIMs #1 and #5 were likely the result of a single bullet that struck the front tire of the Jeep and then ricocheted towards the parked white Mercedes Benz. Detective Meza further concluded that two bullets struck the Jeep’s front passenger side tire, causing it to go flat when a bullet fragment hit the tire valve stem. Detective Meza did not find any ballistic damage or recover any firearm from inside the Jeep.

d. Highway Collision Investigation Squad

On March 20, 2022, pursuant to a search warrant obtained by this Office, Detective Karl Zarek from the Highway Collision Investigation Squad conducted event data recorder imaging of the Jeep’s black box. The analysis showed that the recording ended at approximately the time of the impact with the church on Boston Road. The

velocity of the collision with the police car was minimal. Prior to this impact, the recording showed that the driver of the Jeep had depressed the gas pedal, but that the highest speed the Jeep reached before hitting the police car was 10 mph. It further showed that about 2½ seconds before the final impact with the church, there was a decrease in speed to approximately 7 mph. The recording also captured that the wheels of the Jeep continued to turn even after the car's impact, and that the steering wheel rotated about 66 degrees in a counterclockwise direction.

e. Medical Records

Mr. Monsanto was taken to nearby Lincoln Hospital by FDNY directly from the scene, arriving at the Emergency Room ("ER") at approximately 8:08 p.m. During an initial examination, Mr. Monsanto presented with a Glasgow Coma Scale ("GCS") Level 3,¹⁹ indicating that he had no brain stem reflexes and was unresponsive. Mr. Monsanto was intubated for airway protection, and the medical staff began conducting additional tests.²⁰

Mr. Monsanto's doctors determined that he had sustained three distinctive wounds to the forehead and left temple, specifically, lacerations to the forehead and frontal skin injuries ranging in size from approximately ½" to ¾". Three injuries were

¹⁹ According to the National Institute of Health (NIH), the Glasgow Coma Scale is used to objectively describe the extent of impaired consciousness in all types of acute medical and trauma patients.

²⁰ Mr. Monsanto's blood was taken, and subsequent toxicology testing revealed that he had THC in his system.

to the mid-forehead, lateral left eyebrow skin, and the skin above the lateral left eyebrow. These lacerations were closed with sutures and skin staples. A fourth skin injury included a 1/2” laceration near the left eye that was not closed.

Mr. Monsanto underwent a series of CT scans, including a head scan, a “maxillofacial without contrast” or “face” scan, and a cervical spine scan. Dr. Eugene Kim reviewed them. The head scan showed a bone fracture in the left frontal lobe with extensive metallic and bone fragments in addition to a parenchymal hemorrhage,²¹ a left subdural hemorrhage,²² and a subarachnoid hemorrhage.²³ The face scan depicted no acute facial bone fractures, but there was some facial and scalp soft tissue injury on the left side. Lastly, the cervical spine scan showed that there was no spine fracture. Based on Dr. Kim’s review, these internal injuries were consistent with Mr. Monsanto’s mid-forehead skin injury.

Mr. Monsanto was admitted to the Intensive Care Unit (“ICU”). At approximately 11:50 p.m., neurosurgery was notified because Mr. Monsanto showed improvement. His previous GCS Level 3 rating had increased to a Level 7, meaning that he was able to lift his head and had attempted to sit up. Mr. Monsanto experienced pain in the left side but was not able to show movement to his right side. He exhibited a corneal reflex and a gag reflex. Based on this evaluation, Dr. Joseph DeMattia

²¹ This is bleeding in the brain’s functional tissue.

²² This is when blood collects beneath a membrane surrounding the brain.

²³ This is when a blood vessel bursts in the brain.

performed a decompressive hemicraniectomy²⁴ and removed a bone flap to relieve brain swelling. On March 12th, Dr. Laura Hyde performed a percutaneous tracheostomy²⁵ and a percutaneous endoscopic gastrostomy tube.²⁶ Mr. Monsanto was discharged from Lincoln Hospital four weeks later. He then spent four months at Mount Sinai Hospital for daily in-patient physical therapy until he was discharged in August 2022 and returned home. By this time, Mr. Monsanto was able to walk short distances with the assistance of a cane, and he could respond to questions with “yes” or “no,” but he was unable to formulate full sentences.

f. Forensic Pathology Report

After interviewing Mr. Monsanto’s doctors at Lincoln Hospital and reviewing the interviews and video footage, the Office hired a forensic pathology consultant, Dr. James Gill, a licensed physician certified in anatomic and forensic pathology. Dr. Gill is the Chief Medical Examiner for the State of Connecticut, the 2021 President of the National Association of Medical Examiners, and a prior Chair of the Forensic Pathology Committee of the College of American Pathologists. He was previously the Deputy Chief Medical Examiner for Bronx County, has published over 100 scientific articles and book chapters on a variety of forensic pathology and public health topics,

²⁴ This is a neurological procedure that involves temporarily removing a part of the skull to allow swelling to expand without being squeezed.

²⁵ This is a breathing tube inserted through the neck.

²⁶ This is a feeding tube.

and is a clinical professor at the Yale School of Medicine. Dr. Gill's specialty includes forensic pathology in addition to determining the cause, mechanism, and manner of disease, injury, or death.

Dr. Gill was asked to assist with the investigation by attempting to determine precisely how Mr. Monsanto's injury was caused. He was provided with voluminous information, including: (1) Mr. Monsanto's Lincoln Hospital medical records, including radiographs and CT scan images; (2) images and videos of Mr. Monsanto in the hospital; (3) witness statements including notes from Dr. Kim and Dr. DeMattia; (4) the NYPD CSU reports; (5) firearm reports; and (6) video surveillance and body worn camera footage of the incident.

Based upon the available evidence, Dr. Gill developed findings as to what likely occurred during the shooting. Most importantly, Dr. Gill determined that Mr. Monsanto's injuries were caused by a single bullet, which fragmented after striking the Jeep's front windshield. Dr. Gill determined that when the bullet hit the windshield, it fragmented and lost velocity, resulting in the multiple superficial and deep injuries to Mr. Monsanto's head and face. The CT scan images depict many fragments of metallic foreign bodies and bone.

Some of the fragments struck Mr. Monsanto's midforehead and became lodged in the subcutaneous tissue. Dr. Gill noted that these fragments did not enter or fracture Mr. Monsanto's skull. Other bullet fragments struck his left frontal skull, which is above his left eye. Some of those fragments entered the cranial cavity where they were lodged

in his brain, and others became lodged in the soft tissues under the scalp in the temple region, outside of the skull. Dr. Gill also determined that the impact of the bullet with Mr. Monsanto's left frontal bone likely caused the projectile to further fragment, such that those fragments lodged inside and outside of Mr. Monsanto's skull. Dr. Gill also determined that most of Mr. Monsanto's wounds reflected a front to back trajectory. When the fragments entered his brain in the left temporal region, they had a slightly downward trajectory, assuming that Mr. Monsanto was in the standard position a driver would occupy.

g. Ballistics

Only four rounds were fired in about two seconds—one by Officer Rodriguez and three by Officer Moriarty. However, the crime scene photographs, and Detective Meza's conclusion are consistent with six separate bullet impact marks and one bullet hole. The Office has determined that it would not be possible to prove, beyond a reasonable doubt, which officer fired the round that pierced the Jeep's windshield and struck Luis Monsanto.

Officer Moriarty fired her first round when the Jeep was in front of her, angled to the left, and fired her next two rounds as the Jeep continued to move to her right. Thus, Officer Moriarty rounds were all fired at the Jeep from the passenger side; at no point did P.O Moriarty have an angle that could have caused a bullet to strike the driver side of the Jeep. Officer Rodriguez discharged his weapon from in front of the Jeep at the driver side, almost head on.

i. BIM #2: Ballistic Damage To The Passenger Side Windshield

The Office has concluded that BIM #2 was caused by Officer Moriarty. The bullet appears to have struck at the lower passenger side of the windshield and angled upwards towards the driver side. This is consistent with both the direction and angle of Officer Moriarty's firearm discharge. It is also wholly inconsistent with having been fired by Officer Rodriguez based on positioning and proximity to the Jeep. Thus, the first of Officer Moriarty's three rounds struck the Jeep's windshield and deflected away in the same general direction.²⁷

ii. BIMs #s 1, 3, 4, & 5: Ballistic Damage To The Passenger Side Wheel And Parked Mercedes

The Jeep's front passenger side wheel sustained ballistic damage – two separate bullet impact marks, BIM #s 3 & 4. In addition, the white Mercedes parked across the street sustained ballistic damage but was not in the line of sight of either Officer Moriarty or Officer Rodriguez. The Office agrees with Det. Meza that BIM #s 1 and 5, on the parked Mercedes, were likely the result of a ricochet during the shooting. However, we also believe that the two points of damage on the wheel, BIM #s 3 & 4, were caused by a single round that ricocheted off one portion of the tire well, struck a second portion, and then bounced back across the street, striking the white Mercedes.

²⁷ For purposes of ease in our analysis, this report refers to the 'first,' 'second,' and 'third' of Officer Moriarty's rounds, but are not asserting that these rounds were fired in any particular order.

Given that the bullet ricocheted, it is likely that it fragmented, which could account for both BIMs 1 & 5. This conclusion is odd, but is nonetheless logically consistent with the scene, particularly because there are two remaining BIMs that were caused by the officers. Thus, the second of Officer Moriarty's rounds can be accounted for. The first caused BIM #2 to the passenger side windshield, and the second struck the front passenger tire, ricocheted, struck it again, and ricocheted across the street and into the Mercedes.

iii. BIM #6: Ballistic Damage To The Rear Driver Side Door

As discussed, two remaining ballistic impacts were caused by the officers. One is the hole in the front windshield where the bullet entered the Jeep and struck Mr. Monsanto in the head. The second, BIM # 6, is the mark atop the driver side rear passenger door that appears to have also damaged the rear driver's side window. Officer Moriarty could not have directly fired her weapon to cause this bullet impact mark because the driver side was not in her line of fire. Officer Moriarty's third round may have struck one of the Jeep's roof rack bars and then deflected downward; however, Detective Meza did not make any notation of seeing a ballistic impact marks consistent with such a circumstance, nor is there any photographic support for this possibility. Officer Rodriguez may have caused BIM # 6 when he fired his weapon, given that he was closer to the driver side. Yet this theory is also difficult to align with the video footage and his recollection that he stood directly in front of the Jeep from less than five feet away when he fired directly at the driver. There is therefore inconclusive

evidence as to which of the two officers caused BIM # 6. On the one hand, there is no evidentiary support for the conclusion that Officer Moriarty's third round caused that ballistic damage. However, it is difficult to imagine given the available evidence that Officer Rodriguez caused that damage and not the bullet hole in the center of the windshield. The Office is therefore unable to conclude beyond a reasonable doubt which of the two officers' caused BIM # 6.

iv. Bullet Hole On The Driver's Side Of The Windshield

The bullet that pierced the windshield of the Jeep struck Luis Monsanto in the head and caused his serious injuries. This round was likely fired by Officer Rodriguez. This conclusion is consistent with Officer Rodriguez's position when he fired both in terms of angle and proximity and is consistent with the smoke at the windshield and visible bullet hole immediately after he fired his round. Yet when Officer Moriarty first discharged her weapon, the Jeep was directly ahead of her and at a slight angle, approximately ten feet away. Therefore, it is also possible that Officer Moriarty fired the round that struck Luis Monsanto. Given that there is an unexplained bullet impact mark, BIM #6, that could have been caused by either of the two officers, it is not clear which of the two officers fired the round that struck Mr. Monsanto and caused his tragic injuries.

3. Legal Analysis

Here, we briefly discuss the law that applies when police officers stop a car on a city street, and we conclude that the officers did not violate the law in how they initially

approached the Jeep. The shooting that took place when Mr. Monsanto tried to evade the police leads us to discuss the concept of “justification,” or the justifiable use of force, which is sometimes referred to informally as “self-defense.” When such a defense is raised at a criminal trial, the prosecution must prove beyond a reasonable doubt not only that the conduct took place, but also that the conduct was not justified. Finally, we conclude by explaining why, based on the evidence we have gathered, we cannot prove beyond a reasonable doubt that the officers’ conduct was not justified.²⁸

a. The Officers Properly Attempted To Stop The Jeep

The first legal question we must consider is whether the officers properly attempted to stop the Jeep in the first place. This question is not necessarily determinative of the officers’ liability for their conduct after the attempted stop. Even police officers who make a valid stop would still be liable for any subsequent illegal conduct. Likewise, officers who make an illegal stop may be confronted with a situation that justifies their use of force to defend themselves. But it is important to assess whether the police acted properly at the outset, because this may reflect their states of mind, and any jury passing upon their guilt would likely learn about it. Thus, the legality of the stop is a factor that may inform conclusions about the reasonableness of the

²⁸ It is important to remember that the word “justification,” as it is being used here, is a legal term of art that refers to a longstanding body of law regarding criminal liability for the use of force. The principles of justification do not speak to morality, proper police procedure, or civil liability. We emphasize here what we said earlier in this report: this Office’s investigation and this report are for the sole purpose of considering criminal liability for the officers’ use of force against Mr. Monsanto.

officers' behavior as events unfolded. As discussed below, we conclude that, as a matter of law, the officers here properly attempted to stop the Jeep.

To begin, police officers are permitted to stop a car when they personally observe it engaged in moving violations, and they may remove the driver and any passengers from the car during such a stop.²⁹ Thus, not only may the police stop and detain a car on the basis of even a single traffic infraction, but they may go so far as to require the occupants to get out.³⁰ Here, where the officers recalled seeing the Jeep cross the double-yellow line, drive into the oncoming traffic lane, and then proceed through two consecutive red lights, blocking the car to ensure it could not drive away was not unreasonable. The observed conduct amounted to not just one but a series of traffic infractions, any one of which would have justified a stop. And the conduct was quite dangerous—driving the wrong way, speeding, and running red lights endangered the occupants of the car as well as the public, and it was still happening while the officers watched. Thus, it was necessary for the officers to stop the Jeep.

The manner in which the stop was conducted did not undo its legitimacy. The inherent danger in performing car stops has long been recognized as a legitimate rationale for police procedures that may intrude on a driver's personal liberty.³¹ Officer

²⁹ See *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977); *People v. Robinson*, 74 N.Y.2d 773, 774-75 (1989).

³⁰ Removing the occupants from a car is at least as intrusive as blocking the car from driving away, because it certainly cannot be driven at all if the driver is removed from it.

³¹ See *Mimms*, 434 U.S. at 110.

Rodriguez saw the Jeep cross the double yellow line to go around cars stopped at the red light and heard the Jeep's tires screech as it took the sharp right turn from the left lane and proceeded through the red light around the stopped cars. Upon seeing this, Rodriguez thought, "who drives like that?" and Officer Moriarty heard one of her colleagues shout expletives about the recklessness of the driving. Finally, Rodriguez noticed, as he caught up to the Jeep at East 165th Street and Boston Road, that its wheels were slightly turned to the right. That made him worry that the Jeep would turn the wrong way on East 165th Street to evade the police.

To be sure, the initial effort to stop the Jeep was more aggressive than the more familiar slow approach from behind, activation of turret lights, and signaling the driver to pull over. But as noted, this was not a routine stop for a single, unremarkable infraction. Here, the officers had just witnessed a series of moving violations, and the dangerous driving was ongoing. This was not a conclusion drawn only from the statements of the officers; even Gutierrez, who was sitting next to Mr. Monsanto in the Jeep, thought so. He told investigators that Mr. Monsanto was driving fast and disobeying red lights to "show off" in his old neighborhood and that Gutierrez asked Mr. Monsanto to "calm down." It was not at all unreasonable that Officer Rodriguez pulled in front of the Jeep at the red light where it had stopped and deliberately tried to block it, knowing that it had already run previous red lights by driving around stopped

cars. There is no requirement that the police “take care to stop the police vehicle in a way that makes it possible for the other driver to pull away.”³²

There was additional context for this decision as well. As noted, Rodriguez had been informed earlier that day, by a detective, that he should be aware of possible gang violence brewing near East 163rd Street and Third Avenue, because the “Africans Get Money” gang might be looking to retaliate for a recent shooting in the area. Having seen the aggressive driving here, in that very area, and aware that Officer Murray’s car was also in pursuit, it was not unreasonable for Officer Rodriguez to pull in front of the Jeep while Murray pulled behind it.

Based on these facts, we conclude that the officers had the right—indeed the duty—to stop the Jeep. The stop was therefore lawful. Below we discuss the officers’ use of force by firing their service weapons, and we consider whether there is sufficient evidence to convict them of a crime. This requires consideration of the law of justification.

b. The Legal Defense Of Justification

There is no question that Officers Rodriguez and Moriarty both intentionally aimed their weapons at Mr. Monsanto and pulled the trigger, and that one of their bullets pierced the Jeep’s windshield and caused Mr. Monsanto serious physical injury. Both officers said that they did so, and the video footage and forensic evidence confirm

³² *People v. Thomas*, 19 A.D.3d 32, 35 (1st Dep’t 2005).

it. Several statutes in the Penal Law make it a crime to intentionally attempt to kill or injure another person, including attempted murder and assault.³³ Thus, both officers could potentially be guilty of at least some degree of assault, or even attempted murder, without a legal defense to such a charge.³⁴

The inquiry does not end there, however, because both officers, if charged with attempted murder or assault, would be expected to raise the legal defense of “justification,” or self-defense. We know this because both officers, when interviewed, reported that they believed Mr. Monsanto was about to kill Rodriguez by running him over with the Jeep, and they fired at Mr. Monsanto in an effort to save Rodriguez’s life. It is not a defendant’s burden to prove this defense; it is the prosecution’s burden to disprove it. Thus, if this Office were to prosecute the officers for any variation of attempted murder or assault, we would have to be able to prove—beyond a reasonable doubt—that the shots were not justified within the meaning of the law.

Penal Law Article 35 governs the law of justification in New York. As pertinent to this case, a person may use “deadly physical force” upon another person only when

³³ See generally Penal Law Articles 120 (assault) and 125 (homicide).

³⁴ While it appears likely that Officer Rodriguez’s single shot toward the driver’s side of the Jeep as it approached him was the one that hit Mr. Monsanto, this would not necessarily preclude a prosecution of Officer Moriarty on the theory that the two officers were acting together with shared purpose. See *People v. Brathwaite*, 63 N.Y.2d 839, 842 (1984) (“It is not necessary to prove that the defendant fired the fatal shot if the evidence is sufficient to establish that the defendant was acting in concert with another who did fire the fatal shot and that the defendant was acting with the mental culpability required for the commission of the crime”).

the person “reasonably believes” such force to be necessary to defend against the other person’s use of deadly physical force.³⁵ Even then, a person may not use deadly physical force if he can “retreat” from the threat with “complete personal safety.”³⁶ This is often called the duty to retreat. But the law expressly excuses police officers from this duty to retreat if they are confronted with deadly force when they are “making an arrest” or “preventing an escape.” In that case, an officer would have no duty to retreat and would be permitted to use deadly physical force “to defend the police officer . . . or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.”³⁷ Of course, while there is no duty to retreat, an officer must not continue to use deadly force after it is no longer necessary.³⁸

The law provides a two-part test for assessing an actor’s “reasonable belief” that deadly force is necessary. The test requires both a subjective and objective analysis. To

³⁵ Penal Law § 35.15(2)(a).

³⁶ *Id.*

³⁷ Penal Law § 35.30(1)(c); *People v. Colecchia*, 251 A.D.2d 5 (1st Dep’t 1998) (“The trial court’s consideration of Penal Law § 35.30 and the elements of manslaughter provided the appropriate standard by which to measure the reasonableness of defendant police officer’s conduct”). “Deadly physical force” is “physical force which, under the circumstances in which it used, is readily capable of causing death or other serious physical injury.” Penal Law § 10.00(11); *People v. Magliato*, 68 N.Y.2d. 24, 29 (1986).

³⁸ *See, e.g., People v. Del Debbio*, 244 A.D.2d 195 (1st Dep’t 1997) (police officer properly convicted for shooting suspect four times in the back; the “right to use that force terminates at the point he can no longer reasonably believe the assailant still poses a threat to him”); *People v. Reeder*, 209 A.D.2d 551, 552 (2d Dep’t 1994) (police officer defendant was not justified when, “after firing one shot which struck the victim in the shoulder, [he] shot the victim a second time as he was falling, and three more times as he lay immobile on the ground”).

justifiably use deadly physical force, (1) a person must actually believe deadly physical force is necessary to prevent the imminent use of deadly force by another, and (2) that belief must be reasonable in light of the circumstances.³⁹ “The reasonableness inquiry depends only upon the officer’s knowledge of circumstances immediately prior to and at the moment that he made the split-second decision to employ deadly physical force.”⁴⁰

When assessing the reasonableness of a police officer’s use of physical force, the United States Supreme Court advises that the action “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,” and with “allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.”⁴¹ Therefore, when evaluating whether the officer reasonably believed deadly physical force was necessary, “it does not matter that [he] was or may have been

³⁹ *People v. Wesley*, 76 N.Y.2d 555 (1990); *People v. Goetz*, 68 N.Y.2d 96 (1986).

⁴⁰ *Salim v. Proulx*, 93 F.3d 86 (2d Cir. 1996).

⁴¹ *Graham v. Connor*, 490 U.S. 386, 396 (1989); see *People v. Reyes*, 91 A.D.2d 935, 936 (1st Dep’t 1983) (“In evaluating the propriety and reasonableness of the actions by the police, we must take cognizance of the realities of urban life in relation to the dangers to which officers are exposed daily, which often require split-second decisions, with life or death consequences”).

mistaken in his belief, provided that such belief was both honestly held and reasonable.”⁴²

The law clearly recognizes that a “vehicle” can be a “dangerous instrument” that, “under the circumstances in which it is used,” is “readily capable of causing death or serious physical injury.”⁴³ Specifically, dangerous use of a vehicle can pose the deadly force against which an officer may justifiably defend himself. In one case, this Office obtained a manslaughter conviction of an off-duty police officer who fatally shot the driver of a van that had just been in an accident.⁴⁴ The driver started driving while the officer was at his open door checking on his well-being, and the officer became trapped between the door and the body of the van. As the van began to drag the officer, the officer, fearing that he would be dragged to his death, “intentionally fired four or five shots in 1.5 seconds or less ... at close range” into the driver “to extricate himself from the vehicle as it dragged him.” While the appellate court reversed the conviction on other grounds, it also noted that the officer’s explanation that he was attempting to save himself from the danger posed by the vehicle, if believed, “would impact on [a] justification defense.”

c. The Evidence Will Not Prove Beyond A Reasonable Doubt That The Officers Unjustifiably Fired at Mr. Monsanto

⁴² CJI2d[NY] Justification: Use of Deadly Physical Force in Defense of a Person (https://www.nycourts.gov/judges/cji/1-General/Defenses/CJI2d.Justification.Person.Deadly_Force.pdf, accessed January 24, 2025).

⁴³ Penal Law § 10.00(13).

⁴⁴ *People v. Lora*, 85 A.D.3d 487 (1st Dep’t 2011).

To obtain a criminal conviction for any crime, the prosecution must prove every element of that crime “beyond a reasonable doubt.” When a jury is asked to deliberate at a New York criminal trial, the jurors are instructed that this standard requires “proof that leaves you so firmly convinced of the defendant’s guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant’s identity as the person who committed the crime.”⁴⁵ This is the highest burden of proof in our legal system.

When a criminal defendant raises a justification defense, the prosecution must prove beyond a reasonable doubt not only that the defendant committed the conduct, but also that the conduct was not justified. Here, we explain why we believe that a jury would not be able to find, beyond a reasonable doubt, that the officers were not justified when they fired at Mr. Monsanto. It is important to remember that this is not the same thing as saying that the officers were definitely justified, or that their actions were ideal. It means only that we cannot disprove justification beyond a reasonable doubt.

i. Officer Rodriguez Cannot Be Proved Not To Have Acted In Defense Of Himself

Officer Rodriguez discharged his firearm once, and, most likely, this was the shot that injured Mr. Monsanto. If this Office were to charge Officer Rodriguez with assault

⁴⁵ See CJI2d[NY] Burden of Proof (https://www.nycourts.gov/judges/cji/1-General/CJI2d.Presumption.Burden.Reasonable_Doubt.pdf, accessed January 24, 2025).

or a similar crime for that conduct, he would surely raise justification as a defense, as explained above. Thus, to convict him, this Office would have to convince a jury, beyond a reasonable doubt, that Officer Rodriguez was not justified. In other words, to convict Officer Rodriguez, this Office would be required to prove, beyond a reasonable doubt, either that Officer Rodriguez did not truly believe his use of force was necessary in self-defense, or that even if he did believe it was necessary, it was not reasonable for him to hold that belief.

On the available evidence, it certainly appears that Rodriguez truly believed that he had no choice but to fire his weapon to save himself. When interviewed, he said that he “had nowhere else to go” between the oncoming Jeep and traffic coming from the other direction behind him.⁴⁶ He also explained that “he thought the Jeep would crush or drag him” and “that he would die.”

Other evidence is consistent with this explanation. The video footage from Rodriguez’s own BWC offers a firsthand view of the sudden turn of the Jeep toward Rodriguez and its acceleration in his direction. Officer Moriarty’s BWC and the street surveillance footage also depict how close the Jeep was when Rodriguez fired and jumped out of the way, reflexively putting up his hand as the Jeep just barely missed him and hit the wall. Rodriguez was then the first to call for an ambulance and

⁴⁶ We note that, while Officer Rodriguez had no duty to retreat, even if he were a civilian in this situation, it would be hard to convince a jury that he would have been able to retreat with complete safety to himself. In other words, even if he were not a police officer and had a duty to retreat, he might still have been justified.

personally pulled Mr. Monsanto out of the car. Once other officers were attending to Mr. Monsanto, Rodriguez punched a wall and refused to answer when asked if he was all right. This sort of emotional reaction would be hard to have feigned in the rapidly unfolding situation, and it goes a long way to supporting Rodriguez's account that he fired because he felt he had no choice.

A jury seeing this evidence would likely believe Rodriguez was telling the truth, but it would not even have to be so sure. If the jurors did not unanimously believe beyond a reasonable doubt that Rodriguez was lying about his fear, they would have to move on to consider the second part of the test—whether they were convinced beyond a reasonable doubt that his belief was not one a reasonable police officer could have held.

Under these circumstances, we also do not believe that a jury would unanimously find, beyond a reasonable doubt, that a reasonable officer would not do as Rodriguez did. As Rodriguez explained when he was interviewed, he initially decided it was necessary to stop the Jeep when he saw it veering into the oncoming traffic lane to skirt around other cars stopped at a red light, screeching around a turn, and proceeding through a second red light. Officer Rodriguez's assertion about Mr. Monsanto's driving would not likely be taken as a self-serving lie, because Mr. Monsanto's passenger—the son of the Jeep's owner—confirmed that Mr. Monsanto was driving in that manner, and even that he had chastised Mr. Monsanto for it. Thus, from the outset, Rodriguez was confronted with aggressive driving that was dangerous enough to persuade two

carloads of officers about to have dinner that they should immediately address it. And as noted, Rodriguez had also been warned that there was a potential gang vendetta unfolding in that very area. A reasonable officer would have been right to be on alert even then.

At that point, Rodriguez turned his car around and followed the Jeep before it came to a stop at the red light at East 165th Street and Boston Road. As his car approached the Jeep, Rodriguez noticed the Jeep's wheels turned slightly to the right facing towards East 165th Street, a one-way roadway going in the opposite direction. Rather than pulling up behind the Jeep, Rodriguez pulled in front of it and activated his lights because he suspected that the driver might flee against traffic on East 165th Street.

Once the turret lights were activated, an officer would have reasonably assumed that the driver knew he was being stopped for his driving aggressively seconds earlier. Indeed, courts have recognized that even “a person who stops a car alongside a fire hydrant plainly invites, and should reasonably expect, an interaction with law enforcement.”⁴⁷ The driving here was much more aggressive than that, and a reasonable officer would not think that a driver would be surprised to be pulled over for it. But instead of awaiting the officers' approach and the likely traffic ticket, Mr. Monsanto accelerated forward—which immediately would have signaled to any officer that something was amiss.

⁴⁷ *Thomas*, 19 A.D.3d at 33.

As the Jeep moved forward, it appeared that it might not clear the police car blocking it, and it stopped for an instant. Officer Batule exited Rodriguez's car, and he observed the Jeep's driver look over his shoulder as he reversed, as if he were trying to get away. Batule remembered commanding the occupants to "show me your hands." As Rodriguez approached the Jeep on foot, the Jeep reversed until it collided with the car approaching from behind, which had activated its lights while still five car lengths away from the Jeep. That, too, was an escalation of the situation that a jury would find relevant to an officer's reasonableness.

Furthermore, having committed a series of traffic infractions, Mr. Monsanto had now committed at least the crimes of (1) criminal mischief—by damaging the police car that he hit and (2) leaving the scene of an accident—by continuing to try to get away after hitting the police car. It was in this context that the Jeep switched back into drive and headed straight for Rodriguez; his BWC and the other video evidence, as noted, illustrate a rather harrowing scene. With the double yellow line to his right, Rodriguez was approaching the Jeep towards the driver's side when the wheels of the Jeep suddenly turned to the left and started driving directly towards him. On the other side of the double yellow line, a white car was driving behind Rodriguez. Rodriguez remembered hearing the driver's side rear passenger say "dude, just stop," he heard the engine rev, and he saw the Jeep's headlights moving towards him. With the Jeep closing the short distance between them, Rodriguez fired just once and then nimbly dodged the oncoming Jeep without being hit by the white car. Had Rodriguez's shot not

disabled Mr. Monsanto and sent the Jeep into the wall, it could well have continued its forward motion and struck Rodriguez. Thus, although Rodriguez did not have to be correct that his actions were necessary to avert the deadly force of the oncoming Jeep, he may well have actually stopped the Jeep from hitting him. He would certainly be able to argue at a trial that this was so, and a jury would not likely find beyond a reasonable doubt that he was unreasonable for trying to save himself that way.

As noted, with hindsight, it is easy to see that Mr. Monsanto was not a criminal and probably was not trying to run the police officers down with his car. Much more likely, Mr. Monsanto was simply trying to escape by attempting a “U” turn when he pulled forward from hitting the police car. But in the rapidly unfolding scenario, Officer Rodriguez was not required to bet his life on the possibility that Mr. Monsanto would take care not to run him down.

Mr. Monsanto could have stopped when the first police car pulled in front of him, or when he hit the second one, or when his passenger urged him to stop. Instead, he escalated the situation. Thus, it was Mr. Monsanto’s actions that put Rodriguez between the front of the advancing Jeep and the white car passing behind, and that forced Rodriguez to make a split-second decision. Mr. Monsanto did not deserve to be so grievously injured for his poor judgment; he deserved a few traffic tickets or, after he slammed into the police car, a misdemeanor arrest. But in this rapidly unfolding scenario, we do not believe that there is enough evidence to convince a jury that Officer Rodriguez’s reaction was not justified.

In short, this Office has concluded that Officer Rodriguez's use of deadly physical force was probably "justified," as a matter of law. A jury certainly would not be likely to find, beyond a reasonable doubt, that the conduct was *not* justified, and therefore would not be able to convict Rodriguez. Because we believe that the available evidence would not be sufficient to convict Rodriguez, we will not seek an indictment.

ii. Officer Moriarty Cannot Be Proved Not To Have Acted In Defense Of Officer Rodriguez

Officer Moriarty discharged her weapon three times in the direction of the Jeep, almost simultaneously with Officer Rodriguez's single shot, and certainly within two seconds of it. While Rodriguez's single shot was most likely the one that struck Mr. Monsanto, we cannot be sure that it was not one of Moriarty's rounds that hit him. We will assume that Moriarty would be liable for acting in concert with Rodriguez, if she was wrong to fire her weapon, even if her bullets did not hit Mr. Monsanto. The same inquiry just applied to Rodriguez would thus apply to Moriarty, because justification applies when an action is taken in defense of others as well as in defense of oneself.

Moriarty said that after the Jeep hit Officer Murray's police car, she heard the engine rev and someone yell "stop, stop, stop." She then saw the Jeep accelerate toward where Rodriguez was standing and upon seeing that, she quickly fired three times. She was aiming for the driver's side of the Jeep because she thought the driver of the vehicle was going to kill Rodriguez.

A frame-by-frame analysis of Officer Moriarty's BWC suggests that it is possible that her three shots were fired just as the Jeep was already beginning to pass Rodriguez, and thus would not have been helpful in diverting the driver from striking him.⁴⁸ But if Moriarty fired too late for her shots to achieve her intent of saving Rodriguez's life, she did so by only a second or two, and as noted, the law does not require an officer who uses deadly force to be correct that it was necessary to avert deadly force, so long as she was reasonable in believing as much. The entire time from when the Jeep struck Officer Murray's car, approached Officer Rodriguez, and hit the church wall was mere seconds. If Moriarty's reaction was in good faith, but just one or two seconds too late to have been effective, that would not render the attempt to help Rodriguez unreasonable.

We thus conclude that we could not disprove beyond a reasonable doubt that Officer Moriarty reasonably believed the Jeep posed a deadly threat to Officer Rodriguez and that she might save him by disabling the driver. The defense of justification applies to Officer Moriarty's intentional acts of discharging her firearm, and, therefore, criminal charges for those acts would not be substantiated.

iii. Reckless Crimes

Given the facts elicited throughout our investigation, we do not believe a colorable argument can be made that Officers Rodriguez or Moriarty acted "recklessly"

⁴⁸ It would still be hard to prove this beyond a reasonable doubt because there is no audio on the BWC, which had not yet been activated, so the sound of the gunshots cannot be paired with the timestamp on the video to confirm the exact timing of the discharges.

with respect to their firearms' discharges. It is important to note that justification is a defense to any crime involving the use of force, including reckless crimes.⁴⁹ In other words, given our conclusion that the justification defense precludes a prosecution for any intentional crimes, we must also conclude it precludes a prosecution for any reckless crimes.

In any event, given that the officers both fired at Mr. Monsanto intentionally, the only reckless crime that could conceivably fit this set of facts would be Reckless Endangerment in the Second Degree, a class A misdemeanor, for endangering the other Jeep occupants. To establish that an officer committed Reckless Endangerment in the Second Degree, we would have to prove (1) that his or her conduct created a substantial and unjustifiable risk that another person's serious physical injury would occur; (2) that he or she was aware of and consciously disregarded that risk; and (3) that his or her disregard of that risk was a gross deviation from the standard of conduct a reasonable person would have observed in that situation.⁵⁰

Here, the crossfire obviously created some danger for anyone else in the car, but the officers did not fire recklessly. Instead, they exercised restraint—firing four quick shots only at the moment they thought the Jeep was about to strike Officer Rodriguez, and then they immediately stopped. Rodriguez, who aimed but did not fire until the

⁴⁹ See *People v. McManus*, 67 N.Y.2d 541 (1984); *People v. Huntley*, 59 N.Y.2d 868 (1983).

⁵⁰ See Penal Law § 15.05(3); *People v. Boutin*, 75 N.Y.2d 692, 696 (1990).

Jeep was almost upon him, was so close that it appeared almost impossible that he would have hit anyone but Mr. Monsanto.

Moreover, even Officer Moriarty's quick volley of three shots around the same time as Rodriguez's single shot was measured to disable the driver and protect Rodriguez. This was not an indiscriminate volley of gunshots into a crowd, or in the direction of a fleeing subject surrounded by innocent bystanders. Two experienced officers discharged their firearms—one officer once and the other three times—both from fairly close range, within the span of less than two seconds, at the height of the perceived danger. Both officers' statements attest that they deliberately tried to disable the driver who was close to striking Rodriguez. And they fired at such close range that the risk that they might miss the driver and hit the passengers was not a gross deviation from what a reasonable officer would do in the same situation. We thus do not find that there is support for a misdemeanor charge of Reckless Endangerment in the Second Degree.

Final Conclusions

On March 6, 2022, Luis Manuel Monsanto, an 18-year-old man, was shot and seriously injured by police officers during a traffic stop. This Office has thoroughly investigated the events leading up to the car stop, the shots fired by the two officers involved, and the aftermath. We have analyzed the relevant principles of criminal law. We conclude that there is insufficient evidence to warrant seeking criminal charges against either of the officers.

When the officers first approached the Jeep that Mr. Monsanto was operating, they had already observed the Jeep speeding, crossing a double yellow line, and proceeding through two red lights. The Jeep driver did not comply with the officers' efforts to stop the vehicle. Instead, the Jeep started moving forward, then abruptly stopped, then reversed direction until it crashed into a second unmarked police car with its lights activated. The Jeep then accelerated forwards toward Officer Rodriguez, who had been approaching the driver's side door, and began to drive in a manner that put Rodriguez directly into its path. With the Jeep only a car's length away and closing in, Rodriguez drew his gun and fired once towards the driver. Almost simultaneously, Officer Moriarty, seeing Rodriguez in danger, fired three more shots, all within about two seconds. One of these four bullets struck Mr. Monsanto in the head, and the Jeep collided with the wall of a building on Boston Road.

We do not believe that there is sufficient evidence to prove that the officers were not legally justified in acting as they did. While it may be tempting to speculate with the benefit of hindsight that the officers could have protected themselves without discharging their weapons, the People must prove someone's guilt of a crime beyond a reasonable doubt. Here, where both officers rapidly discharged their weapons toward a car being driven directly at one of them and stopped as soon as the danger appeared to have been averted, the People would not be able to prove beyond a reasonable doubt that the officers' conduct was not justified.

Subsequent Administrative Changes

Four months after the tragic events on March 6, 2022, the New York Police Department released a revision of their patrol guide concerning Vehicle Pursuits, Procedure No.: 221-15. Thereafter, the patrol guide governing vehicle pursuits has been revised twice more.⁵¹ The more substantive changes were made in the revision issued on February 1, 2025. This revision states that “vehicle pursuits are not authorized when the most serious offense committed, or suspected of being committed, is a traffic infraction, violation, or non-violent misdemeanor.” Further, this revision defines several terms, among them, “Vehicle Pursuit,”⁵² “Forcible Stopping,”⁵³ “Roadblock,”⁵⁴

⁵¹ See Exhibits 1-4, Patrol Guide Procedure No: 221-15 (I.O. 90) October 14, 2021; Patrol Guide Procedure No 221-15 (I.O 82) July 2022, Patrol Guide Procedure No 221-15, (R.O. 44) July 2, 2024, Patrol Guide Procedure No 221-15, February 1, 2025. The July 2022 revision states that the tactic of placing the department vehicle in a position to be struck by the pursued vehicle and using roadblocks are “generally prohibited and should not be used in an attempt to stop a vehicle.” The revision then provides a caveat that violations of this prohibition are reviewed on a case-by-case basis to determine whether the actions were justified. In July of 2024, another revision was issued which added additional data about whether officers should continue a pursuit into a building

⁵² A vehicle pursuit is defined as “Any attempt by a uniformed member of the service operating an above listed authorized emergency vehicle to stop a subject who is actively seeking to elude custody or apprehension while also operating a vehicle.”

⁵³ Forcible Stopping is defined as “a form of restriction (e.g., ramming, etc.), initiated by a uniformed member of the service operating an authorized emergency vehicle for the purpose of stopping a pursued vehicle. Forcible stopping restrictions are prohibited from used during a vehicle pursuit.

⁵⁴ A Roadblock is defined as “a vehicle, physical barrier, or other obstruction intentionally place on ta roadway by a member of the depart to encourage a pursued vehicle to stop in order to avoid physical impact. A roadblock is prohibited from use during a vehicle pursuit.”

and “Road Closure.”⁵⁵ It also changes the language governing the use of roadblocks or placing a department vehicle in a position to be stuck from “generally prohibited” to “prohibited.”

The thrust of these revisions reflects a more conservative approach to vehicle pursuits, balancing the risks it poses to the public and officers against the danger presented to the community. In retrospect, cutting off the Jeep and blocking it seems overly aggressive given the traffic violations observed by the officers, especially when juxtaposed to a more common traffic stop – using lights and sirens to command a vehicle to pull over. While these new provisions may not precisely match the facts here⁵⁶ nor present a panacea for vehicle pursuits, hopefully they will serve to inhibit future situations where vehicle pursuits quickly escalate in the danger presented.

⁵⁵ Road closure is defined as “a method of restriction utilized for the purpose of preventing free passage of motor vehicles on a roadway by positioning Department vehicle(s) in a manner that blocks certain exits and roads, thereby directing the pursued vehicle to an area that will minimize the potential for injury and allow for voluntary stop.

⁵⁶ Had these revisions been in place in March 2022, they would not have applied to this case. The definition of vehicle pursuit states that the pursuit must be an attempt to stop a subject who is actively seeking to elude custody. That is not what transpired in this case. Officer Rodriguez did not activate his lights until just before he stopped in front of the Jeep to block its potential forward movement. The Jeep was at a full stop at a red light at the corner of 165 and Boston Road when the two police vehicles caught up to it. It is only after the stop of Officer Rodriguez’s vehicle that the Jeep could be described as trying to possibly evade the police but at that point, the officers were on foot and their vehicles were stationary. Nor was there any evidence that the Jeep occupants observed the police following them and changed the manner of driving as a result. Therefore, this case does not constitute a vehicle pursuit.

Videos

Officer Will Rodriguez Body Worn Camera Cut: <https://youtu.be/2dafywf-Ntw>

Officer Lauren Moriarty Body Worn Camera Cut: <https://youtu.be/uKLuJEovtgE>

Officer John Batule Body Worn Camera Cut: <https://youtu.be/vRQ4pdEKJD8>

576 East 165th Street Video Surveillance Cut: <https://youtu.be/78JxZjVmQNk>

EXHIBITS 1 - 4



PATROL GUIDE

Section: Tactical Operations		Procedure No: 221-15
VEHICLE PURSUITS		
DATE EFFECTIVE: 10/14/21	LAST REVISION: I.O. 90	PAGE: 1 of 4

PURPOSE To determine the necessity of commencing a vehicle pursuit and the method to be employed in conducting such a pursuit.

DEFINITIONS PRIMARY VEHICLE - vehicle initiating pursuit.
SECONDARY VEHICLE - first additional unit assisting in pursuit.
VEHICLE RAMMING ATTACK (VRA) - A form of attack in which a perpetrator deliberately rams a motor vehicle into a crowd of people or building.

PROCEDURE Upon observing a vehicle which is to be stopped or there is a likelihood that vehicle pursuit may be imminent:

UNIFORMED MEMBER OF THE SERVICE, PRIMARY VEHICLE

1. Initiate vehicle stop when feasible.
2. Determine the necessity for commencing and continuing a vehicle pursuit by considering the following:
 - a. Nature of offense
 - b. Time of day
 - c. Weather condition
 - d. Location and population density
 - e. Capability of Department vehicle
 - f. Familiarity with area.

NOTE *Department policy requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if suspect is not immediately apprehended. If chase is terminated, members will attempt to obtain sufficient information to effect apprehension.*

3. Notify radio dispatcher at start of pursuit and provide the following information:
 - a. Your location
 - b. Type of vehicle, color and direction of travel
 - c. Nature of offense
 - d. Registration number and state of registration
 - e. Occupants
 - f. Any other pertinent information.
4. Maintain contact with radio dispatcher but do not depress transmitter key unnecessarily.
 - a. Keep radio transmissions brief and speak in normal tones.
5. Utilize vehicle's emergency signaling devices intelligently.
 - a. Do not use the "constant" position on siren, since it tends to distort transmissions and blot out the sound of approaching vehicles.
6. Inform radio dispatcher if vehicle changes direction.
 - a. Give last location of vehicle, speed, and direction of travel.
7. Notify radio dispatcher if pursued vehicle is lost or pursuit is terminated.

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PATROL SUPERVISOR, PRECINCT OF OCCURRENCE

8. DIRECT AND CONTROL THE PURSUIT AND THE APPREHENSION EFFORT.
 - a. Monitor radio transmissions
 - b. Keep radio dispatcher informed of location
 - c. Limit involvement and control radio use of other units.

NOTE

Units other than the primary vehicle, secondary vehicle and supervisor's unit shall stay off the air except in extreme emergencies and stay clear of the pursuit but remain alert to its progress. They will not join in or interfere with the pursuit vehicles.

9. Request other units to respond to strategic locations to apprehend the vehicle.
 - a. Primary and secondary units will be the only units to operate in close pursuit of the pursued vehicle.
 - b. Additional units may be requested by the officers in the primary unit or by a supervisor, if it appears that the officers in the vehicle involved would not be able to safely effect the apprehension of the suspects. Vehicles shall not caravan behind pursuing vehicles.
10. Terminate the pursuit, if necessary.
11. Coordinate a search of the vicinity where pursued vehicle last observed.

RADIO DISPATCHER, COMMUNICATIONS SECTION

12. Notify Communications Section platoon commander/uniformed supervisor of pursuit.
13. Direct other units to assist and support the pursuing vehicles, as directed by the patrol supervisor.
 - a. If the registration plate number is known, inform members concerned whether the vehicle is wanted on an alarm or not.

NOTE

When a vehicle pursuit results from another assignment, status code 10-88 will be utilized in ICAD. Pick-up vehicle pursuits will be entered as 10-60I.

PLATOON COMMANDER/ UNIFORMED SUPERVISOR, COMMUNICATIONS SECTION

14. Monitor pursuit.
 - a. Control and direct the apprehension effort, in the absence of active patrol supervisor. Terminate pursuit if warranted.

UNIFORMED MEMBER OF THE SERVICE, SECONDARY VEHICLE

15. Acknowledge assignment as secondary vehicle.
 - a. Allow at least five car lengths distance from primary pursuit vehicle.
 - b. Do not pass primary vehicle unless requested by that unit, or if other circumstances exist such as a collision, mechanical malfunction, etc.

PATROL SUPERVISOR, PRECINCT ORIGINATING PURSUIT

16. Immediately after pursuit, prepare **VEHICLE PURSUIT REPORT (PD371-153).**
17. Forward report to commanding officer, precinct originating pursuit.

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NOTE *If pursuit is initiated by other than Patrol Services Bureau personnel, the immediate supervisor of those officers will perform the duties of the patrol supervisor.*

- COMMANDING OFFICER, PRECINCT ORIGINATING PURSUIT**
18. Review and endorse patrol supervisor's report (include statement regarding disciplinary action) and have copies forwarded, as follows:
 - a. Personnel Safety Desk (original and copy through channels)
 - b. Borough Safety Officer
 - c. Commanding officers of members involved in pursuit (attach **SUPERVISOR'S COMPLAINT REPORT (PD468-123)**, if prepared).
 - d. Risk Management Bureau, Attn: Early Intervention Program, if required.

NOTE *In cases that don't warrant discipline, the commanding officer, precinct originating pursuit may find a referral to the Risk Management Bureau beneficial (e.g., incidents where members of the service use poor judgement, etc.).*

- COMMANDING OFFICER OF MEMBER INVOLVED IN PURSUIT**
19. Determine and take appropriate disciplinary action (command discipline, charges and specifications, etc.) and notify Borough Safety Officer.
 20. Have a copy of all reports prepared placed in personal folder of members involved.

- PERSONNEL SAFETY DESK**
21. Have a number assigned to report, upon receipt.
 - a. Numbers will start with 0001 for the first incident reported each year.

NOTE *The Personnel Safety Desk will maintain a chronological file of all reported vehicle pursuits.*

22. Have a copy of report forwarded to:
 - a. Commanding Officer, Driver Education and Training Unit
 - b. Personnel Services Unit.

- PERSONNEL SERVICES UNIT**
23. Have report placed in the personal folder of officers involved.

- DIRECTOR, INFORMATION TECHNOLOGY SERVICES DIVISION**
24. Prepare and forward a monthly report of all vehicle pursuits to the appropriate Borough Safety Officer.

- BOROUGH SAFETY OFFICER**
25. Insure that a vehicle pursuit report has been prepared for all pursuits identified by Communications Section.
 26. Review and report data regarding vehicle pursuits to patrol borough commanding officer.

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**ADDITIONAL
DATA**

The following tactics are generally prohibited and should not be used in an attempt to stop a vehicle:

- a. Ramming*
- b. Placing moving Department vehicle in a position to be struck by the pursued vehicle*
- c. Driving alongside the pursued vehicle*
- d. Roadblocks (unless specifically directed by supervisory personnel).*

If a vehicle is being used in a vehicle ramming attack, uniformed members of the service will take reasonable measures to stop the vehicle.

Any violations of the above prohibitions may be reviewed on a case-by-case basis by the Use of Force Review Board to determine whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of a prohibited action may have been justified and within guidelines (i.e., a “vehicle ramming attack” is the type of extraordinary event that this clause is intended to address. The objectively reasonable use of deadly physical force to terminate a mass casualty event would be legally justified and within Department guidelines).

Unmarked Department vehicles will limit pursuits.

Department vans and scooters (2 and 3 wheel) will not be used in pursuits.

Two wheel motorcycles will limit pursuits and terminate pursuit when a four wheel Department vehicle has joined pursuit.

**RELATED
PROCEDURES**

Vehicle Collisions - General Procedure (P.G. 217-01)

Vehicle Collisions Which Result in Death, Serious Injury and Likely to Die, or Critical Injury (P.G. 217-02)

**FORMS AND
REPORTS**

SUPERVISOR’S COMPLAINT REPORT (PD468-123)

VEHICLE PURSUIT REPORT (PD371-153)



PATROL GUIDE

Section: Tactical Operations		Procedure No: 221-15
VEHICLE PURSUITS		
DATE EFFECTIVE: 07/14/22	LAST REVISION: I.O.82	PAGE: 1 of 4

PURPOSE To determine the necessity of commencing a vehicle pursuit and the method to be employed in conducting such a pursuit.

DEFINITIONS PRIMARY VEHICLE - vehicle initiating pursuit.
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MASS CASUALTY VEHICLE RAMMING ATTACK - A form of attack in which a perpetrator deliberately rams a motor vehicle into a crowd of people or building.

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 - c. Weather condition
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NOTE *Department policy requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if suspect is not immediately apprehended. If chase is terminated, members will attempt to obtain sufficient information to effect apprehension.*

3. Notify radio dispatcher at start of pursuit and provide the following information:
 - a. Your location
 - b. Type of vehicle, color and direction of travel
 - c. Nature of offense
 - d. Registration number and state of registration
 - e. Occupants
 - f. Any other pertinent information.
4. Maintain contact with radio dispatcher but do not depress transmitter key unnecessarily.
 - a. Keep radio transmissions brief and speak in normal tones.
5. Utilize vehicle's emergency signaling devices intelligently.
 - a. Do not use the "constant" position on siren, since it tends to distort transmissions and blot out the sound of approaching vehicles.
6. Inform radio dispatcher if vehicle changes direction.
 - a. Give last location of vehicle, speed, and direction of travel.
7. Notify radio dispatcher if pursued vehicle is lost or pursuit is terminated.

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PATROL SUPERVISOR, PRECINCT OF OCCURRENCE

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RADIO DISPATCHER, COMMUNICATIONS SECTION

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NOTE *If pursuit is initiated by other than Patrol Services Bureau personnel, the immediate supervisor of those officers will perform the duties of the patrol supervisor.*

- COMMANDING OFFICER, PRECINCT ORIGINATING PURSUIT**
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 - c. Commanding officers of members involved in pursuit (attach **SUPERVISOR'S COMPLAINT REPORT (PD468-123)**, if prepared).
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NOTE *In cases that don't warrant discipline, the commanding officer, precinct originating pursuit may find a referral to the Risk Management Bureau beneficial (e.g., incidents where members of the service use poor judgement, etc.).*

- COMMANDING OFFICER OF MEMBER INVOLVED IN PURSUIT**
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**ADDITIONAL
DATA**

The following tactics are generally prohibited and should not be used in an attempt to stop a vehicle:

- a. Ramming*
- b. Placing moving Department vehicle in a position to be struck by the pursued vehicle*
- c. Driving alongside the pursued vehicle*
- d. Roadblocks (unless specifically directed by supervisory personnel).*

If a vehicle is being used in a mass casualty vehicle ramming attack, uniformed members of the service will take reasonable measures to stop the vehicle.

Any violations of the above prohibitions may be reviewed on a case-by-case basis by the Use of Force Review Board to determine whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of a prohibited action may have been justified and within guidelines.

Unmarked Department vehicles will limit pursuits.

Department vans and scooters (2 and 3 wheel) will not be used in pursuits.

Two wheel motorcycles will limit pursuits and terminate pursuit when a four wheel Department vehicle has joined pursuit.

**RELATED
PROCEDURES**

Vehicle Collisions - General Procedure (P.G. 217-01)

Vehicle Collisions Which Result in Death, Serious Injury and Likely to Die, or Critical Injury (P.G. 217-02)

**FORMS AND
REPORTS**

SUPERVISOR'S COMPLAINT REPORT (PD468-123)
VEHICLE PURSUIT REPORT (PD371-153)



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VEHICLE PURSUITS			
DATE EFFECTIVE: 07/02/24	LAST REVISION: R.O. 44	PAGE: 1 of 4	

PURPOSE To determine the necessity of commencing a vehicle pursuit and the method to be employed in conducting such a pursuit.

DEFINITIONS PRIMARY VEHICLE - vehicle initiating pursuit.
SECONDARY VEHICLE - first additional unit assisting in pursuit.
MASS CASUALTY VEHICLE RAMMING ATTACK - A form of attack in which a perpetrator deliberately rams a motor vehicle into a crowd of people or building.

PROCEDURE Upon observing a vehicle which is to be stopped or there is a likelihood that vehicle pursuit may be imminent:

- UNIFORMED MEMBER OF THE SERVICE, PRIMARY VEHICLE**
1. Initiate vehicle stop when feasible.
 2. Determine the necessity for commencing and continuing a vehicle pursuit by considering the following:
 - a. Nature of offense
 - b. Time of day
 - c. Weather condition
 - d. Location and population density
 - e. Capability of Department vehicle
 - f. Familiarity with area.

NOTE *Department policy requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if suspect is not immediately apprehended. If chase is terminated, members will attempt to obtain sufficient information to effect apprehension.*

3. Notify radio dispatcher at start of pursuit and provide the following information:
 - a. Your location
 - b. Type of vehicle, color and direction of travel
 - c. Nature of offense
 - d. Registration number and state of registration
 - e. Occupants
 - f. Any other pertinent information.
4. Maintain contact with radio dispatcher but do not depress transmitter key unnecessarily.
 - a. Keep radio transmissions brief and speak in normal tones.
5. Utilize vehicle's emergency signaling devices intelligently.
 - a. Do not use the "constant" position on siren, since it tends to distort transmissions and blot out the sound of approaching vehicles.
6. Inform radio dispatcher if vehicle changes direction.
 - a. Give last location of vehicle, speed, and direction of travel.
7. Notify radio dispatcher if pursued vehicle is lost or pursuit is terminated.

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PATROL SUPERVISOR, PRECINCT OF OCCURRENCE

8. DIRECT AND CONTROL THE PURSUIT AND THE APPREHENSION EFFORT.
 - a. Monitor radio transmissions
 - b. Keep radio dispatcher informed of location
 - c. Limit involvement and control radio use of other units.

NOTE

Units other than the primary vehicle, secondary vehicle and supervisor's unit shall stay off the air except in extreme emergencies and stay clear of the pursuit but remain alert to its progress. They will not join in or interfere with the pursuit vehicles.

9. Request other units to respond to strategic locations to apprehend the vehicle.
 - a. Primary and secondary units will be the only units to operate in close pursuit of the pursued vehicle.
 - b. Additional units may be requested by the officers in the primary unit or by a supervisor, if it appears that the officers in the vehicle involved would not be able to safely effect the apprehension of the suspects. Vehicles shall not caravan behind pursuing vehicles.
10. Terminate the pursuit, if necessary.
11. Coordinate a search of the vicinity where pursued vehicle last observed.

RADIO DISPATCHER, COMMUNICATIONS SECTION

12. Notify Communications Section platoon commander/uniformed supervisor of pursuit.
13. Direct other units to assist and support the pursuing vehicles, as directed by the patrol supervisor.
 - a. If the registration plate number is known, inform members concerned whether the vehicle is wanted on an alarm or not.

NOTE

When a vehicle pursuit results from another assignment, status code 10-88 will be utilized in ICAD. Pick-up vehicle pursuits will be entered as 10-60I.

PLATOON COMMANDER/ UNIFORMED SUPERVISOR, COMMUNICATIONS SECTION

14. Monitor pursuit.
 - a. Control and direct the apprehension effort, in the absence of active patrol supervisor. Terminate pursuit if warranted.

UNIFORMED MEMBER OF THE SERVICE, SECONDARY VEHICLE

15. Acknowledge assignment as secondary vehicle.
 - a. Allow at least five car lengths distance from primary pursuit vehicle.
 - b. Do not pass primary vehicle unless requested by that unit, or if other circumstances exist such as a collision, mechanical malfunction, etc.

PATROL SUPERVISOR, PRECINCT ORIGINATING PURSUIT

16. Immediately after pursuit, prepare **VEHICLE PURSUIT REPORT (PD371-153).**
17. Forward report to commanding officer, precinct originating pursuit.

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NOTE *If pursuit is initiated by other than Patrol Services Bureau personnel, the immediate supervisor of those officers will perform the duties of the patrol supervisor.*

- COMMANDING OFFICER, PRECINCT ORIGINATING PURSUIT**
18. Review and endorse patrol supervisor’s report (include statement regarding disciplinary action) and have copies forwarded, as follows:
 - a. Personnel Safety Desk (original and copy through channels)
 - b. Borough Safety Officer
 - c. Commanding officers of members involved in pursuit (attach **SUPERVISOR’S COMPLAINT REPORT (PD468-123)**, if prepared).
 - d. Professional Standards Bureau, Attn: Early Intervention Program, if required.

NOTE *In cases that don’t warrant discipline, the commanding officer, precinct originating pursuit may find a referral to the Professional Standards Bureau beneficial (e.g., incidents where members of the service use poor judgement, etc.).*

- COMMANDING OFFICER OF MEMBER INVOLVED IN PURSUIT**
19. Determine and take appropriate disciplinary action (command discipline, charges and specifications, etc.) and notify Borough Safety Officer.
 20. Have a copy of all reports prepared placed in personal folder of members involved.

- PERSONNEL SAFETY DESK**
21. Have a number assigned to report, upon receipt.
 - a. Numbers will start with 0001 for the first incident reported each year.

NOTE *The Personnel Safety Desk will maintain a chronological file of all reported vehicle pursuits.*

22. Have a copy of report forwarded to:
 - a. Commanding Officer, Driver Education and Training Unit
 - b. Personnel Services Unit.

- PERSONNEL SERVICES UNIT**
23. Have report placed in the personal folder of officers involved.

- DIRECTOR, INFORMATION TECHNOLOGY SERVICES DIVISION**
24. Prepare and forward a monthly report of all vehicle pursuits to the appropriate Borough Safety Officer.

- BOROUGH SAFETY OFFICER**
25. Ensure that a vehicle pursuit report has been prepared for all pursuits identified by Communications Section.
 26. Review and report data regarding vehicle pursuits to patrol borough commanding officer.

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ADDITIONAL DATA

The following tactics are generally prohibited and should not be used in an attempt to stop a vehicle:

- a. Ramming*
- b. Placing moving Department vehicle in a position to be struck by the pursued vehicle*
- c. Driving alongside the pursued vehicle*
- d. Roadblocks (unless specifically directed by supervisory personnel).*

If a vehicle is being used in a mass casualty vehicle ramming attack, uniformed members of the service will take reasonable measures to stop the vehicle.

Any violations of the above prohibitions may be reviewed on a case-by-case basis by the Use of Force Review Board to determine whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of a prohibited action may have been justified and within guidelines.

Unmarked Department vehicles will limit pursuits.

Department vans and scooters (2 and 3 wheel) will not be used in pursuits.

Two wheel motorcycles will limit pursuits and terminate pursuit when a four wheel Department vehicle has joined pursuit.

In close pursuit cases involving a misdemeanor or lesser offense, a suspect may flee into a private residence. In such cases, pursuing members of the service must consider the totality of the circumstances before following a suspect into a private residence, including but not limited to the following:

- a. Nature of the crime,*
- b. Nature of the flight,*
- c. Risk of escape,*
- d. Destruction of evidence,*
- e. Injury to others, and/or*
- f. Other exigent factors.*

When members of the service are involved in a close pursuit involving a misdemeanor or lesser offense and the circumstances of the close pursuit do not suggest that entry is necessary to prevent imminent injury, destruction of evidence, escape by the suspect, or other exigent circumstances, the involved members of the service should secure a warrant prior to making entry into a private residence or its curtilage.



PATROL GUIDE

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VEHICLE PURSUITS			
DATE EFFECTIVE: 02/01/25	LAST REVISION: R.O. 3	PAGE: 1 of 8	

PURPOSE To determine the necessity of initiating a vehicle pursuit and the method to be employed in conducting such a pursuit.

SCOPE Vehicle pursuits are not authorized when the most serious offense committed, or suspected of being committed, is a traffic infraction, violation, or non-violent misdemeanor.

DEFINITIONS AUTHORIZED EMERGENCY VEHICLE – A marked or unmarked Department radio motor patrol (RMP) is allowed to initiate and engage in a vehicle pursuit; Department vans must immediately disengage from a pursuit when another Department vehicle has joined the pursuit. Furthermore, unmarked RMPs and two-wheeled motorcycles must immediately disengage from a pursuit when a marked RMP has joined the pursuit. Uniformed members of the service should keep in mind the capabilities of the Department vehicle when deciding whether or not to initiate or engage in a vehicle pursuit.

VEHICLE PURSUIT – Any attempt by a uniformed member of the service operating an above listed authorized emergency vehicle to stop a subject who is actively seeking to elude custody or apprehension while also operating a vehicle. This does not include use of the Aviation Unit or other techniques deployed to monitor and broadcast updates regarding the subject vehicle, while operating a Department vehicle in a non-emergency capacity.

VEHICLE PURSUIT TERMINATION – The official ending of a vehicle pursuit in which a uniformed member of the service ceases all vehicular pursuit activity by deactivating emergency signaling devices, notifying radio dispatcher, and resuming patrol.

NON-VIOLENT MISDEMEANOR – A misdemeanor that does not cause, threaten, or create a substantial risk of physical injury or death to a person.

PRIMARY VEHICLE – Vehicle initiating and/or controlling a pursuit. If Highway District personnel are involved in, or have responded to, a vehicle pursuit, they will be designated the primary authorized emergency vehicle.

SECONDARY VEHICLE – First additional authorized emergency vehicle assisting in a pursuit.

FORCIBLE STOPPING – A form of restriction (e.g., ramming, etc.), initiated by a uniformed member of the service operating an authorized emergency vehicle for the purpose of stopping a pursued vehicle. Forcible stopping restrictions are prohibited from use during a vehicle pursuit.

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DEFINITIONS (continued)

ROADBLOCK – A vehicle, physical barrier, or other obstruction intentionally placed on a roadway by a member of the Department to encourage a pursued vehicle to stop in order to avoid physical impact. A roadblock is prohibited from use during a vehicle pursuit.

ROAD CLOSURE – A method of restriction utilized for the purpose of preventing free passage of motor vehicles on a roadway by positioning Department vehicle(s) in a manner that blocks certain exits and roads, thereby directing the pursued vehicle to an area that will minimize the potential for injury and allow for voluntary stop.

PROCEDURE

Upon observing a vehicle which is to be stopped or otherwise believing that a vehicle pursuit may be imminent:

UNIFORMED MEMBER OF THE SERVICE, PRIMARY AUTHORIZED EMERGENCY VEHICLE

1. Initiate vehicle stop, when feasible.
2. Determine the necessity for initiating and continuing a vehicle pursuit by considering the following:
 - a. Nature of offense(s),
 - b. Time of day,
 - c. Weather conditions,
 - d. Location and population density (e.g., residential, commercial, proximity to schools and playgrounds, etc.),
 - e. Capability of Department vehicle, and
 - f. Familiarity with area.
3. Terminate the pursuit, when necessary.
4. Notify division radio dispatcher and Citywide 4 radio dispatcher of the following:
 - a. Pursued vehicle is lost, or
 - b. Pursuit is terminated.

NOTE

Department policy requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if suspect is not immediately apprehended. Termination of the pursuit in totality can be initiated by the primary authorized emergency vehicle or a supervisor. Uniformed members of the service will not be the subject of criticism or disciplinary action for self-termination of a pursuit if, based on their judgment, the pursuit cannot be continued safely.

If pursuit is terminated, uniformed members will attempt to obtain sufficient information to effect apprehension.

Uniformed members of the service who initiate a pursuit for grand larceny of a motor vehicle must be able to clearly articulate their particularized basis for believing that the subject vehicle is stolen. A vehicle pursuit is not authorized based solely on the fact that a subject vehicle is fleeing a vehicular stop. A vehicle pursuit is not authorized for a vehicle engaged in reckless driving, unless the fleeing vehicle is being used as a means to cause serious physical injury or death to a uniformed member of the service or other persons present.

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**UNIFORMED
MEMBER OF
THE SERVICE,
PRIMARY
AUTHORIZED
EMERGENCY
VEHICLE
(continued)**

5. Upon initiating pursuit, immediately activate body-worn camera, all emergency signaling devices, and vehicle mounted video system if RMP is so equipped.
 - a. Avoid using “constant” position on siren.

NOTE

All uniformed members of the Department involved in a pursuit must activate body-worn camera immediately upon initiating their involvement and comply with P.G. 212-123, “Use of Body-Worn Cameras.”

6. Notify division radio dispatcher and Citywide 4 radio dispatcher at start of pursuit and provide:
 - a. Location,
 - b. Type of vehicle, color, and direction of travel,
 - c. Nature of offense(s),
 - d. Registration number and state of registration,
 - e. Occupants,
 - f. Current speed, and
 - g. Any other pertinent information.
7. Maintain contact with radio dispatcher, when feasible and consistent with personal safety.
 - a. Keep radio transmissions brief and speak in normal tones.
 - b. Communicate speed of Department vehicle at regular intervals, when feasible.
8. Inform radio dispatcher(s) if vehicle changes direction.
 - a. Give last location of vehicle, speed, and direction of travel.

**UNIFORMED
MEMBER OF
THE SERVICE,
SECONDARY
AUTHORIZED
EMERGENCY
VEHICLE**

9. Acknowledge assignment as secondary authorized emergency vehicle.
 - a. Allow at least five car lengths distance from primary authorized emergency vehicle.
 - b. Do not pass primary authorized emergency vehicle unless requested by that unit, or if other circumstances exist such as a collision, mechanical malfunction, etc.
 - c. Activate body-worn camera immediately, all emergency signaling devices, and vehicle mounted video system if RMP is so equipped, and maintain contact with radio dispatcher, when feasible and consistent with safety.
10. Disengage from pursuit, when necessary.
 - a. Acknowledge disengagement of pursuit via radio dispatcher.

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**PATROL
SUPERVISOR,
PRECINCT OF
OCCURRENCE**

11. Direct and control pursuit and apprehension effort.
 - a. Monitor radio transmissions.
 - b. Request speed of primary authorized emergency vehicle at regular intervals.
 - c. Keep both radio division and Citywide 4 dispatchers informed of location.
 - d. Limit involvement and control radio use of other units.
 - e. Request response of a StarChase-equipped vehicle.
 - f. Request Aviation Unit to assist with tracking of pursued vehicle, if necessary.
 - g. Ensure secondary authorized emergency vehicle is designated, if necessary.
 - h. Designate a marked RMP as the primary authorized emergency vehicle when possible and consistent with personal safety.
 - i. Direct the use of a road closure, when necessary, if the facts and circumstances surrounding its use is warranted to protect uniformed members of service or others from imminent threat of death or serious physical injury.
12. Terminate the pursuit, when necessary.
 - a. Ensure primary and secondary authorized emergency vehicles acknowledge termination of pursuit.

NOTE

If pursuit is initiated by other than Patrol Services Bureau precinct personnel, the immediate supervisor of those officers initiating the pursuit will perform the duties of the patrol supervisor, precinct originating pursuit throughout this procedure, if available. Regardless of the supervisor who initially directs and controls the pursuit, the patrol supervisor, precinct of occurrence, shall always monitor all uniformed members of the service engaged in a pursuit occurring within the precinct confines. The patrol supervisor should broadcast any relevant local precinct conditions over radio division and Citywide 4, if known (e.g., traffic condition, street fair, etc.).

If the patrol supervisor is in the primary or secondary authorized emergency vehicle, a supervisor of a higher rank (e.g., lieutenant, duty captain, etc.) will perform the duties of the patrol supervisor.

Units other than the primary authorized emergency vehicle, secondary authorized emergency vehicle, and supervisor's shall not make radio transmissions except in extreme emergencies, shall stay clear of the pursuit but remain alert to its progress, and shall not join in unless directed to do so.

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PATROL SUPERVISOR, PRECINCT OF OCCURRENCE (continued)

13. Request other units to respond to strategic locations to apprehend vehicle.
 - a. Primary and secondary authorized emergency vehicles will be the only vehicles to operate in close pursuit of the pursued vehicle.
 - b. Additional units may be requested by the primary authorized emergency vehicle or by a supervisor, if it appears that uniformed members of the service involved would not be able to safely effect apprehension; vehicles shall not caravan behind pursuing vehicles.
14. Notify Operations Unit and provide vehicle information for entry into Precision Alerting System (PAS).
15. Coordinate a search of the vicinity where pursued vehicle last observed.

RADIO DISPATCHER, COMMUNICATIONS SECTION

16. Notify Communications Section platoon commander/uniformed supervisor of pursuit.
17. Request response of a StarChase-equipped vehicle, if available.
18. Direct other units to assist and support the pursuing vehicles, as directed by patrol supervisor.
 - a. Inform uniformed members concerned whether vehicle is wanted on an alarm or not, if registration number and state is known.
 - b. Ensure appropriate unit/command assigned is made aware, if a road closure is requested.

NOTE When a vehicle pursuit results from another assignment, status code 10-88 will be utilized in ICAD. Pick-up vehicle pursuits will be entered as 10-60I.

PLATOON COMMANDER/ UNIFORMED SUPERVISOR, COMMUNICATIONS SECTION

19. Monitor pursuit.
 - a. Control and direct the apprehension effort, in the absence of active patrol supervisor.
 - b. Terminate pursuit, when necessary.

COMMANDING OFFICER/ EXECUTIVE OFFICER/ DUTY CAPTAIN

20. Monitor pursuit.
 - a. Terminate pursuit, when necessary.
 - b. Ensure Aviation Unit is responding, if necessary.
 - c. Ensure Operations Unit is notified for PAS alert in a timely fashion.

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UPON COMPLETION OR TERMINATION OF A VEHICLE PURSUIT:

PATROL SUPERVISOR, PRECINCT ORIGINATING PURSUIT

21. Prepare **VEHICLE PURSUIT REPORT** in Finest Online Records Management System (FORMS) immediately after pursuit.
 - a. Notify Operations Unit and obtain log number to include on **VEHICLE PURSUIT REPORT** narrative section.

NOTE

*If a supervisor is in the primary or secondary authorized emergency vehicle, a supervisor of a higher rank (e.g., lieutenant, duty captain, etc.) must prepare **VEHICLE PURSUIT REPORT**.*

22. Generate Automatic Vehicle Location (AVL) report from Domain Awareness System (DAS) for all Department vehicles involved in a vehicle pursuit.
 - a. Include 30 minutes prior to pursuit and add AVL report as attachment in **VEHICLE PURSUIT REPORT**.
23. Generate event report from DAS and add as attachment in **VEHICLE PURSUIT REPORT**.
24. Add commanding officer, precinct originating pursuit in **VEHICLE PURSUIT REPORT** and submit for signoff.

COMMANDING OFFICER, PRECINCT ORIGINATING PURSUIT

25. Review and endorse **VEHICLE PURSUIT REPORT**, include statement regarding disciplinary action.
26. Ensure monthly review of all **VEHICLE PURSUIT REPORTS** is conducted.
 - a. Follow up with uniformed members of the service involved in a vehicle pursuit, if necessary.
27. Prepare and forward a report on **Typed Letterhead** addressed to Commanding Officer, Professional Standards Division when requesting review by Early Intervention Unit indicating reasons for referral.
28. Notify commanding officer of uniformed member involved in pursuit, if not assigned to same command.

NOTE

In certain instances, the commanding officer, precinct originating pursuit, may find a referral to the Professional Standards Division, Early Intervention Unit beneficial (e.g., incidents where uniformed members of the service use poor judgment, etc.).

COMMANDING OFFICER, UNIFORMED MEMBER INVOLVED IN PURSUIT

29. Determine and take appropriate disciplinary action (command discipline, charges and specifications, etc.) and notify Commanding Officer, Professional Standards Division, if disciplinary action taken.
30. Have a copy of all reports prepared placed in personnel folder of uniformed members involved.

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- PERSONNEL SERVICES UNIT** 31. Have a completed **VEHICLE PURSUIT REPORT** placed in personnel folder of uniformed members of the service involved.
- COMMANDING OFFICER, COMMUNICATIONS DIVISION** 32. Prepare and forward a monthly report of all vehicle pursuits to:
a. Commanding Officer, Professional Standards Division, and
b. Borough adjutant, patrol borough concerned.
- INTEGRITY CONTROL OFFICER** 33. Review ICAD history for all assignments with 10-60I radio code designation by 5th day of the month for preceding month.
a. Report results of review to commanding officer.
- BOROUGH ADJUTANT CONCERNED** 34. Ensure each **VEHICLE PURSUIT REPORT** is reviewed monthly by commanding officer concerned.
35. Coordinate with Professional Standards Division to implement strategies to improve performance and correct deficiencies.
- COMMANDING OFFICER, PROFESSIONAL STANDARDS DIVISION** 36. Verify that a **VEHICLE PURSUIT REPORT** has been prepared for all pursuits identified by Communications Section.
a. Forward any discrepancies to the commanding officer, precinct originating pursuit.
37. Review incidents involving vehicle pursuits to reveal patterns or trends that indicate training needs, modifications, and/or the addition or deletion of applicable equipment.
38. Conduct an analysis that includes a review of policy and reporting procedures and prepare a report with the findings annually.
- COMMANDING OFFICER, PRECINCT ORIGINATING PURSUIT** 39. Take corrective action, as necessary, based on the result of investigations conducted by the Commanding Officer, Professional Standards Division or integrity control officer.
- CHIEF OF TRAINING** 40. Ensure all probationary police officers receive training on Department vehicle pursuit policy.
41. Ensure all uniformed members of the service review Department policy concerning vehicle pursuits annually.

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**ADDITIONAL
DATA**

The following forcible stopping tactics are prohibited and should not be used in an attempt to stop a vehicle:

- a. Ramming into another vehicle,*
- b. Placing moving Department vehicle in a position to be struck by the pursued vehicle,*
- c. Driving alongside the pursued vehicle, and/or*
- d. Roadblocks.*

Any violations of the above prohibitions may be reviewed on a case-by-case basis by the Precinct Vehicle Pursuit and Collision Safety Review Board to determine whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of a prohibited action may have been justified and within guidelines.

Citywide 4 radio frequency will be utilized to assist coordination between both uniformed members of the Department and outside agencies to ensure apprehension of a pursued vehicle. Uniformed members of the service engaged in a close pursuit of a vehicle are reminded to comply with P.G. 208-01, "Law of Arrest."

When considering an inter-jurisdictional pursuit (i.e., pursuit initiated by law enforcement other than the Department), members are bound by the duties delineated in this procedure.

In pursuit situations, a suspect may flee on foot into a private residence. If the pursuit involves a felony suspect, uniformed members of service may pursue the suspect into the private residence. If the pursuit involves a misdemeanor suspect, uniformed members of service may make immediate entry into a private residence to prevent imminent injury, destruction of evidence, escape by the suspect, or if the totality of the circumstances demonstrates an emergency. One or more of these considerations will be present in many misdemeanor flight situations. If none of these considerations are present, the officers must obtain a warrant or consent to enter the residence.