



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 19, 2019

CASE NUMBER: 2019OPA-0280

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits - 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Management Action)
# 2	13.031 - Vehicle Eluding/Pursuits - 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained (Training Referral)
# 3	13.031 - Vehicle Eluding/Pursuits - 7. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)
# 4	13.030 - Emergency Vehicle Operations - 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Training Referral)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee may have engaged in an out of policy pursuit.

ADMINISTRATIVE NOTE:

OPA initially recommended that Allegation #3, which concerned NE#1’s failure to cease the pursuit when the risk outweighed the need to arrest the subject, be Sustained. As discussed below, at the discipline meeting, OPA was convinced by the chain of command that retraining rather than a Sustained finding and discipline was the more appropriate result for this case. OPA ultimately agreed with the chain of command and herein amends its previous finding.

At the discipline meeting, the discipline committee also had concerns regarding the newly created exception to the pursuit policy for potential DUIs. The discipline committee agreed that this exception could be used to defeat the rule. Specifically, officers could always articulate the belief, even if not necessarily warranted under the circumstances, that a driver was possibly impaired. This would allow for pursuits in cases where they would otherwise be prohibited. The discipline committee discussed a possible fix to mitigate this concern. This proposed policy revision is set forth in Allegation #1, which has been amended from Not Sustained – Inconclusive to a Not Sustained – Management Action Recommendation.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

13.031 - Vehicle Eluding/Pursuits - 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving

On February 24, 2019, Named Employee #1 (NE#1) was on patrol when he observed a white car with no license plates make an illegal left turn. NE#1 began to follow the subject car and attempted to catch up with it in order to initiate a traffic stop. As he began to approach the subject car, it sped up and began to make multiple rapid lane changes. The subject car drove erratically, including moving into the oncoming lane of traffic. NE#1 activated his patrol vehicle's lights and sirens and attempted to stop the subject car. NE#1 reported that, at that time, he believed that the subject car's driver was likely DUI. In his General Offense Report, he wrote: "I began to suspect that the driver was impaired given the dangerous driving behavior...I did not believe that a sober driver would continue driving in such a manner." He provided the following further explanation for why he believed the driver was DUI in his Blue Team Vehicle Pursuit entry:

I saw the sedan swerve back and forth between both of the northbound lanes of Rainier Av S and southbound lanes of Rainier Av S. I could see the driver cutting directly in front of other vehicles without any use of a signal. The rapid speed, inability to maintain a lane, and large number of lane changes without warning were driving behaviors I was taught to look for in my DUI detection and enforcement training I received during my 720 hour BLEA and two-day Advanced Roadside Impaired Driving Enforcement class. I have also seen similar driving patterns in several other DUI collisions. One of them was a hit and run collision. The other collision resulted in an injury to the suspect that was so extensive that I had to pursue an exigent blood draw as part of my DUI investigation. An impaired driver represents a substantial risk to the public so I believed that it was in the best interests of the community if I were to stop the vehicle.

NE#1 went over the radio and stated that he was in a pursuit of a DUI driver. He provided additional information at the inception of the pursuit, including a description of the subject car, direction of travel, speed, driving patterns, and pedestrian traffic. The pursuit lasted for approximately two minutes. During that time, both NE#1 and the subject car drove into the lane of oncoming traffic, drove well in excess of the posted speed limit, and drove through red lights without stopping to clear the intersections. While engaging in the pursuit, NE#1 hit a curb that was situated several feet from a pedestrian. Moreover, near the end of the pursuit, the subject car nearly struck a family of four that appeared to be about to cross the street. NE#1's In-Car Video (ICV) captured the family moving quickly backwards onto the curb in an apparent attempt to avoid being struck.

Shortly thereafter, the subject car abruptly stopped, and the driver and passengers got out and fled. All were ultimately located and taken into custody. The driver was determined not to be impaired and later disclosed that he fled from NE#1 in order to not return to jail. When he stopped his patrol vehicle, NE#1 got out and pursued the subject car's occupants on foot. At that time, NE#1's patrol vehicle rolled backwards and struck a fence.

Both the pursuit and the later inadvertent collision between NE#1's patrol vehicle and the fence were reviewed by the chain of command. With regard to the pursuit, both NE#1's Lieutenant and Captain believed it to be out of



policy. Specifically, they concluded that, based on the totality of the evidence, NE#1's pursuit was purposed to enforce the traffic violation. The Assistant Chief of Patrol, who was the final reviewer, disagreed. He found that, even though it was a close call, the pursuit was justified. This matter was ultimately referred to OPA by the Force Review Unit, which reviewed the completed pursuit investigation.

As part of its investigation, OPA reviewed the documentation generated concerning the pursuit and the video that captured the pursuit. In OPA's perspective, the ICV was the best evidence of what occurred during the pursuit. OPA also interviewed NE#1.

SPD Policy 13.031-POL-4 states that: "Officers will not pursue without articulable justification that the public safety need to stop the eluding vehicle outweighs the inherent risk of pursuit driving. This policy directs that, among the crimes for which a pursuit is impermissible, are gross misdemeanors and misdemeanors. (SPD Policy 13.031-POL-4.) However, the policy exempts DUIs from this restriction and instructs that, when engaging in a pursuit for this crime, officers must "adhere to the restrictions in this policy." (*Id.*)

As discussed above, while NE#1 and the Assistant Chief of Patrol believed that the pursuit was justified, the Lieutenant and Captain disagreed. OPA agrees with the Assistant Chief of Patrol that whether or not the pursuit was justified is a close call. From a review of the video, it does not readily appear that the driver of the subject car was intoxicated. It seems more likely that the subject car was driving as it did in order to avoid being stopped. However, NE#1 provided a convincing explanation for why he believed the driver to be DUI both in his reports and at his OPA interview. OPA believes that, even if this determination by NE#1 was not ultimately supported by the facts, it was made by NE#1 in good faith. OPA is further sensitive to the fact that, NE#1's determination that the driver was potentially DUI and his decision to engage in the pursuit, was made in seconds, while OPA's evaluation is conducted with the benefit of time. However, OPA is concerned that, given the expansion of the policy to permit pursuits for DUIs, it opens the door for officers to justify otherwise prohibited pursuits by describing drivers as potentially DUI. OPA articulated these same concerns when this policy change was first made, and I remain worried that allowing pursuits for possible DUIs could conceivably create an exception to the policy that subsumes the rule.

As discussed above, at the discipline meeting, the discipline committee discussed the concerns raised by OPA concerning the DUI exception to the pursuit policy. The discipline committee agreed that the DUI exception could be taken advantage of and, if this occurred, that it could significantly undermine the policy. However, the discipline committee also recognized the importance of apprehending DUI drivers and, thus, the need for the exception. In order to mitigate these concerns, the discipline committee discussed possible fixes to the policy. One such fix was adding language requiring that reasonable suspicion for DUI be established prior to the traffic stop being initiated. This would protect against situations where DUI was used as a pretext to continue the pursuit of a driver where termination of the pursuit would otherwise be required. OPA will also continue to monitor cases where pursuits are conducted for DUI suspects to determine whether the DUI exception is being used appropriately.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #1 - Allegation #2

13.031 - Vehicle Eluding/Pursuits - 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver

SPD Policy 13.031-POL-5 states that: "Officers will cease [a] pursuit when the risk of pursuit driving outweighs the need to stop the eluding driver." In making this determination, officers are expected to evaluate multiple factors including: the underlying reason for the pursuit; the location of the pursuit; the officer's speed and the speed and operation of the eluding vehicle; and the traffic conditions and presence of pedestrians and other vehicles. (SPD Policy 13.031-POL-5.)

Even if the pursuit itself was justified, NE#1 acted contrary to policy when he failed to cease the pursuit after it began to pose an unreasonable risk of harm to others that outweighed the need to stop the subject car. When evaluating the relevant factors set forth in this policy, OPA believes that each one weighed in favor of terminating the pursuit.

First, the underlying reason for the pursuit, a potential DUI, did not justify continuing the pursuit in light of the other factors. It was not a crime of violence, the subject car was not connected to another serious crime, and the evidence that the driver was actually DUI was minimal. Second, much of the pursuit occurred in residential neighborhoods. Even those portions that occurred on main thoroughfares were dangerous as NE#1 and the subject car proceeded driving at high speeds and weaving in and out of traffic while in the near vicinity of other involved vehicles. Third, according to GPS data, NE#1 drove at speeds up to 62 miles per hour. During the majority of the pursuit he drove at nearly 30 miles per hour above the posted limit, including while proceeding through residential neighborhoods. Fourth, the subject car drove at even higher levels of speed and in an extremely erratic manner. Around halfway through the pursuit, the front hood of the subject car flipped up and appeared to block the driver's view. However, the subject car continued to elude and drive in a highly risky fashion. Fifth, and last, while vehicle and pedestrian traffic was light at the inception of the pursuit, it increased as the pursuit proceeded. Most notably, on two occasions, the vehicles proceeded close to pedestrians, including a family of four who were required to leap back on to the sidewalk to avoid being struck.

All of the above factors weighed in favor of a finding that the risk of the pursuit outweighed the need to stop the driver of the subject car. As such, when the danger of the pursuit continued to rise, NE#1 should have terminated. Notably, at his OPA interview, NE#1 was asked to calculate his speeds and was surprised that he was recorded driving as fast as the GPS revealed. Further, it appeared that, prior to watching the video of the pursuit, he was unaware of how close he came to pedestrians. He remarked at his OPA interview that seeing the pedestrians on video made him think that he should have slowed down and re-evaluated the pursuit.

In the initial DCM for this case, OPA issued the following conclusion:

As discussed in the context of Allegation #1, NE#1 engaged in proactive law enforcement activity and, based on his OPA interview, he was trying to do the right thing during this incident. However, the pursuit he engaged became unduly risky and presented a danger to himself and nearby vehicles and pedestrians. For this reason, OPA finds that NE#1 acted contrary to policy and recommends that this finding be Sustained. OPA further



recommends that NE#1's lack of bad intent be considered as a mitigating factor when evaluating what disciplinary action, if any, is warranted.

At the discipline meeting, OPA further discussed this incident with the chain of command and, specifically, discussed whether this incident merited discipline or could be resolved with further training. While the discipline committee collectively agreed that the pursuit was out of policy, the chain of command argued that NE#1 was a young officer trying to do the right thing and that retraining would be more impactful than discipline. Based on my review of the record and the information provided by the chain of command concerning NE#1, I agree and herein reverse my initial recommended Sustained finding. I now recommend that NE#1 receive a Training Referral. I further refer to the Training Referral set forth in Allegation #3, below.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

13.031 - Vehicle Eluding/Pursuits - 7. Officers Must Notify Communications of Pursuits

SPD Policy 13.031-POL-7 requires that officers immediately notify communications of pursuits and specifies the information that must be provided. This information includes the following: reason for pursuit; location; direction; description of suspect vehicle and suspect(s); speed; and traffic conditions (pedestrians and vehicles). (SPD Policy 13.031-POL-7.)

Here, NE#1 provided an initial notification to radio and disclosed that he was in pursuit of a potential DUI subject. He informed radio of the following: a description of the subject car; direction of travel; speed; driving patterns; and pedestrian traffic. At the time he made that notification, he stated that he was driving at approximately 36 miles per hour and that there was no vehicle or pedestrian traffic. However, he did not provide additional updates to inform radio that his speed exceeded 60 miles per hour and that, as the pursuit continued, there was both vehicle and pedestrian traffic.

Given the above, the information that NE#1 provided over the radio was incomplete. OPA believes it possible that had a supervisor monitoring the radio heard that NE#1 was driving nearly 30 miles per hour over the limit with other vehicles and pedestrians in the near vicinity while pursuing the subject car (which had its hood flipped up) through residential neighborhoods, the pursuit may have been quickly terminated. However, NE#1 did not make this information available. OPA believes that the failure to provide ongoing information may have been based on how quickly this incident proceeded, the lack of a direct backing unit that could have taken over communications, and NE#1's relative newness as an officer.

Ultimately, OPA concludes that NE#1 would benefit from additional training concerning this policy. As such, OPA recommends that this allegation be Not Sustained and issues the below Training Referral.

- **Training Referral:** NE#1's chain of command should debrief this incident with him. This debrief should include retraining on SPD Policies 13.031-POL-7 and 13.030-POL-5. NE#1 should be counseled to ensure compliance in the future with these policies and the other policies concerning pursuits and emergency driving. To the extent these matters have already been fully covered by NE#1's chain of command, no



further retraining or counseling is necessary. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegations #4

13.030 - Emergency Vehicle Operations - 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle

SPD Policy 13.030-POL-5 concerns emergency vehicle operations and instructs that “officers are responsible for the safe operation of their patrol vehicle.”

During the pursuit, NE#1 drove, at times, nearly 30 miles per hour over the posted speed limit. He drove his patrol vehicle into the lanes of oncoming traffic and through red lights without clearing intersections. When he did so, there were a number of other vehicles on the road. At times, those vehicles were required to pull to the side of the road to avoid being involved in a collision. Moreover, as discussed above, NE#1 and the subject car passed within feet of two sets of pedestrians, the second being a family of four that was required to jump back onto the curb. In addition, significant portions of the pursuit occurred in residential neighborhoods.

Further, after NE#1 exited his patrol vehicle at the conclusion of the pursuit, it rolled backwards and struck a community member’s fence. This collision was later deemed to have been preventable by the chain of command.

Based on its review of the totality of the evidence, OPA concludes that, during the pursuit, NE#1 did not operate his patrol vehicle in a safe manner as contemplated by this policy. However, OPA believes that this conduct is better captured by SPD Policy 13.031-POL-5, which is evaluated in Allegation #2. OPA determines, however, that NE#1 still acted contrary to this policy when he failed to properly park his vehicle and it collided with a fence.

The above being said, this was clearly a mistake on the part of NE#1 and not intentional misconduct. As such, OPA believes that this matter is better addressed by retraining. OPA accordingly recommends that this allegation be Not Sustained and refers to the Training Referrals set forth in Allegation #3.

Recommended Finding: **Not Sustained (Training Referral)**