



City of Phoenix

To: Jack F. Harris
Public Safety Manager

Date: September 30, 2009

From: Blake A. McClelland, Assistant Chief
Professional Standards Bureau

BAM

Subject: INTERNAL INVESTIGATION - PSB09-0115

Internal Investigators:

Commander Jeffery Hynes
Lieutenant Ben Henry (Investigative Review)
Sergeant Gabe Lopez (Primary Investigator)
Sergeant Amanda Faust (Interviews)
Detective Ann Hughes (Interviews)
Detective Kim Hutchison (Interviews)

Allegation #1:

On September 2, 2009, Officer Richard Nelson #8527 and Officer Robert Swank #7202 provided false reports to Sergeant Brian Barricklow #6948 and Lieutenant David Moore #6355 at 4800 East Southern Avenue.

Findings:

Sustained

Allegation #2:

On September 2, 2009, Officer Swank gave false, incomplete, or misleading statements, or willful omissions during a criminal traffic investigation at 4800 East Southern Avenue.

Findings:

Unresolved

Allegation #3:

On September 2, 2009, at 11:44 p.m., Officer Swank called Officer Andrews #8497 and attempted to interfere with a criminal and administrative investigation.

Findings:

Sustained

Employee/s Involved:

Officer Richard Nelson #8527
Division: Patrol Operations South
Precinct: South Mountain Precinct
Squad: 43J
Schedule: 2100-0700 – T/F/S
Date of Hire: 2-27-06

Officer Robert Swank #7202
Division: Patrol Operations South
Precinct: South Mountain Precinct
Squad: 43J
Schedule: 2100-0700 – T/F/S
Date of Hire: 1-24-00

Complainant: Department Initiated
Witness Employees: See Witness Employee section
Departmental Reports: Tempe Police Department Report #09-145368
Related Investigation: TRF09-0005
Attachments: See Attachment section

SUMMARY OF INVESTIGATION:

On September 2, 2009, at approximately 10:47 p.m., Officer Richard Nelson #8527 and Officer Robert Swank #7202 attempted to stop a 1995 Chevrolet Tahoe (suspect vehicle), with a New Mexico license plate of HJF210, at 7000 South 48th Street. Officer Nelson activated the emergency lights on the patrol Tahoe behind the suspect vehicle, and Officer Swank ran a criminal history query on the suspect vehicle's license plate. The suspect vehicle turned west into the neighborhood and refused to stop. Officer Nelson said he activated the air horn on his patrol Tahoe "a couple of times," and the suspect vehicle began attempting to elude them by accelerating away. Officer Nelson deactivated his emergency lights, and pursued the vehicle. The suspect vehicle eventually ran the red light eastbound through the intersection of South 48th Street and East Southern Avenue, causing a three vehicle collision. At no time did the officers declare a pursuit, nor did they provided any radio transmissions over the South Mountain Precinct radio frequency indicating they were following behind a vehicle that was actively trying to elude them. The distance traveled between the attempted stop location and the traffic collision is 3.8 miles. An administrative pursuit packet was completed by the Professional Standards Bureau (PSB), please see TRF09-0005 for more information.

After the collision, Sergeant Brian Barricklow #6948 and Lieutenant David Moore #6355 asked Officers Nelson and Swank what they were doing prior to the accident and if they had chased the suspect vehicle. Officer Swank said they were in the neighborhood south of the accident location and they responded to assist Officer Stephen Salazar #6566. Officer Swank told PSB

investigators that he denied chasing the suspect vehicle to both Sergeant Barricklow and Lieutenant Moore. Based on witness statements, Tempe police investigators confronted Phoenix police supervisors several times about Phoenix police officers chasing the suspect vehicle before the traffic collision. Lieutenant Moore said he asked Officers Nelson and Swank to pull up their Unit History so he could prove to Tempe police investigators that Phoenix officers had not chased the suspect vehicle. The officer's Unit History showed that Officers Nelson and Swank ran a query on the license plate of the suspect vehicle approximately seven minutes before the collision. Lieutenant Moore confronted Officers Swank and Nelson about querying the license plate, and Officer Swank said they had been in the neighborhood south and maybe the suspect vehicle had passed them, or Officer Glasser may have called the license plate number out over the F4 radio frequency. According to Lieutenant Moore, Officer Nelson nodded in agreement when Officer Swank said they had no contact with the suspect vehicle prior to the accident.

Officer Nelson did not speak directly to Sergeant Barricklow or Lieutenant Moore; however, he was present for both conversations and he failed to truthfully report what occurred. Therefore, the allegation that Officers Nelson and Swank provided false reports to Sergeant Barricklow and Lieutenant Moore is sustained.

Officer Nelson and Officer Swank were interviewed separately by Tempe Police Officer Jason Moser #19827. Officers Swank and Nelson both told Officer Moser they had observed the suspect vehicle traveling eastbound on Southern Avenue. The officers also said the suspect vehicle ran the red light and caused the traffic accident. According to Officer Moser, he asked Officers Swank and Nelson if they ever activated their emergency lights and/or siren behind the suspect vehicle, and both officers said "no." Officer Swank and Officer Nelson failed to give Officer Moser any information about the attempted traffic stop or the subsequent pursuit.

Due to the seriousness of the traffic collision, the Tempe Police Vehicular Crimes Unit responded to the scene and assumed the investigation. Tempe Detective W.L. Hover #11647 attempted to interview Officers Swank and Nelson. After allowing Officer Swank time to speak with his Phoenix Law Enforcement Association (PLEA) representative and PLEA attorney, Detective Hover asked Officer Swank if he would be willing to talk about what occurred, and Officer Swank said, "I think I'm going to pass" and then walked away. Detective Hover also asked Officer Nelson if he would be willing to talk, and Officer Nelson agreed to be interviewed. Officer Nelson provided a detailed interview about what occurred prior to the traffic collision.

On February 24, 2010, an Investigative Review Process meeting was held at PSB with Officer Swank and his PLEA representative. Officer Swank contended that he refused Officer Hover's request for an interview on the advice of his PLEA attorney. Officer Swank later called the case agent (September 10, 2009), Tempe Detective Weisbrod, and provided a truthful statement of what occurred with the suspect vehicle prior to the collision. Because Officer Swank refused to be interviewed by Detective Hover at the accident scene, the only statement the Tempe Police Department had from Officer Swank was his initial untruthful statement that he provided to Tempe Patrol Officer Moser at the beginning stages of the traffic investigation.

An allegation of providing false, incomplete, or misleading statements, or willful omissions during Tempe's criminal investigation was not placed upon Officer Nelson by the Phoenix Police Department's Professional Standards Bureau because Officer Nelson corrected his initial statement during his on-scene interview by Tempe Detective Weisbrod. Officer Swank acted upon the advice of his legal council and did not provide a follow-up interview at the accident scene with the intent to correct the initial untruthful statement.

The Professional Standards Bureau does recognize that every officer is ultimately responsible for the accuracy of statements provided to criminal investigators. Clarification of the facts is also recognized as part of the interview process, but the clarification of facts is restricted to location, date, and time. It is Officer Swank's contention that his clarification process was influenced by the direct input of his legal council and the logical chain of events that follow demonstrate his continued desire to complete the interview with Tempe's criminal investigator.

9/3/09	Thursday	Regularly scheduled day off
9/4/09	Friday	Regularly scheduled day off
9/5/09	Saturday	Regularly scheduled day off
9/6/09	Sunday	First day back to work, but Tempe investigators unavailable / weekend
9/7/09	Monday (Labor Day)	Called to setup interview and was told that the case was not assigned yet and to call back
9/9/09	Wednesday	9:12 am Called and left message to request interview 5:30 pm Tempe returned call and set interview
9/10/09	Thursday	8:00 am Conducted interview with Tempe

Ultimately, the mitigating factor of Officer Swank's timely actions in attempting to complete his interview and clarify the initial untruthful statement has caused this allegation to be unresolved.

On September 2, 2009, at approximately 11:44 p.m., Officer Swank called Officer Matthew Andrews #8497 and attempted to influence any future statements by telling Officer Andrews what he should say. Officer Swank said he called Officer Andrews because he omitted information while talking with Tempe police, and he wanted him to know what he and Officer Nelson told Tempe police. Therefore, the allegation that Officer Swank attempted to interfere with a criminal and an administrative investigation is sustained.

