



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 9, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0108

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed [...]	Not Sustained - Training Referral (Expedited)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed [...]	Not Sustained - Training Referral (Expedited)

***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:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) allegedly unjustifiably initiated a vehicle pursuit.

### ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation for the purpose of issuing a training referral. See OPA Manual, § 5.4(B)(iv). That means OPA, with the Office of Inspector General’s (OIG) review and approval, believed it could reach and issue recommended findings based on its intake investigation, without interviewing the involved employees.

### SUMMARY OF INVESTIGATION:

The Complainant, a SPD Lieutenant, alleged NE#1 and NE#2 participated in an unjustified vehicle pursuit. OPA opened an investigation.

During its investigation, OPA reviewed the OPA Blue Team complaint, Computer-Aided Dispatch (CAD) call report, incident report, pursuit statements and reviews, Performance Appraisal System (PAS) reviews, In-Car Video (ICV), and Google Maps data.<sup>1</sup>

<sup>1</sup> The entirety of NE#1 and NE#2’s vehicle pursuit participation was captured on ICV and contemporaneously updated CAD comments.



SPD officers, including NE#1 and NE#2, responded to a call reporting “yelling in distress” inside a parked van. The caller described a male occupant ducking down when the caller made eye contact. The vehicle was described as silver, possibly a Honda Odyssey, with a blue container on the rear passenger side.

About seven or eight minutes after the 911 call, two SPD officers arrived and observed a silver minivan with a blue container near the rear passenger side. The officers approached the van on foot. The van pulled away.

NE#1 and NE#2 arrived in separate SPD vehicles. NE#1 and NE#2 followed the silver van. NE#1 and NE#2 activated their emergency equipment. The van did not stop. Driving within normal traffic patterns at approximately 25-30 miles per hour, NE#1 and NE#2 followed the van for about 0.4 mile. The van ran a red light (Red Light Intersection). NE#1 and NE#2—with lights and sirens still activated—slowed, then pursued the van through the red light.

The van approached vehicles stopped at another intersection, entered a parking lot, and exited from another entryway, bypassing the stopped vehicles. NE#1 and NE#2 continued pursuit. The van increased speed. NE#1 and NE#2 did too. The van entered oncoming traffic and NE#1 radioed for permission to pursue the van. About five seconds later, the Complainant denied NE#1’s request. NE#1 and NE#2 deactivated their emergency equipment and discontinued pursuit. The distance from the Red Light Intersection to the location where NE#1 and NE#2 were ordered to terminate pursuit was about 0.3 mile.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***13.031 - Vehicle Eluding/Pursuits 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed [...]***

The Complainant alleged NE#1 engaged in an out of policy pursuit.

A vehicle pursuit exists when an officer, to keep pace with and/or immediately stop or apprehend an eluding driver, drives in a manner that is outside of normal traffic restrictions. See SPD Policy 13.031-POL-1. Officers may only engage in a vehicle pursuit if they have probable cause to believe an occupant of the vehicle committed either a violent offense or a sex offense. See SPD Policy 13.031-POL-4. Additionally, the following factors must exist: (1) the officer must have probable cause to believe the suspect poses a significant imminent threat of death or serious physical injury to others such that the risk of allowing the suspect to escape outweighs the risk of the pursuit; and (2) the officer received authorization to continue the pursuit from a supervisor. See *id.*

Here, NE#1 and NE#2 were not engaged in a vehicle pursuit until they bypassed the Red Light Intersection, driving outside of normal traffic restrictions to keep pace with the van. At that point, the only evidence NE#1 and NE#2 had of a “violent offense or a sex offense” was a 911 caller who reported “yelling in distress” inside a van matching the description of the one they pursued. Even with the van’s efforts to elude them, NE#1 and NE#2 only had reasonable suspicion of a violent crime, not probable cause.<sup>2</sup> Moreover, the named employees had neither (i) probable cause to

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<sup>2</sup> Compare *State v. Fuentes*, 183 Wash.2d 149, 158 (2015) (“A valid *Terry* stop requires that the officer have reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop.), with *State v. Gluck*, 83 Wash.2d 424, 426-27 (1974) (“Probable Cause exists where the facts and circumstances within the arresting officer’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in a belief that an offense has been or is being committed.”).



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believe the van posed an “imminent threat of death or serious physical injury to others” outweighing the risk of the pursuit, nor (ii) a supervisor’s approval to continue the pursuit. Consequently, the pursuit violated policy.

However, OPA and OIG agreed to expedite this matter to issue training referrals for NE#1 and NE#2. OPA considered the short duration of the pursuit (about forty-five seconds), fact NE#1 requested a supervisor’s approval to continue pursuit shortly after it started, and the fact NE#1 and NE#2 terminated pursuit immediately after the Complainant’s order. Moreover, neither NE#1 nor NE#2 have prior discipline or PAS entries for similar violations. Also, NE#1 and NE#2 wrote detailed pursuit statements acknowledging their role in the pursuit.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 13.031-POL-4 with NE#1 and provide further retraining and counseling it deems appropriate. Any retraining and counseling should be documented and maintained in Blue Team.

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

**Named Employee #2 - Allegation #1**

***13.031 - Vehicle Eluding/Pursuits 13.031-POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed [...]***

For the reasons set forth at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review SPD Policy 13.031-POL-4 with NE#2 and provide further retraining and counseling it deems appropriate. Any retraining and counseling should be documented and maintained in Blue Team.

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