



## King County

### Office of Law Enforcement Oversight

August 12, 2021

TO: Undersheriff Patti Cole-Tindall, King County Sheriff's Office

FR: Adrienne Wat, Interim Director, Office of Law Enforcement Oversight

RE: AMENDED Recommended findings for IIU2021-132

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The Internal Investigations Unit (IIU) advised the Office of Law Enforcement Oversight (OLEO) that findings for investigation number IIU2021-132 had been drafted after OLEO certified the fact-finding portion of the investigation as thorough, objective, and timely on June 18, 2021. OLEO has independently reviewed the findings, disagrees in part, and recommends the following findings pursuant to King County Code 2.75.040(C).

#### **Allegations Against Each Subject Employee**

	General Orders Manual (GOM) Allegation	KCSO Commander Findings	OLEO Recommended Finding
Subject Employee 1	(1) 3.00.030(1): Bias-Based Policing	Exonerated	Non-Sustained
	(2) 3.00.015(2)(a): Insubordination or Failure to Follow Orders	Sustained	Sustained
	(3) 3.00.020(1)(d): Performance Standards: Acts in Violation of Directives, Rules, Policies or Procedures	Sustained	Sustained
	(4) 3.00.020(1)(c): Performance Standards: Performs at a Level Below the Standard Achieved by Others in the Work Unit	Exonerated	Sustained
	(5) 3.00.020(4)(a): Performance Standards: Supervision	Sustained	Sustained
	(6) 3.00.015(2)(k): Conduct Unbecoming	Sustained	Sustained

	(7) 3.00.015(2)(f): Failure to Report a Member's Possible Misconduct	Exonerated	Sustained
	(8) 3.00.015(1)(b): Conduct criminal in Nature	Non-Sustained	Sustained
Subject Employee 2	(1) 3.00.030(1): Bias-Based Policing	Exonerated	Exonerated
	(2) 3.00.015(2)(a): Insubordination or Failure to Follow Orders	Sustained	Non-Sustained
	(3) 3.00.020(1)(d): Performance Standards: Acts in Violation of Directives, Rules, Policies or Procedures	Sustained	Sustained x3 <sup>1</sup>
	(4) 3.00.020(1)(c): Performance Standards: Performs below the standard Achieved by Others in the Work Unit	Exonerated	Sustained
	(5) 3.00.015(2)(k): Conduct Unbecoming	Sustained	Sustained
	(6) 3.00.015(1)(b): Criminal Conduct in Nature	Non-Sustained	Sustained
	(7) 3.00.015(2)(f): Failure to Report a Member's Possible Misconduct	Exonerated	Exonerated

### **Summary of the Incident**

On March 13, 2021, King County Sheriff's Office (KCSO) Metro Transit Unit and Sound Transit Unit were deployed to protect civilians and property associated with their jurisdiction during a protest on the anniversary death of Breonna Taylor in downtown Seattle. The Sheriff had a standing order that KCSO would not police in the Seattle Police Department (SPD) jurisdiction during protests or riots in the Seattle downtown corridor. An incident action plan was created to: keep transit environment safe for ridership and ensure that normal train operations are carried out; watch and prevent individuals/groups of protesters from entering stations to disrupt transit operations; allow citizens to express their first amendment rights to protest and demonstrate peacefully; and respond to stations in an emergency situation and safely remove all Sound Transit employees, if needed, and close the station until any safety issues were resolved. The action plan was approved through the chain of command.

Amongst the individuals deployed were the subject employees, who were responsible for conducting surveillance in a covert capacity. Both subject employees were working overtime and did not participate in the planning of the action plan. Subject employee 1 and 2 were present

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<sup>1</sup> It is OLEO's position that this allegation should be analyzed for three separate occurrences of misconduct, and that OLEO recommends a finding of three sustained instances of performance standards in violation of directives and rules. See Analysis.

during the briefing of the action plan. On the day of the incident, the subject employees rode together in a large white truck without tint. The truck had no license plates, no KCSO or law enforcement markings, and no emergency equipment (such as sirens or overhead lights). The subject employees were dressed in plainclothes (civilian) clothing with their KCSO badges in their pocket. Neither of the subject employees had any markings on their clothing indicating they worked for KCSO or were law enforcement.

At the beginning of the shift, subject employee 1 started a text message thread with four other KCSO employees. Over the course of the evening, text messages containing video and pictures were sent to the group. One video had no visible images, but contained audio of subject employee 1 stating that he hates those people. During the evening, the subject employees identified a vehicle, a black darkly tinted Nissan SUV, that appeared suspicious. They began following the vehicle covertly for surveillance and then began following the vehicle aggressively with the goal of making the driver leave the area. The subject employees followed the Nissan for several blocks. When the Nissan ran a red light, the subject employees also ran the red light.

Moments after running the red light, the subject employees were surrounded by marked and unmarked SPD vehicles. Subject employee 2 identified himself to SPD officers as law enforcement and notified them he was armed with a gun. SPD officers removed subject employee 2 from the vehicle. When outside the vehicle he told the SPD officer that his badge was in his front pants pocket. When asked by an SPD lieutenant, subject employee 2 stated that subject employee 1 was his supervisor. Another SPD officer recognized subject employee 1 as a KCSO member. The SPD lieutenant informed the subject employees that they were pulled over because they had been aggressively following an undercover SPD detective who was working surveillance for the protest. The subject employees apologized for the mistake and were released. The subject employees returned to the Sound Transit station and shared their experience with fellow officers, but did not contact a captain about the incident before leaving for the evening. The action plan indicated that deconfliction<sup>2</sup> was not performed, and no information was shared with SPD about any active covert policing in the City of Seattle.

The complainant, a sergeant with the Criminal Intelligence Unit, received a phone call the next day from an SPD lieutenant. The complainant stated in his interview that the subject employees had been stopped by SPD for reckless driving and aggressively following an undercover SPD detective who believed that the subject employees were Proud Boys.<sup>3</sup> The lieutenant asked if the complainant had heard about the incident. He stated he told the lieutenant he was not given any specifics about the two subject employees being stopped by SPD. During the interview, the complainant described the process of deconfliction, the appropriate steps required to deconflict an operation, like the one in this action plan, by contacting Western States Information Network (WSIN), and that this situation should have been deconflicted. The complainant stated the Sheriff had a standing order that KCSO would not be policing in Seattle during protests and that there was no reason to communicate with SPD. The complainant also stated that if subject

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<sup>2</sup> Deconfliction is the process of notifying other law enforcement agencies that KCSO would be engaging in covert activities within the other's jurisdiction.

<sup>3</sup> Dictionary.com defines Proud Boys as a right-wing, men-only, U.S.-based extremist group known for nationalistic, misogynistic, and transphobic views and violent clashes with left-wing activists.

employees left their assignment to do police work, they should have communicated that to other people, especially if they were going to follow suspicious vehicles.

Other KCSO employee witnesses with responsibilities in the action plan stated that they were not aware of the subject employees whereabouts or what they were explicitly doing. The employee witnesses present at the action plan briefing stated that subject employee 1 did not appear confused about the plan and did not outline details of surveillance activities he was conducting in execution of the plan. The employee witnesses stated that subject employee 1 joked about the incident, but did not believe it was reportable misconduct at the time.

The undercover SPD detective described her vehicle as a black Nissan SUV without license plates but with temporary tags. She stated that she was followed for a while by the unmarked white truck with two white male occupants and that they were following her aggressively. She stated that she was conducting covert surveillance to watch for violent protesters and support vehicles providing supplies. She first noticed the truck when it pulled up beside her at a red light and noticed the occupants glaring at her. She saw the truck again next to her at another red light and felt uneasy because they glared at her again. The truck was in a turn lane to her left and she was in a lane going straight. However, when the light turned green, she saw the truck behind her instead. She changed her speed and drove around a block to determine if the truck was following her. She stated the truck raced up very close to her bumper, to the point that she could not see the truck's bumper in her rearview mirror, and then it would pull back. She became more concerned when she turned north on Alaskan Way as it was the opposite direction of travel from when she first noticed them. She learned from a coworker that the protesters identified this truck as possible threat because it did not belong to the protestors, which led her to believe she was being followed by Proud Boys. She stated that the truck followed her through four turns. On the fourth turn, she acknowledged the information about the truck and coworkers told her to run a red light to see if the truck would follow her and it did. After the red light, the truck turned off and stopped following her. Then immediately after, she saw marked SPD patrol vehicles box in the truck, and she left the area.

The undercover SPD detective did not believe the subject employees' behaviors were tactically sound and believed that they followed her so aggressively because she was black. She stated she has never been trained on or heard of police officers training this tactic of aggressively following a vehicle while on surveillance or working undercover. She believed the subject employees created an extremely dangerous situation and that someone would have been shot had she gotten out of the car and confronted them. She highlighted that she believed she was racially profiled at the end of her interview. She stated that she could have been identified as a black male because her hair is short and was wearing street clothing.

None of the SPD officers that were interviewed knew that KCSO would be patrolling or surveilling in Seattle. Some of the SPD officers believed that the undercover Nissan's windows were so darkly tinted that it would be impossible to identify the occupant. Other SPD officers believed that the subject employees' actions were motivated by bias-based policing and believed their colleague was racially profiled. One SPD lieutenant believed this situation created unnecessary safety issues for everyone involved and told the subject employees that he would be following up with supervisors at KCSO. None of the SPD officers described the vehicle stop of

the subject employees as a felony stop. None of the SPD officers involved in the vehicle stop indicated that any of them drew their weapons. Most of the SPD officers involved believed that the subject employee 2 was driving in a reckless manner with disregard for safety of persons or property.

Subject employee 2 denied all allegations. He stated he was present during the briefing of the action plan assumed that he and subject employee 1's actions had been approved by command staff. He was unaware that the action plan had not been deconflicted until after the incident. He had a copy of the action plan during the interview. He stated that when conducting covert surveillance around Sound Transit areas, KCSO undercover detectives circle the areas to look out for people leaving weapons and supplies for the violent protestors. Typically, these protestors will have supply vehicles drop off items in an area where they will walk through and be able to access the bricks, bats, water, or other supplies left by these vehicles.

As part of protecting the property, subject employee 2 explained they surveil any areas surrounding and leading up to Sound Transit property as part of the protecting the people at the transit stations and Sound Transit property. He stated this was their normal practice when conducting this type of surveillance. Subject employee 2 acknowledged that he did not have license plates on the vehicle but stated he did not intend to leave them off and forgot to put them back on for a different operation.

Subject employee 2 stated that when they first noticed the vehicle, subject employee 1 stated that it appeared to be a vehicle associated with a woman who had been arrested in the summer for delivering supplies to protestors. He stated that they had also noticed it a few times, and subject employee 2 had taken a picture of what they believed to be the same vehicle earlier in the evening. He described the vehicle as a dark colored Nissan SUV with tinted windows and no license plates. Subject employee 2 said he was driving and subject employee 1, his supervisor, was sitting in the passenger seat. When they noticed the Nissan, they began following it covertly and, at some point, decided to begin following the Nissan overtly and aggressively. Subject employee 2 stated that he was not trained on this tactic but uses overt aggressive driving to force vehicle out of an area and discourage them from staying in the area. He explained the tactic is to be as annoying and aggressive as possible so that vehicle being followed knows that they are being followed and that the tactic is made to make them feel uncomfortable. He stated they did not notify anyone that they were following a vehicle or engaging in overt aggressive driving tactics.

Subject employee 2 stated that they ran one red light, and then moments later they were boxed in by SPD. When SPD approached their truck, he told them he had a firearm and was law enforcement. During his interview, he was shown the SPD body camera video footage and agreed that he was detained.

Subject employee 2 stated that after the stop, he told subject employee 1 that subject employee 1 should inform the captain, and subject employee 1 acknowledged that he would call the captain about the SPD stop. He said they both returned and told a couple of coworkers what happened, but none of them were captains.

When asked if he could identify the driver, subject employee 2 stated the windows were so darkly tinted that he was unable to identify the driver and he never saw the driver out of the vehicle. He stated that he believed he was operating under the action plan as he read it.

Subject employee 1 denied most of the allegations and admitted, with an explanation, to failing to report misconduct. Subject employee 1's description and explanations of the events and decisions made were consistent with subject employee 2. Subject employee 1 had a copy of the action plan during his interview and he realized after the stop that the deconfliction box on the action plan indicated that the operation had not been deconflicted. Subject employee 1 stated when they went over the action plan in the briefing, he explained what he would be doing, which was driving in circles around Sound Transit properties and provide covert surveillance. He stated he thought he was supposed to be conducting mobile surveillance and believed that any roads leading to Sound Transit property were within the action plan for him to surveil. He stated they had done this in the past.

Subject employee 1 was asked about training around overt aggressive driving when following a vehicle. He stated that it was a tactic he picked up throughout his years of training, but then stated he developed it himself. He stated that it was tactic cobbled together based on other trainings he had received from the Federal Bureau of Investigations. He stated it is not trained by KCSO.

Subject employee 1 recalled subject employee 2 telling him he should call a captain after they got back to the precinct and remembered telling subject employee 2 that he would call a captain later. He stated they did talk to some people at the precinct about the incident, but none of them were captains. Subject employee 2 admitted that he did not notify a captain about the incident with SPD. He explained that he had planned to make the notification but thought it could wait because it was nearly midnight when he returned to the precinct. The next day, he was distracted by a family matter, and ultimately did not think it was that big of a deal. He stated that in hindsight he should have reported the incident to his captain.

Subject employee 1 denied that he and subject employee 2 created a dangerous scenario. He denied being involved in active policing that night. He stated that once they followed the SPD detective through the red light, he told subject employee 2 to stop following the vehicle, which is when they were boxed in by SPD patrol vehicles. He stated he tried to speak with the female lieutenant who was on scene that night, but she was upset and would not speak with him.

Subject employee 1 stated he never saw the driver of the vehicle they were following. He thought it might have been a female because when she was on the phone, it lit up her profile and he could see the outline of her hair.

The Emergency Vehicle Operations instructor reviewed the facts of the case. She provided a written statement that explicitly stated that the technique utilized by the subject employees is not trained in any of KCSO's vehicle course.

## **Analysis and Recommended Dispositions**

### **Allegations against subject employee 1:**

#### *(1) Bias-Based Policing – NON-SUSTAINED*

Pursuant to GOM 3.00.030(1), bias-based policing is:

Discrimination that occurs when a member of KCSO, without a legal basis under state or federal law, stops and questions a citizen, takes enforcement action, or conducts a search of person(s) or vehicle(s), when the decision to do so is based solely on race, color, age, gender, sexual orientation, religion, national origin, or the presence of any sensory, mental or physical disability.

To determine whether bias-based policing occurred, two elements must be satisfied: (1) that law enforcement action took place, and (2) that the action was based on one of the protected classes listed in the policy.

Regarding the first element, the subject employees' action of going from covert surveillance to overtly and aggressively following the undercover SPD Nissan constitutes law enforcement action. While the subject employees downplay the amount of time they followed the vehicle, the undercover SPD detective stated that they followed her aggressively for several blocks on several different streets, that she knew she was being followed and tailgated so closely, and that the subject employees ran a red light to continue following her. The subject employees stated in their interviews that they relied on legal protections afforded to them by Washington statute while engaging in law enforcement action, which permits violation of traffic codes. As a result, their driving while following the Nissan constituted law enforcement action.

Regarding the second element, however, there is insufficient evidence to determine whether the subject employee 1 knew the driver's race. The undercover SPD Nissan was darkly tinted, and this incident occurred at night with lighting from streetlights and buildings. The undercover SPD detective, a black female, believed they knew her race because she saw the subject employees staring at her when they stopped next to her at a red light. Another SPD officer, who observed the driving of the subject employees and was in communication with the detective being followed, stated he believed the subject employees were following the detective because of her race. On the other hand, other SPD officers interviewed stated that the tint on the Nissan was too dark to see into the vehicle. And although subject employee 1 stated that he thought the Nissan driver was a female because her profile lit up when she was on the phone, both subject employees stated did not know the race of the individual. Pictures of the Nissan were taken, but not of the driver's side and it was photographed in daylight. OLEO requested the investigator attempt to get more photos of the Nissan in similar lighting to that evening from SPD. SPD never responded. Also, to protect the identity of the undercover SPD detective, KCSO was unable to upload the detective's photo or a photo of her sitting in the vehicle.

Based on the above analysis, there is insufficient evidence to prove or disprove that the subject employee 1's actions were based on the undercover SPD detective's race. OLEO recommends that the allegation of bias-based policing be **non-sustained**.

*(2) Insubordination or Failure to Follow Orders – SUSTAINED*

Pursuant to GOM 3.00.015(2)(a), insubordination is an act that involves defying an order or not respecting a supervisor's authority. Here, subject employee 1 received the action plan and was present for the briefing. According to other employee witnesses present at the briefing, subject employee 1 did not ask questions or show any confusion over what was expected of him, nor did he seek clarification for his role in conducting surveillance. Subject employee 1 also knew about the Sheriff's standing order to not engage in active law enforcement action during protests within the City of Seattle. And it is not disputed that subject employee 1 had a decision-making role when he and subject employee 2 switched from covert surveillance to overt aggressive driving.

Additionally, as mentioned above, there was no emergency situation created by the undercover SPD Nissan that would have justified operating outside of the action plan or Sheriff's standing order. Although subject employee 1 denies violating the action plan, the other employees responsible for creating the action plan and conducting the briefing stated that the action plan precluded the subject employees from doing anything other than surveillance, except if presented with imminent harm to others.

Based on the above analysis, there is clear and convincing evidence that subject employee 1 defied the action plan and the Sheriff's orders. OLEO recommends that the allegation of insubordination or failure to follow orders be **sustained**.

*(3) Performance Standards: Acts in Violation of Directives, Rules, Policies or Procedures – SUSTAINED*

Pursuant to GOM 3.00.020(1)(d), acting in violation of KCSO directives, rules, policies or procedures as set out in the policy manual or elsewhere are acts of misconduct. The Special Emphasis Team's Standard Operating Procedures states that WSIN shall be contacted when there are planned surveillances on major investigations or where there may be crossover with other agencies' investigations. Deconfliction is the process for determining when different law enforcement agency investigations or events are conducted at the same time in close proximity to one another. Deconfliction is achieved by a law enforcement officer notifying WSIN that they or someone from their agency would be conducting undercover operations so that other agencies are aware different agencies are operating in the area to avoid "blue-on-blue." The purpose of deconflicting is to prevent situations similar to what occurred in this incident from happening.

Here, subject employee 1 stated that he was present at the action plan briefing and scanned the plan, but did not notice that the plan indicated that no deconfliction occurred. Regardless of the action plan being deconflicted, the subject employees were not relieved of their independent responsibility to deconflict when they changed from covert surveillance to overtly following a vehicle for the purpose of forcing it to leave the area.



Based on the above analysis, there is clearing and convincing evidence that the employee should have deconflicted when they decided to overtly follow the Nissan. OLEO recommends that the allegations of performance standards in violation of directives and rules be **sustained**.

*(4) Performance Standards: Performs at a Level Below the Standard Achieved by Others in the Work Unit – SUSTAINED*

Pursuant to GOM 3.00.020(1)(c), all KCSO members must perform their assigned duties in a satisfactory and efficient manner. According to the policy, “Unsatisfactory Performance” may be established when a member performs at a level significantly below the standard achieved by others in the work unit. The Special Emphasis Team’s Standard Operating Procedure states that all KCSO regulations pertaining to modification of KCSO equipment will apply to rental or leased vehicles. It also states that rented or leased vehicles are not “County” vehicles and that any use of vehicles in emergency driving situation is strongly discouraged and shall comply with applicable GOM sections.

Here, the subject employees were driving a leased vehicle without any markings or emergency equipment and engaged in overt aggressive driving. This was outside the scope of the action plan. Although the subject employees thought the Nissan was suspicious and wanted to intimidate it to leave the area, there was no emergency situation that may have justified the subject employees’ decision to change from covert to overt actions.

Additionally, neither subject employee contacted a supervisor or communicated to others involved in the action plan that they were leaving their covert position. The complainant stated in his interview that if subject employees left their assignment to do police work, they should have communicated that to other people, especially if they are following suspicious vehicles.

Based on the above analysis, there is clear and convincing evidence subject employee 1 should not have permitted or participated in decision-making to shift from covert to overt action because there was no emergency situation. OLEO recommends that the allegation of performance below standards be **sustained**.

*(5) Performance Standards: Supervision – SUSTAINED*

Pursuant to GOM 3.00.020(4)(a), supervisors shall have a thorough working knowledge of the rules and performance standards of KCSO, which includes communicating the rules, policies, and procedures to subordinates.

Here, subject employee 1, the supervising sergeant of subject employee 2, permitted and encouraged conduct that was in violation of the action plan. While subject employee 1 may have the best of intentions, his lack of providing guidance and supervision shaped what occurred in this incident and was unnecessary given no emergency situation existed.

Based on the analysis above, OLEO recommends that the allegation of failure to supervise be **sustained**.

*(6) Conduct Unbecoming – SUSTAINED*

Pursuant to GOM 3.00.01(2)(k), conduct unbecoming means behavior that generally tends to: diminish respect for KCSO or member; diminish confidence in the operation of KCSO; adversely affect or impair the efficiency of a member; or adversely affect the morale or discipline of KCSO.

Here, the subject employees created a highly dangerous situation without sufficient justification. Their actions resulted in SPD conducting a traffic stop with subject employee 2 being detained and removing his badge from his pocket. The SPD lieutenant on scene was not pleased with the subject employees and would not talk with subject employee 1 even after she learned he was the supervisor. Additionally, SPD reported this incident to KCSO. The conduct of the subject employees diminished respect for and confidence in the operations of KCSO.

Based on the analysis above, there is clear and convincing evidence that the subject employees engaged in conduct unbecoming. OLEO recommends the allegation of conduct unbecoming be **sustained**.

*(7) Failure to Report a Member's Possible Misconduct – SUSTAINED*

Pursuant to GOM 3.00.015(2)(f), members shall promptly report misconduct to a direct supervisor upon knowing or learning of such conduct. Misconduct is any action which *might* result in adversely affecting confidence of the public in the integrity of the county government or KCSO.

Here, subject employee 1 was present when subject employee 2 was pulled over. Subject employee 1 admitted in his interview that he did not report the incident, even after he told subject employee 2 that he would contact a captain or higher to discuss the incident. He admitted that he had planned on telling a captain about the incident but waited because of the time of night and that he did not believe it was urgent. Although he later believed that the incident was not a reportable act of conduct, he had already had a conversation with subject employee 2 about reporting and in hindsight believed he should have reported. Additionally, SPD reported the incident themselves.

Based on the above analysis, there is clear and convincing evidence that subject employee 1 failed to report the possible misconduct. OLEO recommends that the allegation of failing to report a member's possible misconduct be **sustained**.

*(8) Conduct Criminal in Nature – SUSTAINED*

GOM 3.00.015(1)(b) prohibits any conduct that is criminal in nature. Under RCW 46.61.500, any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Furthermore, under RCW 46.64.048, Attempting aiding, abetting, coercing, committing violations, every person who:

Commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared by this title to be a traffic infraction or a crime, whether individually or in connection with one or more other persons or as principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcefully, or willfully induces, causes, coerces, requires, permits or directs others to violate any provisions of this title is likewise guilty of such offense.

Here, subject employee 1, the supervisor, directed subject employee 2 to engage in aggressive driving by tailgating the Nissan so close that the SPD undercover detective could not see the truck's bumper and by running a red light without emergency equipment such as lights or sirens to notify bystanders of the hazard. This type of driving occurred despite the action plan not permitting the overt aggressive driving and no emergency existing. Additionally, neither subject employees sought authorization from command staff they could break covert surveillance to engage the Nissan. SPD officers stated in their interviews that they stopped the vehicle because they had probable cause for reckless driving.

Based on the analysis above, there is clear and convincing evidence that the subject employee 1 directed subject employee 2 to drive recklessly. In an administrative investigation such as this one, the evidentiary standard for whether the alleged misconduct was "conduct criminal in nature" does not require criminal charges be recommended to or filed by the prosecutor. The same administrative standard that applies to other allegations applies to this one. Therefore, OLEO recommends this allegation of conduct that is criminal in nature be **sustained**.

### **Allegations against subject deputy 2:**

#### *(1) Bias-Based Policing – EXONERATED*

Pursuant to GOM 3.00.030(1), bias-based policing is:

Discrimination that occurs when a member of the KCSO, without a legal basis under state or federal law, stops and questions a citizen, takes enforcement action, or conducts a search of person(s) or vehicle(s), when the decision to do so is based solely on race, color, age, gender, sexual orientation, religion, national origin, or the presence of any sensory, mental or physical disability.

To determine whether bias-based policing occurred, two elements must be satisfied: (1) that law enforcement action took place, and (2) that the action was based on one of the protected classes listed in the policy.

Here, subject employee 2 was the driver and engaged in law enforcement action by the way he followed the vehicle in an overt manner. However, subject employee 2 stated that he could not see into the undercover SPD vehicle and did not mention seeing the driver's profile like subject employee 1 had. Moreover, when the truck and Nissan were next to each other at the red light, the truck was on the left and the undercover SPD vehicle on the right. Meaning, given the

conditions, it is more likely than not that subject employee 2 would not have been able to see into the vehicle driver's side.

Based on the above analysis, OLEO recommends that the allegation of bias-based policing be **exonerated**.

*(2) Insubordination or Failure to Follow Orders – NON-SUSTAINED*

Pursuant to GOM 3.00.015(2)(a), insubordination is an act that involves defying an order or not respecting a supervisor's authority. Here, subject employee 2 was relying on his supervisor to provide guidance on how to execute their duties. Although subject employee 2 was present for the action plan briefing and admitted to not reading the plan, he was also following the directions of his direct supervisor at the time of incident.

Based on the above analysis, there is insufficient evidence to determine whether subject employee 2 defied the action plan and Sheriff's standing order because he was following his supervisor's direction. OLEO recommends that the allegation of insubordination or failure to follow orders be **non-sustained**.

*(3) Performance Standards: Acts in Violation of Directives, Rules, Policies or Procedures – SUSTAINED x3*

Pursuant to GOM 3.00.020(1)(d), acting in violation of KCSO directives, rules, policies or procedures as set out in the policy manual or elsewhere are acts of misconduct. It is OLEO's position that this allegation should be analyzed for three separate occurrences of misconduct:

- i. Failure to follow incident action plan;
- ii. Failure to deconflict; and
- iii. Failure to follow mandatory reporting for criminal traffic stop.

*(3)(i) Failure to Follow Incident Action Plan – SUSTAINED*

The directive at issue for this allegation is the action plan and whether subject employee 2 failed to follow that plan. Here, subject employee 2 had access to the action plan prior to conducting his assignment. He admitted during the interview that he did not review the plan beforehand. He acknowledged that he is accountable for following the plan. Although OLEO recommended a non-sustained disposition for insubordination above, it concludes that subject employee 2 still had an independent responsibility to review the action plan and follow it as part of his duties.

Based on the analysis above, there is clear and convincing evidence that subject employee 2 performed in violation of orders by not reading and following the action plan. OLEO recommends this allegation of performance standards in violation of directives and rules be **sustained**.

*(3)(ii) Failure to Deconflict – SUSTAINED*

Additionally, although subject employee 2 was not present at the action plan briefing and relied on subject employee 2 to relay to him the plan, subject employee 2 had an independent responsibility to read the action plan and know the scope of his role. Subject employee 2 also acknowledged that they did not maintain covert operations, which would require deconfliction when he and subject employee 1 decided to engage in overt actions.

Based on the analysis above, there is clearing and convincing evidence that subject employee 2 should have deconflicted when they decided to overtly follow the Nissan. OLEO recommends this allegation of performance standards in violation of directives and rules be **sustained as a second finding**.

*(3)(iii) Failure to Follow Mandatory Reporting for Criminal Traffic Stop – SUSTAINED*

Under GOM 3.03.215, members apprehended after the commission of a criminal traffic offense shall be treated in the same manner as any other citizen in King County and the member forward a copy of the citation and any related reports directly to IIU and the Precinct/Section commander. Here, subject employee 2 was stopped and detained by SPD during a traffic stop. He did not report the incident to IIU or his commander. Although subject employee 2 believed subject employee 1 was going to report the potential misconduct, subject employee 2 had an independent duty to report this potentially criminal traffic stop under GOM 3.03.215.

Based on the above analysis, there is clear and convincing evidence that subject employee 2 failed to report being stopped for a criminal traffic offense by SPD. OLEO recommends that this allegation of performance standards in violation of directives and rules be **sustained as a third finding**.

*(4) Performance Standards: Performs below the Level of Standard Achieved by Others in the Work Unit – SUSTAINED*

The analysis for subject employee 2 is the same as subject employee 1 allegation 4. See above.

*(5) Conduct Unbecoming – SUSTAINED*

The analysis for subject employee 2 is the same as subject employee 1 allegation 6. See above.

*(6) Criminal Conduct in Nature – SUSTAINED*

GOM 3.00.015(1)(b) prohibits any conduct that is criminal in nature. RCW 46.61.005(1) defines reckless driving as any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving, which is a gross misdemeanor. RCW 46.61.135 provides an exception for authorized emergency vehicles, which allows for law enforcement to operate their vehicles that violate traffic codes in the performance of their duties.

Here, OLEO incorporates the analysis under subject employee 1's allegation of conduct criminal in nature for reckless driving. However, because subject employee 2 was the driver, the analysis for aiding and abetting is inapplicable here. Additionally, the exception cited during the subject

employee 2's interview is not applicable. To utilize or be legally protected by the exception, subject employee 2 would have had to receive authorization to drive in the manner that he did.

Based on the above analysis, there is clearing and convincing evidence that subject employee 2 engaged in reckless driving that was not authorized in performance of his duties under the action plan or an emergency. OLEO recommends that the allegation of criminal conduct in nature be **sustained**.

*(7) Failure to Report Misconduct – EXONERATED*

Pursuant to the GOM 3.00.015(2)(f), members shall promptly report misconduct to a direct supervisor upon knowing or learning of such conduct. Misconduct is any actions which might result in adversely affecting confidence of the public in the integrity of the county government or KCSO.

Here, subject employee 2 stated that he and subject employee 1 discussed reporting the incident to a captain. Subject employee 2 stated that subject employee 1, who is subject employee 2's sergeant and direct supervisor, would report the incident to the appropriate command staff. Based on the conversation between the subject employees, subject employee 2 fulfilled his obligation to report by discussing it with his direct supervisor and believed that his supervisor would report what occurred. Therefore, subject employee 2 adhered to the GOM and did not fail to report the possible misconduct.

Based on the above analysis, preponderance of the evidence establishes that subject employee 2's actions for this allegation was lawful and proper. OLEO recommends that the allegation of failing to report a member's possible misconduct be **exonerated**. Other reporting obligations are better identified by performance in violation of directives as addressed above.