



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 9, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0528

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe...	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	Sustained
# 3	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained - Training Referral

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe...	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 - Management Action

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 Employees engaged in a vehicle pursuit which did not comply with SPD’s pursuit policy.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified three other involved Named Employees who may have violated SPD Policy 13.031-POL-5. These allegations were returned to the chain of command to be handled via a Supervisor Action notice.

On June 9th, 2022 at the discipline meeting in this matter, the allegations herein were discussed with the Named Employees’ chain of command. A robust conversation was had concerning ongoing queries amongst SPD officers about the interpretation of pursuit policies. OPA subsequently changed its finding on NE#1 Allegation #1 from



Sustained to Not Sustained – Management Action Recommendation. OPA also changed its finding on NE#2, Allegation #1 from Sustained to Not Sustained – Management Action Recommendation for similar reasoning. The Sustained finding issued for Allegation NE#1, Allegation #2 remains unchanged.

SUMMARY OF INVESTIGATION:

On 11-12-2021, Named Employees responded to a bank hold up alarm at the Key Bank located at 13245 Aurora Av N. A subsequent radio update advised that a tracker was moving southbound on Linden Av N. Radio then verified that an actual robbery had occurred. The suspect utilized a note, and no weapon was seen.

North radio continued to update the location of the tracker while simultaneously providing updates on the suspect description. Officers were directed to the location of the tracker, 950 N 128 St. Named Employee #1 (NE#1) arrived at listed location and observed a dark colored SUV with no license plates pull out of the parking lot and proceed westbound. The male driver matched the suspect description provided by bank employees. North radio provided updates on the tracker's location and direction of travel, which correlated with the movement of the SUV. At this time, NE#1 initiated a traffic stop. The suspect vehicle eluded, and a pursuit ensued.

When NE#1 came into the area, he saw the involved vehicle leaving the area. NE#1 activated his overhead lights, NE#1 was followed by Named Employee #2's (NE#2) vehicle. The involved vehicle initially was westbound on N 128th St. It turned northbound on Linden Av N. About midblock it appeared that the vehicle picked up speed. The Involved vehicle turned eastbound on N 130 St.

NE#1 advised radio that the vehicle was eluding. NE#1 asked about a BOLO for a repeat bank robbery suspect. NE#1 crossed Aurora Av N. There was a red light. NE#1 advised radio that he was in pursuit. Radio asked for a Sergeant. CAD GPS indicated a speed as high as 69 MPH.

The 22 second pursuit concluded when the suspect vehicle collided with a passing motorist. OPA noted that although there was extensive damage to the passing motorist's vehicle, SFD attended the scene and attended to the injuries of the motorist who was struck. The suspect was apprehended. NE#2 was the second vehicle involved in the pursuit. OPA estimated that from where the vehicle was first spotted by Named Employees to where the collision occurred was an approximate distance of 4,294 feet (about .81 miles). The Complaint was referred to OPA by the SPD Force Review Board.

During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report In Car Video (ICV), and Body Worn Video (BWV). OPA also interviewed both Named Employees. OPA also noted that both Named Employees received a focused counselling and training session from their supervisors prior to the OPA investigation. OPA noted that the failure of NE#2 to activate his BWV was processed in this manner. NE#2's ICV was activated.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe...

SPD Policy 13.031-POL-4 governs when pursuits are permitted. The policy states that, in order to engage in a pursuit, an officer must have “probable cause to believe a person in the vehicle has committed a violent offense or a sex offense.” The officer must also demonstrate both of the following: (1) “Probable cause to believe that the person poses a significant imminent threat of death or serious physical injury to others such that, under the circumstances, the public safety risks of failing to apprehend or identify the person are considered to be greater than inherent risk of pursuit driving”; and (2) authorization from a supervisor.

NE#1 was the primary officer in pursuing the subject vehicle. The call was initially noted in CAD as an armed bank robbery and a tracker was placed in the bag with the stolen money which gave regular updates as to its location. NE#1 indicated to radio that the subject vehicle was eluding and that he was in pursuit. In interview, NE#1 stated that it was his decision to pursue. NE#1 stated that he believed that he had probable cause and denoted “Probable cause, to me means that is more likely than not that based on the evidence a crime has occurred. And some if you were to apply a number to it would be 51%.” NE#1 was aware that a tracker was in the bag with the stolen money. NE#1 then stated that this probable cause was built on the alarm, the tracker being in transit, and that a credible person reported the call. NE#1 stated that the driver of the vehicle fit the description provided and that the car appeared to be moving in unison with the tracker’s movements.

OPA questioned NE#1 as to what probable cause he had to believe that the person posed a significant imminent threat of death or serious physical injuries. NE#1 responded that in his experience bank robbers tend to be violent and are aware that they are committing a serious crime. He further stated that such individuals are aware, if apprehended, that they may serve lengthy prison sentences which encourages them to continue to flee.

NE#1 noted that, “We put trackers in money to catch bank robbers. That shows the seriousness of it, we dispatch these calls as a priority one, bank alarms is priority one response was the highest-level response”. While OPA does not disagree with seriousness of a bank robbery, the placement of trackers is to assist in the recovery and location of the money and /or suspect. This robbery involved a note being passed to staff, with no mention of weapons being used, and a note to indicate that no weapons were seen. NE#1 acknowledged that he did not receive supervisory authority to pursue.

Here, OPA finds that NE#1 had probable cause to believe that the suspect had engaged in a crime of violence, specifically, a bank robbery. Similarly, OPA finds that NE#1 had probable cause to believe that, at the time the pursuit was initiated, the suspect posed a “significant imminent threat of death or physical injury to others.” However, NE#1 did not have supervisory authority from a supervisor. OPA accepts that the pursuit itself was 22 seconds in length and as such there was not a significant amount of time with which authority could be given before the collision occurred. OPA recognizes the desire of NE#1 to proactively respond to the bank robbery. However, the inclusion of supervisory authority has been enshrined in policy for a reason. Although this may not have been willful neglect by NE#1, he was outside of policy.

At the discipline meeting in this matter, the chain of command identified ongoing concerns relating to whether the policy speaks to authorization at the start of a pursuit or in continuance of a pursuit. The Chain of Command



contended that this issue remains as a systemic issue that needed to be resolved by unit supervisors. They further committed to addressing this matter promptly and notifying OPA as to the result. Given this, OPA agreed to change its finding from Sustained to Not Sustained – Management Action Recommendation

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. Among the factors that officers should consider when evaluating the risk are: (1) the underlying reason for the pursuit; (2) speed of the pursuit; (3) speed and operation of the eluding vehicle; and (4) traffic conditions, including pedestrians and other vehicles.

Traffic was moderate in the area where the collision occurred. Weather was grey and the ground was damp. NE#1 did not note a lot of pedestrian traffic in the area and ICV corroborates this.

The stolen cash bag had a tracker which mapped the subject's location. One could then reasonably argue that this diluted any need to engage in a pursuit as Named Employees could have easily tracked the subject covertly. It is also difficult to know for certainty if the pursuit caused the collision or whether the driver caused the collision. However, when NE#1's vehicle came upon the subject's vehicle, the subject's vehicle appeared to increase its speed. The speed limit for the area was 30 mph, NE#1 was depicted as driving at 69Mph to keep up with the fleeing vehicle.

OPA appreciates and recognizes NE#1's desire to respond to the call. However, in evaluating the potential risk it appeared that NE#1 did not evaluate the facts, *i.e.* a bank robbery by note, no weapons used and a tracker identifying the subjects locations. In failing to do so, the pursuit placed other members of the public at significant risk which in this instance, resulted in the subject's car colliding with another vehicle causing significant damage.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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 notify communications of pursuits. This includes providing information concerning: the reason for the pursuit; the location; direction of travel; roadway conditions and weather; speed of the officers' vehicle; traffic conditions; and speed and operation of the subject's vehicle.

NE#1 reported the fast-moving dynamics of the situation where communications was relaying the tracker location, and "in addition to trying to broadcast, I need to clear intersections, operate my vehicle, lights siren. Keep an eye on the suspect. Look out for pedestrians there. There's a lot going on...it didn't go perfectly." NE#1 stated that this was his second pursuit, and he did not check some of the communications required in pursuits.



OPA finds that NE#1 did not provide sufficient information over the radio concerning the pursuit. However, taken in conjunction with the previous request for a MAR on traffic pursuits, OPA also recognizes the gap in training in respect to vehicle pursuits and as such OPA issues NE#1 the below Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 13.031-POL-7 with NE#1, and provide any further retraining and counseling that it deems appropriate. NE#1's chain of command should remind him of the requirement to provide sufficient information over the radio to allow a supervisor to fully evaluate the pursuit. This includes weather, road and traffic conditions and speeds. The training and counseling provided to NE#1 should be documented in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #2 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe...

NE#2 was the second vehicle, immediately behind NE#1's vehicle. When interviewed, NE#2 stated that "Imminent doesn't mean immediate imminent means about to occur. OPA believes that, in this case, the robbery suspect definitely represented a serious threat to the public and to other officers responding to the scene because he had committed the robbery was trying to escape from the robbery. He was in a stolen car, he was driving recklessly and endangering the public." NE#2 further stated that the policy, in his interpretation, was unclear with respect to whether the sanction of a supervisor is required to initiate or to continue to pursue. NE#2 stated that "That presupposes that the pursuit is already occurring. There are no time requirements, no protocols as to how the off—the officer is to receive that authorization from the supervisor, or how the officer is to go about in getting it. The pursuit was already being engaged in in the minute and 30 seconds we had, we had not yet requested authorization for—to continue the pursuit."

OPA does not disagree with NE#2 desire for more clarification of the policy in this regard. As indicated above a previous MAR has been issued in this request. However, the policy is clear that "*Both the following,*" must occur with respect to having probable cause and authorization to pursue. NE#2 was not aware of any authorization from a supervisor and "kept expecting a supervisor to get on the air which didn't happen."

As discussed above in NE#1, allegation #1, at the discipline meeting in this matter, the chain of command identified ongoing concerns relating to whether the policy speaks to authorization at the start of a pursuit or in continuance of a pursuit. The Chain of Command contended that this issue remains as a systemic concern that needed to be resolved by the Chain of Command, They further committed to addressing this matter promptly and notifying OPA as to the result. Given this, OPA agreed to change its finding from Sustained to Not Sustained – Management Action Recommendation

Accordingly, OPA recommends that this allegation be Not Sustained-Management Action.

Recommended Finding: **Not Sustained - Management Action**



Named Employee #2 - 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

NE#2 stated that he could not adhere to the responsibilities of the second driver as he had no sight of the Subject's vehicle and was "losing both the of vehicles," and as such, was unable to field the necessary information required over the air. NE#2 described traffic conditions as moderate to busy. OPA noted that approximately 42 seconds elapsed from the time NE#2's vehicle engine revved and appeared to accelerate until the time of the collision. NE#2's speed was not denoted. NE#2 stated that although he has received training on emergency vehicle operation, it has been some time and he is uncertain of the legal standing of vehicle pursuits relative to recent legislative changes.

Of note is that, in February 2022, OPA issued a MAR requesting that SPD Reevaluate the language in SPD Policy 13.031-POL-4 to clarify what constitutes a "significant imminent threat of death or physical injury to others." This was to instruct officers on any changes to the policy and provide department-wide guidance on this matter. OPA is awaiting feedback on this recommendation. Accordingly, OPA recommends that this allegation be progressed as a Management Action Recommendation.

Recommended Finding: **Not Sustained - Management Action**