



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 26, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0407

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 10. The Controlling Supervisor is Responsible for the Pursuit	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Training Referral)
# 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	Allegation Removed

Named Employee #3

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Training Referral)
# 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	Allegation Removed

Named Employee #4

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Sustained
# 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	Allegation Removed



Imposed Discipline

Written Reprimand

Named Employee #5

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Sustained
# 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	Allegation Removed

Imposed Discipline

Written Reprimand

Named Employee #6

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Sustained
# 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	Allegation Removed

Imposed Discipline

Written Reprimand

Named Employee #7

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Training Referral)
# 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	Allegation Removed

Named Employee #8

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Training Referral)
# 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	Allegation Removed



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 Employees #2 through #8 were alleged to have engaged in an out of policy pursuit. Named Employee #1 was also alleged to have failed to have ensured that the pursuit was justified.

ADMINISTRATIVE NOTE:

One other SPD employee, a Student Officer, drove the fourth patrol vehicle involved in the pursuit. Given the officer's status as a student and consistent with precedent cases, OPA referred the allegations against this officer to the Training Unit to be handled as a Supervisor Action.

SUMMARY OF INVESTIGATION:

Officers, including Named Employees #2 through #8, responded to a call of a stolen vehicle. The vehicle – a tow truck – was reported to have been stolen from a lot and the 911 caller indicated that the suspect may have used bolt cutters to enter the lot. The 911 caller indicated that he possessed a knife that he had secured in his vehicle. There was no indication from the CAD report that the suspect had threatened the 911 caller with the bolt cutters or with any other weapon. The radio traffic from South Precinct also contained no information indicating that the suspect threatened the 911 caller.

The dispatched officers located the tow truck and began to pursue it. This pursuit, which was recorded on both Body Worn Video (BWV) and In-Car Video (ICV), proceeded for approximately six minutes through South Seattle, including in residential areas. The tow truck reached speeds in excess of 60 mph, and the officers, at times, exceeded 80 mph. From a review of the video, the tow truck swung from side to side at points and appeared out of control and extremely dangerous.

During the majority of the pursuit, Named Employee #2 (NE#2) and Named Employee #5 (NE#5) were in the first car. At the time of the incident, NE#2, who was the driver, had been an officer for around one year and had never been involved in a pursuit before. NE#5 had been an officer for approximately 14 years. Named Employee #7 (NE#7) and Named Employee #8 (NE#8) were in the second car. At the time of the pursuit, NE#7, who was the driver, had been an officer for less than a year. NE#8, the passenger, had less than two years of experience. Named Employee #3 (NE#3) and Named Employee #6 (NE#6) were in the third car. NE#3 had been employed by SPD for around one year at that time. NE#6 had approximately 14 years of experience. Lastly, a Student Officer – who is not named in this investigation and Named Employee #4 (NE#4) were in the fourth car. At the time, NE#4 had been employed with SPD for approximately 19 years and was assigned as a Field Training Officer.

A supervisor – Named Employee #1 (NE#1) – monitored the pursuit over the radio. He did not initially terminate the pursuit and allowed it to proceed. NE#1 was aware at the time that the pursuit was initiated for auto theft and burglary. Ultimately, a Lieutenant, who was following the incident and learned of the crimes at issue, terminated the pursuit. In response, the officers stopped pursuing.



All of the involved officers were counseled and retrained concerning their involvement in this pursuit, which was deemed to be out of policy. The South Precinct Captain also made an OPA referral. This investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

13.031 – Vehicle Eluding/Pursuits 10. The Controlling Supervisor is Responsible for the Pursuit

SPD Policy 13.031-POL-10 instructs that the controlling supervisor is responsible for a pursuit. The policy specifically indicates that this responsibility concerns whether the pursuit is properly authorized at its inception.

As noted throughout this DCM, the pursuit in question was inconsistent with policy. The officers were pursuing for burglary and auto theft and these crimes cannot justify a pursuit, either together or standing alone. NE#1 knew or should have known of the nature of these crimes, as well as that there was no weapon involved. As such, he should have called off the pursuit immediately instead of allowing it to continue for six minutes.

While OPA recognizes that NE#1 did not have significant experience with pursuits, he was a supervisor and carried a higher level of responsibility. Ultimately, given the high level of danger posed by this pursuit, which grew as it continued, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

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

In evaluating the propriety of the pursuit and the Named Employees' culpability for engaging in an out of policy pursuit, OPA evaluated the more junior officers – including NE#2, NE#3, NE#7, and NE#8 – separately from those that had significantly more experience – including NE#4, NE#5, and NE#6.

For both groups of officers, OPA found that they engaged in an out of policy pursuit. The only crimes that they were aware of at the time were auto theft and burglary, neither of which – standing together or alone – were sufficient to permit a pursuit. While some of the officers speculated that the crime may have involved a threat of violence, there was no support for this in either the CAD Call Log or the 911 radio traffic.

In addition, even were the pursuit justified at the outset, it quickly grew in danger given the suspect's driving of the tow truck. Indeed, the video showed the tow truck speeding through residential neighborhoods, swinging from side to side due to its speed and turns, and blowing through stop signs without any care for pedestrians and other motorists. The officers should have terminated the pursuit given this significant risk well before it was ended six minutes later by the Lieutenant.

Every patrol vehicle involved in the pursuit was driven by an officer with a year or less of experience. For all of the cars, except for the second car, the passenger officer was a much more experienced officer (with an average of almost 16 years of time on). However, these more experienced officers, with the exception of NE#4, functionally



agreed with the decision to initiate the pursuit and took no steps to intervene and cause the pursuit to be terminated.

OPA notes that, while NE#1 did not properly identify the pursuit as being improper, the chain of command did later comprehensively counsel and retrain all of the officers concerning their actions. OPA finds that this was sufficient remedial action with regard to the more junior employees, virtually none of whom had ever been in a pursuit before. As such, OPA does not recommend that discipline be imposed on these officers and, instead, recommends that NE#2, NE#3, NE#7, and NE#8 receive the below Training Referral.

- **Training Referral:** Given that the chain of command has already retrained and counseled NE#2, NE#3, NE#7, NE#8, and thoroughly documented this action, no further training or counseling is required by OPA. However, NE#2, NE#3, NE#7, and NE#8 should be informed by their chain of command that future violations of the pursuit policy will result in a Sustained finding and the imposition of discipline. Any additional retraining or counseling that is conducted should be documented, and this documentation should be maintained in an appropriate database.

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

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

This allegation is discussed more fully in the context of Allegation #1. As such, OPA recommends that be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #2 – Allegation #1).

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

Named Employee #3 - 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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #4 - Allegation #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

As discussed above, NE#4 was the passenger in the fourth car in the pursuit. He was a Field Training Officer at the time and had a Student Officer with him. NE#4 told OPA that he felt that the pursuit was justified at its inception. He stated that he believed the suspect had committed a violent crime with a weapon. He also asserted that he concluded that the pursuit was initially approved because a Lieutenant was monitoring it over the radio. NE#4 told OPA that, as the pursuit evolved, he felt that it grew increasingly dangerous. He said that he called his direct supervisor – who was with NE#1 at the time – and advised that the pursuit should be terminated. He acknowledged that he did not, himself, terminate prior to that time. NE#4 told OPA that, had he known that the only crimes were auto theft and burglary, he would not have engaged in the pursuit at the outset.

Of all the Named Employees, NE#4's culpability is the most challenging for OPA to assess. On one hand, he clearly engaged in an out of policy pursuit and his rationales for why he did so are not compelling to OPA. First, and as indicated throughout this DCM, there was no radio traffic or CAD information indicating that a crime of violence was at issue. Second, the Lieutenant did not begin monitoring the pursuit until it was already commenced. On the other hand, NE#4, unlike the other officers, identified issues with the pursuit and called his Sergeant to try to get it terminated. That being said, NE#4 could have and should have terminated the pursuit himself but did not do so.

Ultimately, what is determinative for OPA is the fact that NE#4 was a Field Training Officer at the time of this incident. In this role, he was responsible for teaching his student and, as part of that instruction, ensuring fidelity to SPD policies. He did not do so here.

Accordingly, and based on the totality of the circumstances, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - 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

As the conduct governed by this policy is completely subsumed in Allegation #1, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #5 - Allegation #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

OPA evaluates the conduct of NE#5 and NE#6 together. Both officers were passengers in patrol vehicles where very junior officers were driving. In addition, both officers were significantly senior, each with 14 years of experience.



However, neither NE#5 nor NE#6 took steps to prevent these junior officers from engaging in an out of policy pursuit or caused these junior officers to terminate the pursuit when it quickly grew unduly dangerous.

Both officers contended that they believed that there was a weapon crime that authorized the pursuit. Again, as discussed in the context of NE#4, this was unsupported by the evidence. Moreover, neither felt that it was necessary to terminate the pursuit. Based on a review of the video and as ultimately determined by the chain of command, this decision was in error.

This pursuit was egregious enough to warrant a finding that the decision-making and lack of action taken by NE#5 and NE#6 violated policy. Accordingly, OPA recommends that this allegation be Sustained as against both officers.

Recommended Finding: **Sustained**

Named Employee #5 - 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

As the conduct governed by this policy is completely subsumed in Allegation #1, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #6 - Allegation #1

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

For the same reasons as stated above (see Named Employee #5 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #6 - 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

For the same reasons as stated above (see Named Employee #5 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #7 - Allegation #1

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



OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #2 – Allegation #1).

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

Named Employee #7 - 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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #8 - Allegation #1

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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #2 – Allegation #1).

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

Named Employee #8 - 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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**