



**PROSECUTING ATTORNEY
BONNEVILLE COUNTY, IDAHO**

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MEMORANDUM

July 20, 2025

*Prosecutorial Review of Conduct of
Idaho State Police Trooper Funderburk
on May 9, 2025*

TO: Captain Chris Weadick, Idaho State Police
Trooper FunderBurk, through counsel, Dennis Wilkinson, *esq.*

FROM: Randy Neal, Prosecuting Attorney

cc: Scott Hall, Chief, Civil Division, Bonneville County Prosecuting Attorney
Weston Davis, Civil Division, Bonneville County Prosecuting Attorney

High speed pursuit is defined as an active attempt by a law enforcement officer operating an emergency vehicle to apprehend alleged criminals in a moving motor vehicle, when the driver of the vehicle increases speed or takes other evasive action to avoid apprehension. When a police officer engages in a high-speed pursuit in a police car, the vehicle becomes a potential deadly weapon. G P Alpert & P R Anderson, *Most Deadly Force - Police Pursuits*, Journal Justice Quarterly Vol 3 Issue 1 (March 1986).

As the Prosecuting Attorney of Bonneville County, I am tasked with the responsibility of reviewing the most critical of law enforcement actions and determining if they may require accountability up to and including criminal prosecution. While my Office enjoys a close, productive working relationship with District 6 of the Idaho State Police ("ISP"), I find it necessary to make this decision myself so that I may be held accountable for such decisions by the voters of Bonneville County, who would be denied that right if I were to simply refer this decision to an outside prosecutor.

As a former law enforcement officer with 18 years experience, I take no joy in the potential prosecution of law enforcement officers who have selflessly volunteered to face danger and serve their community. However, I also understand that when it comes to high speed pursuits, any "thrill of the chase" must constantly be held in check, and that any of the countless small decisions made during a pursuit may have significant irreversible consequences which may end a career or in the worst-case scenario cause injury or death.

I have reviewed all available videos and photographs associated with this event. I have considered the statements provided by Trooper Funderburk and witnesses. I have reviewed the reports and other evidence developed through the investigation by the Bonneville County Sheriff's Office and Special Agent Chris Terry of my Office. For the reasons explained in detail below, it is my conclusion that criminal prosecution is warranted in this case.

FACTS OF THE CASE

1. On the evening of May 9, 2025, Trooper Funderburk was working the night shift which was from 5:00 pm to 2:00 am.
2. It was the first shift of his workweek and he had slept about 6 hours prior to going on duty.
3. During his shift, Trooper Funderburk was advised that there was criminal activity, involving narcotics, that was probably coming into his area.
4. ISP units were alerted that Lucas Shane James was returning to the Bonneville County area.
5. IFPD detectives informed Trooper Olson that James had a an active probation warrant.
6. Trooper Olson also learned he had been convicted of assault, domestic violence and possession of a firearm by a prohibited person in Washington.
7. The information was given a couple of hours prior to the pursuit actually beginning.
8. IFPD detectives informed ISP that James was northbound approaching I-15 milepost 112 in Bonneville County, Idaho, in a white Hyundai (Idaho registration 8BMB716).
9. Trooper Olson located the vehicle and observed a minor traffic violation.
10. The Hyundai exited I-15 at the northbound milepost 113 exit.
11. ISP attempted to conduct a traffic stop by activating emergency lights as the Hyundai began to merge back onto I-15 from the northbound 113 exit.
12. The Hyundai accelerated northbound reaching speeds of approximately 108 mph.
13. ISP activated sirens and initiated a pursuit of the Hyundai.
14. When the pursuit started, Trooper Olson was the primary unit and Trooper Funderburk became the second unit in the pursuit.
15. The road conditions at the time of the pursuit were dry and traffic was light on I-15.
16. The Hyundai exited I-15 at the milepost 116 offramp and began traveling West on Sunnyside Rd.
17. Trooper Olson attempted a PIT maneuver as the vehicle turned west on Sunnyside but was unable to make contact with the vehicle.
18. As the pursuit continued west on 33rd S speeds reached approximately 70 mph and traffic in the area was light.
19. The Hyundai was not maintaining its lane during the pursuit.
20. Near the intersection of 33rd S and 45th W, the Hyundai entered a large, cultivated field.

21. While in the field, the Hyundai and Trooper Olson's vehicle struck a pipe for a sprinkler system, however, Trooper Olson was able to maintain the pursuit.

22. As Trooper Funderburk was exiting the field, he became stuck in a ditch as he tried to exit the field.

23. Trooper Funderburk was able to free his vehicle from the ditch but he had become distanced from the pursuit.

24. The Hyundai eventually turned North onto outlet Blvd. The traffic conditions during this part of the pursuit were still very light, but there were a few civilians traveling in the area.

25. As the Hyundai continued to flee on the west side of Idaho Falls the pursuit entered several neighborhoods.

26. Throughout the pursuit in these areas, the suspect was veering into the oncoming lanes of traffic.

27. Near the intersection of Skyline and Grandview, the pursuit encountered several units from IFPD.

28. At that intersection, it appears there was a first attempt by IFPD to throw spikes in front of the suspect vehicle without effect.

29. Traffic was substantially heavier on Skyline and Broadway.

30. It also appears that some IFPD vehicles temporarily entered the pursuit, and it is unclear when or where they discontinued their involvement.

31. The pursuit crossed into neighborhoods on the south side of Pancheri.

32. Traffic was generally light in these residential neighborhoods.

33. Trooper Funderburk tried to rejoin the pursuit, running with lights and siren through the general area though not directly involved in the pursuit.

34. It appears he made some wrong turns, and his frustration could be heard as he made u-turns to correct his direction.

35. Trooper Funderburk executed a u-turn on Pancheri as the suspect exited the residential neighborhood on Dickson Avenue, turning east on Pancheri.

36. The suspect had created some distance from Trooper Olson, and this placed Trooper Funderburk in the primary pursuit position as Trooper Olson was negotiating the final turns on the residential streets.

37. Trooper Funderburk and the suspect traveled East on Pancheri at a high rate of speed at one point called out as 90 mph.

38. Near Eagle Rock Junior High School, it appears the suspect intentionally veered toward traffic in the opposing lanes.

39. This tactic has been seen in many prior pursuits in Bonneville County and it appears some individuals in the criminal community have spread the word that this will usually make law enforcement terminate the pursuit.

40. A few vehicles had to veer to the right to avoid a collision.

41. The pursuit began to encounter heavier traffic as it approached Skyline.

42. Trooper Olson was the number two vehicle in the pursuit and was apparently travelling at a slower speed and indicated in his report that he began to lose sight of Trooper Funderburk and the suspect vehicle.

43. Shortly after passing over the I-15 overpass, a Bonneville County Sheriff unit attempted to deploy “stop sticks” spike strips into the roadway.

44. Trooper Funderburk stated he wasn’t quite sure what the sheriff’s deputies were doing, and it does not appear there was any radio traffic about the attempt to deploy the spike strips.

45. Instead of being thrown out into a long strip, however, the sections of the spikes clumped together at the end of the tether line.

46. The suspect vehicle does not appear to have made contact with the spikes at all, but in an evasive maneuver away from the deputy on the side of the road, it appears Trooper Funderburk made contact with the strips with at least two tires.

47. He can be heard to say, “shit!” on his dashcam audio as the sound of the vehicle hitting the strips can be heard.

48. Trooper Funderburk stated he believed he hit “a box” which looked like the box that the spike strip was kept in, but he wasn’t quite sure what it was.

49. Both vehicles cleared the intersection of Riverside and Pancheri, and Trooper Funderburk accelerated to keep up with the suspect vehicle which was driving without any apparent concern for other traffic in the area.

50. The traffic on Pancheri between Skyline and Yellowstone Highway was significantly more congested, and the Yellowstone/Pancheri intersection is one of the busiest intersections in Idaho Falls.

51. East, West and North traffic at this intersection all had red lights, while only southbound traffic (including left turn traffic) had a green light.

52. Southbound traffic on Yellowstone was light, with a single vehicle turning left just prior to the suspect vehicle entering the intersection. No other southbound traffic entered prior to Trooper Funderburk entering the intersection.

53. Based on this circumstance, it may have appeared that vehicles were stopped for the approaching emergency vehicle.

54. Two vehicles were parked in the left turn lane of the eastbound lanes of Pancheri.

55. These vehicles would have obstructed both the view of Trooper Funderburk and the cross traffic southbound on Yellowstone.

56. Trooper Funderburk stated that he used “his peripheral vision to clear the intersection,” but was focusing on the suspect vehicle.

57. Surveillance cameras show a 2007 BMW X3, Idaho license plate 8BZ534U, owned by Jose Galan, a pastor in a local church, approaching the intersection, and although an exact speed could not be determined, it did not appear to be travelling at an unusual speed for the area.

58. Mr Galan stated that after preaching at his church, he was driving home on Yellowstone Hwy, approaching the intersection with Pancheri Dr.

59. His lane of travel had a green light.

60. Mr. Galan stated he had entered the intersection and had almost gotten through when he was hit by another vehicle.

61. He received the first impact and then, shortly after, received another impact with a vehicle stopped across the intersection in a northbound lane.

62. It does not appear that any of the occupants were seriously injured.
63. Just before the collision, Mr. Galan did not see any police lights or hear any sirens until just before the impact.
64. He did see the white SUV go through the intersection in front of him before the impact.
65. Mr. Galan stated he was already entering the intersection when the white SUV went through in front of him. Mr. Galan marked that he was in the #1 lane when he entered the intersection.
66. At the time of the collision, Mr. Galan stated he was already in the intersection by the time he saw and heard the lights and heard the siren.
67. When he entered the intersection, Mr. Galan said he was traveling at approximately 31 mph.
68. After the collision, Trooper Olson called out, "crash, crash, crash!" and relayed that he believed that Trooper Funderburk was involved.
69. Sgt. A. Ward then broadcast on the radio to discontinue the pursuit
70. The pursuit was terminated and the suspect continued East on 17th St from Yellowstone.
71. Trooper Funderburk has been with the Idaho State Police for three years with no other law enforcement experience.
72. While in the pursuit, he stated he had his emergency lights in "full configuration," with "wig-wags" and siren activated.
73. In his vehicle, however, it does not appear that "wig wags" alternated the high beam headlights, just the day "running lights" that border the headlights.
74. His particular vehicle had a light bar mounted inside the front windshield across the top, a light bar mounted on the rear deck, a total of six lights mounted on the sides and two on the trunk. No lights are mounted above the roofline.
75. Of particular interest are the lights mounted facing to the side. Two are mounted about 2 ½ feet off the ground on the front push bumper. They flash at approximately a 45 degree angle toward the front and each side.
76. Two lights with a 180 degree angle are mounted on the side rearview mirrors which are approximately 3 ½ feet off the ground.
77. Two lights are mounted about 2 ½ feet off the ground near the rear wheel well.
78. Dash cams from the trooper vehicles show that these lights were operating well, however, the lights to the front seemed to be in a low intensity setting, and it was difficult to even see reflection from the forward facing lightbar mounted in the windshield. This lightbar was in a solid blue with intermittent flicker pattern.
79. As Trooper Funderburk's vehicle approached the intersection, there did not appear to be a substantial amount of reflection of the blue emergency lighting to the front, except with the side mounted lights, the tallest of which would have been obstructed by the vehicles waiting in the eastbound left turn lane.
80. Given the building and vehicles in the area, there was approximately a two second opportunity for the drivers to see each other as they approached the intersection.

81. Trooper Funderburk estimated he had been in a “few” pursuits during his time with the Idaho State Police, but it had been a few, and there had been a mixture of city and rural highway pursuits.

82. Trooper Funderburk stated he did not know his speed when he ran over the “box” in the roadway but had been going approximately 90 mph prior to that.

83. After he hit the “box”, he could not recall how fast he was going but he knew he was slowing down.

84. He could also not remember if he activated his brakes after he ran over the “box”.

85. He stated that he did not know what his speed was when he entered the intersection of Pancheri Dr and Yellowstone Hwy.

86. Despite numerous attempts, no data was able to be downloaded from the EDR from the 2007 BMW X3, owned by Jose Galan.

87. Two other vehicles damaged by the collision were stationary when they were struck.

88. The following EDR data was obtained for the Idaho State Police vehicle driven by Trooper Funderburk:

Time Stamp (sec) *Prior to Impact	Speed, Vehicle Indicated (mph)	Accelerator Pedal (% Full)	Engine Throttle (% Full)	Service Brake	ABS Activity	Steering Input	Tire Pressure Status RF	Tire Pressure Status RR
-5.0	78	15	22	Off	No	6	41	41
-4.9	78	5	16	Off	No	6	41	41
-4.8	78	0	12	Off	No	6	41	41
-4.7	77	0	12	Off	No	6	41	41
-4.6	77	0	12	Off	No	6	41	41
-4.5	77	0	12	Off	No	5	41	41
-4.4	77	0	12	Off	No	4	41	41
-4.3	77	0	11	Off	No	2	41	41
-4.2	77	0	11	On	No	2	41	41
-4.1	76	0	11	On	No	3	41	41
-4.0	76	0	11	On	No	4	41	41
-3.9	76	0	11	On	No	4	41	41
-3.8	75	0	11	On	No	4	41	41
-3.7	75	0	11	On	No	4	41	41
-3.6	74	0	11	On	No	3	41	41
-3.5	74	0	11	On	No	3	41	41
-3.4	73	0	11	On	No	5	41	41
-3.3	72	0	11	On	No	6	41	41
-3.2	71	0	11	On	No	8	41	41
-3.1	70	0	10	On	No	10	41	41
-3.0	69	0	10	On	No	11	41	41
-2.9	68	0	10	On	No	11	41	41

-2.8	67	0	10	On	No	10	41	41
-2.7	66	0	10	On	No	10	41	41
-2.6	65	0	10	On	No	12	41	41
-2.5	64	0	10	On	No	13	41	41
-2.4	63	0	9	On	No	13	41	41
-2.3	62	0	9	On	No	12	41	41
-2.2	61	0	9	On	No	12	41	41
-2.1	60	0	9	On	No	12	41	41
-2.0	59	0	8	On	No	13	41	41
-1.9	58	0	8	On	No	15	41	41
-1.8	58	0	8	On	No	17	41	41
-1.7	57	0	8	On	No	17	41	41
-1.6	56	0	8	On	No	16	41	41
-1.5	56	0	8	On	No	15	41	41
-1.4	55	0	8	On	No	15	41	41
-1.3	55	0	8	On	No	15	41	41
-1.2	54	0	8	On	No	14	41	41
-1.1	54	0	8	On	No	11	41	41
-1.0	54	42	12	Off	No	6	41	41
-0.9	54	42	19	Off	No	4	41	41
-0.8	54	42	27	Off	No	9	41	41
-0.7	54	40	24	Off	No	17	41	41
-0.6	54	41	26	Off	No	13	41	41
-0.5	55	0	22	Off	No	-3	41	23
-0.4	54	0	10	On	No	-4	41	23
-0.3	54	0	6	On	No	8	41	23
-0.2	52	0	8	On	Yes	10	41	23
-0.1	48	0	8	On	Yes	14	41	23

89. The EDR data showed that Trooper Funderburk was slowing down, but was traveling at 48 mph (70.5 fps) at the point of impact, and around 54 mph as he entered the intersection.

90. At the -1.0 mark (1 second before impact), there was a significant amount of input on the accelerator pedal (0 to 42 %) with a corresponding increase in engine throttle (8, 12, 19, to 27%).

91. There was not a corresponding increase in vehicle speed which can be contributed to the electronic throttle control on the vehicle.

92. The pressure on the accelerator pedal dropped to 0 at the -0.5 mark, with a corresponding decrease in engine throttle, and a corresponding indication that the service brake was activated.



93. It appears that Trooper Funderburk believed the intersection was clear and pressed on the accelerator, even though his view of southbound traffic was obstructed, which he a 0.5 second later reversed.

94. After obtaining the EDR data, a time/position analysis, using the EDR time and vehicle speed data was conducted.

95. Using the standard equation of $D=T/S$, Trooper Funderburk was approximately 37 feet from the intersection, 1 second prior to the impact and Mr. Galan was approximately 29 feet into the intersection at the same time.

96. It was determined that the right rear tire did run over the spike strip, as the tire pressure showed sudden loss of pressure, from 41 PSI to 23 PSI at the -0.5 mark.

97. Mr. Yoxcel Salazar was driving the vehicle which was hit by the BMW.

98. He was stopped in the northbound lane on Yellowstone Hwy because the light was red.

99. There was a lifted Ford Bronco to his left, a few feet forward of where he was stopped and he stated that he did not see the first impact.

100. He stated he saw the two vehicles after they hit and the BMW hit his truck.

101. He did not see any vehicles turn left from the opposite side of the intersection, nor did he notice any vehicles go past him on Pancheri/17th, in front of him.

102. He stated that he did not see any police lights until after the impact.

103. He also stated that he did not hear or notice a siren prior to the impact, and he had been "sitting there for a while."

APPLICABLE LAWS

Idaho Code (“I.C.”) § 49–623 provides as follows:

(1) The driver of an authorized emergency or police vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions stated.

(2) The driver of an authorized emergency or police vehicle may:

- (a) Park or stand, irrespective of the parking or standing provisions of this title;
- (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (c) Exceed the maximum speed limits so long as he does not endanger life or property;
- (d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to an authorized emergency or police vehicle shall apply when necessary to warn and to make use of an audible signal having a decibel rating of at least one hundred (100) at a distance of ten (10) feet and/or is displaying a flashing light visible in a 360 degree arc at a distance of one thousand (1,000) feet under normal atmospheric conditions.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency or police vehicle from the duty to drive with due regard for the safety of all persons, nor shall these provisions protect the driver from the consequences of his reckless disregard for the safety of others.

The last phrase of Idaho Code § 49–623(4) states, “nor shall these provisions protect the driver from the consequences of his reckless disregard for the safety of others.” This phrase establishes a “reckless disregard” standard. *Athay v. Stacey*, 142 Idaho 360, 364–65, 128 P.3d 897, 901–02 (2005)

Confusion may arise as a result of equating the words “due regard” with negligence. The words “due regard” mean “consideration in a degree appropriate to demands of the particular case.” Black’s Law Dictionary (Rev. 4th ed. 1968) p. 590. They are not words of art synonymous with negligence. In enacting Idaho Code § 49–623, the legislature obviously

balanced the need for emergency or police vehicles to respond quickly in emergencies or to pursue fleeing law violators with the risks created by such conduct. It decided that in such circumstances, due regard for the safety of others is a reckless disregard standard.

The Idaho Supreme Court In *Hodge v. Borden*, 91 Idaho 125, 134, 417 P.2d 75, 84 (1966), explained, “ ‘Reckless disregard of the rights of others’ could be regarded as the type of conduct engaged in by the driver when he actually perceives the danger and continues his course of conduct.” *Athay v. Stacey*, 142 Idaho 360, 364–65, 128 P.3d 897, 901–02 (2005).

I.C. § 49–623(4) however does not create a punishable criminal act. In other words, an officer cannot be charged with violating 49–623(4). I also do not read this section to act as withdrawing “the privileges set forth in this section.” I.C. § 49–623(3) is worded differently and expressly defines when “[t]he exemptions granted to an authorized emergency or police vehicle shall apply.” That section clearly states that the exemptions apply when there is a necessity to “warn and make use of an audible signal” and/or the emergency vehicle “is displaying a flashing light visible in a 360 degree arc.”

In Idaho, drivers must yield the right-of-way to authorized emergency vehicles, such as police cars, ambulances, and fire trucks, when they are using audible and visible signals (sirens and flashing lights). This means drivers should pull over to the right side of the road, clear of any intersections, and stop until the emergency vehicle has passed, unless otherwise directed by a peace officer, I.C. § 49-625.

I.C. § 49-625(2), however, repeats the warning, “[t]his section shall not operate to relieve the driver of an authorized emergency or police vehicle from the duty to drive with due regard for the safety of all persons using the highway.” While at first glance, this “due regard for the safety” may suggest a simple negligence standard, as described, *supra*, I take this to mean again a “reckless disregard” standard.

In *Foberg v. Harrison*, 71 Idaho 11, 225 P.2d 69 (1950) the court redefined the term ‘reckless disregard’ as follows:

The term ‘reckless disregard’ as used in said section means an act or conduct destitute of heed or concern for consequences; especially foolishly heedless of danger, headlong rash; wanton disregard, or conscious indifference to consequences.’ 71 Idaho at 16, 225 P.2d at 71.

The Supreme Court of Idaho followed the same definition in *Turner v. Purdum*, 77 Idaho 130, 289 P.2d 608 (1955); *Mason v. Mootz*, 73 Idaho 461, 253 P.2d 240 (1953); *Riggs v. Roberts*, 74 Idaho 473, 264 P.2d 698 (1953). In *Mason v. Mootz*, *supra*, the Court recognized that proof of ordinary negligence is not sufficient to show “reckless disregard”:

It must be remembered that reckless disregard, within the meaning of the guest statute, requires proof of an absence of heed or concern for consequences, a heedlessness of danger, a 'wanton disregard, or conscious indifference to consequences.' This implies a consciousness of danger and a willingness to assume the risk, or an indifference to consequences.' (Emphasis supplied) 73 Idaho at 468, 253 P.2d at 243.

Applicable Traffic and Criminal Codes.

In this case, as the Prosecuting Attorney, I must determine if Trooper Funderburk violated any of the following:

I.C. § 49-801. Obedience to and required traffic-control devices.

(1) The driver of any vehicle shall obey the instructions of any traffic-control device placed or held in accordance with the provisions of this title, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle by this title.

I.C. § 49-802(3)(a) Traffic Control Signals

A driver facing a steady circular red signal alone shall stop before entering the intersection, as defined in section 49-110, Idaho Code, and shall remain stopped until an indication to proceed is shown except as provided in paragraph (b) of this subsection. While stopped at the intersection, the driver shall remain stopped behind the marked limit line, as defined in section 49-113, Idaho Code, or if there is no marked limit line, shall not block the crosswalk.

I.C. § 49-654. Basic Rule and Maximum Speed Limits

(1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection...

(2)(a) Where no special hazard or condition exists that requires lower speed for compliance with subsection (1) of this section, the limits as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of the maximum limits:

(i) Thirty-five (35) miles per hour in any residential, business or urban district, unless otherwise posted in accordance with section 49-207(2) or (3), Idaho Code.

I.C. § 49-1401(1) Reckless Driving

Any person who drives or is in actual physical control of any vehicle upon a highway, or upon public or private property open to public use, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property ... shall be guilty of reckless driving.

I.C. § 49-1401(3) Inattentive Driving

Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight.

ANALYSIS

In this case, the evidence is conclusive that Trooper Funderburk was engaged in a high-speed pursuit and that this necessitated the use of a siren and/or emergency lights. There can be no dispute from the evidence that Trooper Funderburk had activated both his siren and emergency flashing blue lights, and that the suspect vehicle was ignoring these signals to stop, and in doing so the suspect was driving recklessly and in a manner which endangered the public. In fact, he was charged with felony eluding as a result.

While the Trooper was "...in the pursuit of an actual or suspected violator of the law," in compliance with I.C. § 49-623(1), he could only exercise the privileges set forth later in subsection (2), "***subject to the conditions stated.***"

Pursuant to I.C. § 49-623(2)(b) and (2)(c), these conditions included:

(b) Proceed past a red or stop signal or stop sign, ***but only after slowing down as may be necessary for safe operation;***

(c) Exceed the maximum speed limits ***so long as he does not endanger life or property;***

In this case, Trooper Funderburk did not slow down "as may be necessary for safe operation" prior to proceeding "past the stop signal," and he "endangered life or property" by

proceeding through the intersection at the speed he was travelling. Because the “conditions stated” were not met, the two pertinent exceptions do not apply and as a result, his violations of both I.C. § 49-801, § 49-802(3)(a) Obedience to Traffic-Control Devices, and I.C. § 49-654 Basic Rule and Maximum Speed Limits did not fall within the I.C. 49-623(2) exceptions.

There may be a temptation to jump to the “reckless disregard” standard implicated by I.C. § 49-623(4) and I.C. § 49-625(2), however, such an analysis is misplaced. It is not necessary to determine whether the conduct arises to reckless disregard under subsection (4), because Trooper Funderburk did not fall under the exceptions of the earlier subsections. However, the analysis of “reckless disregard” will be addressed under the I.C. § 49-1401(1) Reckless Driving analysis, *infra*.

Pursuant to I.C. § 49-1401(1), Trooper Funderburk is guilty of reckless driving if in the operation of his vehicle:

- 1) carelessly and heedlessly, or
- 2) without due caution and circumspection,
and
- 1) at a speed as to endanger or be likely to endanger any person or property, or
- 2) in a manner as to endanger or be likely to endanger any person or property.

Based on the facts and circumstances, I conclude Trooper Funderburk operated his vehicle 1) without due caution and circumspection, and 2) both at a speed and in a manner as to endanger or likely to endanger a person or property. Thus, Trooper Funderburk’s operation of the motor vehicle meets the criteria set forth in sub section (1). This should come as no surprise, since it cannot be disputed that he was operating his vehicle in nearly the same manner as the vehicle he was pursuing, and no one would dispute that the suspect was operating his vehicle in a reckless manner.

However, pursuant to I.C. § 49-1401(3), a charge of inattentive driving is a lesser offense than reckless driving, and is applicable in those circumstances where:

- 1) the conduct of the operator has been “inattentive, careless or imprudent,” in light of the circumstances then existing, rather than “heedless or wanton,” or
- 2) in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight.

Trooper Funderburk’s operation of his emergency vehicle created more than a “slight” danger to persons or property, so the second condition is not applicable. It is fortunate that the vehicle Trooper Funderburk struck was a BMW SUV which has a premium construction. Occupants in a different vehicle may have suffered a different outcome. However, I find that

“inattentive, careless or imprudent” in light of the “circumstances then existing,” rather than “heedless or wanton” is applicable.

“Heedless” is defined by Black's Law Dictionary (12th ed. 2024) as “The fact or condition or an instance of being thoughtless and inconsiderate; esp., conduct involving the disregard of others' rights or safety. Heedlessness is often construed to involve the same degree of fault as recklessness.”

“Willful and wanton misconduct” is defined by the Idaho Jury Instructions as “intentional or reckless actions, taken under circumstances where the actor knew or should have known that the actions not only created an unreasonable risk of harm to another, but involved a high degree of probability that such harm would actually result.” IDJI 2.25.

I therefore cannot find that Trooper Funderburk operated his vehicle heedlessly or in a wanton manner. However, Trooper Funderburk did not exercise the kind of care and prudence of other officers when encountering the same circumstances. He was far outdistancing Trooper Olson who was the second car in the pursuit as it proceeded eastbound on Pancheri, and other officers appeared to not engage or discontinue their involvement with the pursuit based on increasingly dangerous traffic conditions.

The following factors implicate careless or imprudent decisions in the final stage of the pursuit:

1. Trooper Funderburk continued to pursue the suspect vehicle even after traffic became more congested and the suspect was intentionally veering into oncoming traffic. Although other officers and supervisors involved in or with knowledge of the pursuit had authority to terminate the pursuit, each officer has the responsibility to terminate the pursuit when they recognize the risk to the public has reached an excessive level. The speeds being driven on Pancheri Drive between Skyline and Yellowstone, estimated to be around 90 mph, were excessive and imprudent and created an unjustifiable risk to the public.

2. Trooper Funderburk continued to pursue the suspect vehicle even after striking an object in the road which may have caused damage to his tires. Although his reaction on bodycam videos after the collision seemed to indicate genuine surprise that his tires had been spiked, Trooper Funderburk would likely only have learned of the damage to his tires when when operation of the vehicle began to to be affected by the quickly deflating tires. This appeared to happen a fraction of a second before the impact, but also only seconds before a major curve in the road just east of the intersection. The effect on Trooper Funderburk's ability to maintain control of his vehicle was fortunately not tested, but by choosing to continue in the pursuit at a high rate of speed without checking the condition of the car, Trooper Funderburk acted imprudently.

3. Trooper Funderburk entered the intersection without slowing to a reasonable speed where he could have come to a complete stop if he encountered cross traffic. This could

only have been foregone, if and only if he had a clear view to approaching traffic in all directions. Within 5 seconds of impact, Trooper Funderburk was around 80 mph. Trooper Funderburk slowed to about 55 mph, and likely chose not to slow more because the suspect continued at a reckless speed was likely to substantially increase his distance from Trooper Funderburk. However, Trooper Funderburk should have known that in high stress situations, humans will experience tunnel vision. His reliance on his “peripheral vision” to ensure that the intersection was “clear,” especially given the vehicles blocking his view of southbound traffic, and the speed he was travelling, covering half the length of a football field in just 1 ½ seconds, was imprudent.

4. Trooper Funderburk was travelling at an unreasonable speed, not only given that he had not cleared the intersection visually, but because his emergency lights and siren were clearly insufficient to provide adequate warning to other traffic in this congested urban intersection under these circumstances.

- a. *Audible Warnings.* Sirens must compete with vehicle sounds created by engines, drivetrain and exhaust systems, car radios, and vibrations from heating, air conditioning and air intake systems. Additionally, the noise-insulating structure of contemporary vehicles has improved dramatically over the last two decades. High urban building density is another factor that impacts the effectiveness of siren signals. Wolfberg D., *Lights and siren and liability.* J Emerg Med Serv 12: 38-40, 1996. At speeds above 50 mph, an emergency vehicle may "outrun" the effective range of its audible warning device. DeLorenzo RA, Eilers MA. *Lights and siren: A review of emergency vehicle warning systems.* Ann Emerg Med 20(12): 1,331-5, Dec 1991. In 1991, Drs. Robert De Lorenzo and Mark Eilers reported that U.S. Department of Transportation studies indicated that over a siren's effective frequency range, the average signal attenuation through closed windows resulted in a maximum effective siren-penetration distance of only 26-40 feet at urban intersections. This means in this scenario that the siren was only detected 0.5 seconds before the impact. And findings show that sound penetration under such conditions, given reaction time of ¾ to 1 ½ seconds, for example, does not leave sufficient time for a driver to adequately respond to emergency warning signals. *Ibid.*
- b. *Emergency Lighting.* Trooper Funderburk's most effective side warning lights were at most 3 ½ feet above the ground and a driver's view of these lights is easily obstructed by other vehicles. Although Trooper Funderburk is not responsible for the design of the emergency lighting on his vehicle, he is nevertheless responsible to operate the vehicle within safe parameters given the limitations of the emergency lighting.

It is my conclusion that Trooper Funderburk did not act intentionally to create a high degree of probability that harm would **actually** result. This intent is necessary to constitute wanton conduct. Because the two clauses referenced in subsection 3 are disjunctive, only one

condition need be applicable. Therefore, while I do not find reckless driving based on the factors articulated above, I conclude Trooper Funderburk acted either inattentively or imprudently.

CONCLUSION

The investigation sustains that Trooper Funderburk violated:

1. I.C. § 49-801, § 49-802(3)(a) Obedience to traffic-control devices
2. I.C. § 49-654 Basic Rule and Maximum Speed Limits, and
3. I.C. § 49-1401(3) Inattentive Driving.

I find the first two offenses to be generally addressed within the definition of inattentive driving. Therefore, exercising my prosecutorial discretion, I find that the appropriate charge in this matter is I.C. § 49-1401(3) Inattentive Driving, and will instruct my staff to file a misdemeanor traffic complaint and request a summons for Trooper Funderburk to answer for that charge.

Further, I find no basis for criminal liability for the drivers of any other vehicle involved directly in the collision. Under these circumstances, the driver of the cross-traffic vehicle simply could not have recognized the approaching emergency vehicle with enough time to avoid the collision and the other drivers did not contribute in any way.

ADDITIONAL COMMENTS

As one of the chief law enforcement officers of Bonneville County (see Idaho Code § 31-2227), and given the level of acquaintance with the facts I have developed through this review, I think this situation provides a chance to discuss some “lessons learned” and encourage local law enforcement agency heads to consider the following recommendations.

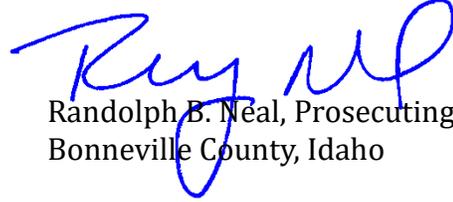
Interagency Communications. Although all agencies in Bonneville County have the ability to monitor other frequencies, it seems prudent that all involved agencies should utilize a common frequency once they become involved in a joint action such as this pursuit. Although some agencies may have chosen to limit their involvement, it appears that two different agencies attempted to intervene with the deployment of spike strips without the pursuing vehicles being advised of these actions. I recommend that agency heads consider policies and practices that would better coordinate the responses of multiple agencies in this type of scenario, including the use of a common frequency. Although I understand that a mutual frequency is available, there may be some reluctance in situations like this to utilize it since that frequency may be seen as mostly for disaster response and similar major operations. Since the Idaho State Police are basically the only agency in Bonneville County not utilizing the same frequency as the remaining law enforcement agencies, ISP leadership should at least in Bonneville County consider that it might be simplest to switch to the Bonneville County frequency in this type of circumstance.

Emergency Lighting. It is my professional opinion as a former law enforcement officer and an attorney that police vehicles with this type of emergency lighting system are not adequately equipped for urban high-speed responses and pursuit. This applies similarly to detective and other unmarked cars which are minimally complying with the 360° warning requirements of Idaho law. If an agency chooses to use such lighting schemes for stealth, ease of maintenance, or any other reason, then policy and practice should be developed to provide appropriate precautions and limits to using such vehicles for high speed emergency responses. It’s not that such vehicles should never be used for emergency responses, but they should be limited for example in how fast they should be driven, or how they should be driven through an intersection, due to the increased risk to the public. Given the necessity for Idaho State Police vehicles to be used in congested urban environments, I encourage ISP leadership to reconsider utilizing overhead lighting systems.

Independent Investigation. In this case, the Idaho Falls Police declined to conduct the investigation, however, the Bonneville County Sheriff's Office accepted responsibility for the investigation of the crash. Given that the Sheriff's Office was involved in at least a minor way, it may have been more appropriate to have an independent agency conduct the investigation. I have some concerns with how the investigation was initially conducted. This caused some

significant delays in ensuring a thorough investigation. While this case may not have fallen under Critical Incident protocol, it may have been appropriate for Tri-County, a Critical Incident Task Force, or investigators from the Prosecuting Attorney's Office to conduct the investigation. I encourage agency heads to consider policies and practices which allow more independence in this type of officer involved investigation.

DATED this 21st day of July, 2025



Randolph B. Neal, Prosecuting Attorney
Bonneville County, Idaho