



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 29, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0281

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....	Not Sustained (Management Action)
# 1	13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop	Sustained
# 1	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)

Named Employee #3

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

It was alleged that Named Employee #1 and Named Employee #2 engaged in an out of policy pursuit that was approved by their supervisor, Named Employee #3.

ADMINISTRATIVE NOTE:

Named Employee #3, who was the supervisor of the other Named Employees and who authorized the pursuit discussed in this case, tragically passed away after the conclusion of this investigation. Given this, OPA removes the allegations against him.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a call concerning gunshots. NE#1 was operating the patrol vehicle and NE#2 was the passenger. At that time, the officers observed a vehicle that matched



a wanted bulletin. The bulletin indicated that there was probable cause to arrest the driver for bank robbery and to seize the car pursuant to a burglary investigation. The driver was identified as armed and dangerous within the bulletin.

NE#1 attempted to initiate a traffic stop of the suspect vehicle and it eluded, increasing speed, making illegal turns, and driving against traffic lights. NE#1 went over the radio and stated that he was pursuing the suspect vehicle. His supervisor, Named Employee #3 (NE#3), responded and asked if the pursuit was related to the gunshots call. NE#1 said that it was not and that it was concerning the robbery bulletin. NE#3 responded by saying “copy.” NE#3 did not terminate the pursuit. NE#1 provided sporadic updates until NE#2, the passenger, took over operating the radio. NE#2 also provided sporadic updates.

The pursuit lasted for approximately six minutes. It proceeded through multiple red traffic lights and through both light and medium traffic. On numerous occasions the suspect vehicle pulled around other cars and into oncoming traffic before moving back into the previous lane of travel. NE#1 followed. The speeds of the pursuit varied but averaged around 60 to 70 miles per hour. GPS records showed that NE#1 reached a high speed of over 100 miles per hour. There were several near collisions, involving both the suspect vehicle and NE#1’s patrol vehicle. The pursuit ended in Renton when the suspect vehicle collided with two other vehicles. The suspect was taken into custody. He was injured as a result of the collision, as were two other motorists.

The pursuit was later reviewed by the chain of command. In his review, NE#3 wrote that, while he initially believed that the pursuit was consistent with policy, he later changed his mind after more fully evaluating the incident and re-reading the policy. He noted his concerns and he counseled and retrained NE#1 and NE#2. A lieutenant subsequently reviewed the pursuit and determined that, while it was initially within policy, it grew sufficiently dangerous that the risk outweighed the need to apprehend the suspect. The lieutenant asserted that NE#1’s failure to terminate the pursuit at that time was contrary to policy. The lieutenant also contended that, had NE#1 and NE#2 provided more information to NE#3 over the radio during the pursuit, NE#3 likely would have terminated it. An acting captain also reviewed the pursuit. Like the lieutenant, the acting captain found that the pursuit was appropriate at its inception but that it should have been terminated by NE#1. The acting captain referred the incident to OPA for investigation.

OPA’s investigation included reviewing Body Worn Video and In-Car Video and the reports and reviews of the pursuit. OPA also interviewed all of the Named Employees.

NE#1 told OPA that he reviewed an e-directive that documented the recent changes to the pursuit policy – specifically, making the policy more restrictive to only allow pursuits for violent offenses and/or sex offenses. However, he told OPA that he had not received any formal training concerning the new policy. NE#1 stated that he felt that he was permitted to pursue based on the facts and circumstances he was aware of. He also asserted that, during the pursuit, he operated his vehicle in a sufficiently safe manner. NE#1 said that he called out his speed at the inception of the pursuit, as well as explained why he was pursuing. The pursuit was not subsequently terminated by NE#3 and he considered this to constitute approval to continue. NE#1 did not provide any further updates concerning his speed or traffic conditions. NE#1 stated that he was not completely aware of his speed because he was focusing on his driving and did not want to multitask. He remembered one near collision but felt that the pursuit should continue. He recalled driving around vehicles and into lanes of oncoming traffic. NE#1 observed a second occasion where he felt that the suspect vehicle could collide with other cars. He was about to terminate and began to slow down when the suspect vehicle was involved in a collision. NE#1 did not believe that he acted contrary to any SPD policies during this incident.



NE#2 stated that this was the first pursuit he had been involved in and the highest stress incident he had experienced as a member of SPD. He said that he read the e-directive concerning the new pursuit policy but that he had not received any training concerning the role of a passenger officer during a pursuit. NE#1 recalled that, early in the pursuit, NE#1 made radio transmissions. Eventually, NE#2 took over the radio to allow NE#1 to focus on the pursuit. He gave updates, but he did not provide any information about speeds, traffic, or road conditions. NE#2 told OPA that his lack of experience and the stress of the pursuit caused him to get “locked in” and impacted his ability to provide timely and comprehensive updates.

NE#3 told OPA that he was aware that the pursuit policy had been revised and that he had read the e-directive. However, he did not believe that the changes were in effect at the time of the pursuit. He felt that, based on the information provided to him, the pursuit was consistent with policy. He also did not hear information over the radio during the course of the pursuit that made him think that it should be terminated. He said that his recollection was hearing that the speeds were around 75 miles per hour and that the pursuit was heading back north into Seattle. He said that the officers seemed calm over the radio, which was another factor that caused him to believe that the pursuit was under control. NE#3 told OPA that, at the time, he felt that he had sufficient information and that he did not want to make frequent radio broadcasts that he worried would distract the officers. NE#3 said that he later identified issues with the pursuit when he reviewed the video.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

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.

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. He also had supervisory authorization from NE#3. The outstanding question is whether 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.”

Since the pursuit policy was updated, this section has caused confusion among officers. OPA also finds this language vague. Does it mean that an officer must have information indicating that the suspect is actively threatening to cause imminent death or physical injury to others or, for example, that the suspect (like in this case) is described as armed and dangerous and appears to have escalating behavior? In OPA’s perspective, it is unclear.

OPA believes that the latter scenario is the more logical interpretation of the policy. Given this, OPA concludes that NE#1’s engaging in a pursuit was consistent with policy. In reaching this determination, however, OPA notes that it may very well be that the Department prefers a stricter interpretation that would significantly lessen pursuits. If this is the case, SPD should modify the policy or the training it provides on the policy to make clear that this is so.



Accordingly, OPA recommends that the Department reevaluate this language and clarify what showing it expects officers to make concerning the “significant imminent threat of death or physical injury to others.” SPD should instruct officers on any changes and provide guidance Department-wide on this matter.

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...

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.

As discussed above, OPA believes that the pursuit was permitted at its inception. However, based on a review of the video and on the totality of the circumstances, OPA concludes that the risk grew significantly during the pursuit and, ultimately, outweighed the need to catch the suspect vehicle. At that point, the pursuit should have been terminated by NE#1. This was the case even though the suspect was wanted for a serious crime.

Influencing this decision is the fact that the pursuit was conducted at extremely high speeds, at times over 100 miles per hour. The suspect operated his vehicle in an increasingly dangerous manner, driving into oncoming lanes of traffic at high speeds and almost causing multiple collisions. NE#1 also drove at high speeds and, while more controlled than the suspect, was similarly at risk of colliding with other vehicles. The pursuit put many other drivers at risk for a sustained period of time and eventually ended with a collision and injuries caused to two other motorists. It is fortunate that these injuries were not more significant.

Two other facts give OPA concern. First, at his interview, NE#1 did not appear to understand the problems with this pursuit and why he should have terminated it. This was the case even though he received substantial training and counseling from his chain of command. Second, NE#1 has previously been counseled in this area based on another OPA investigation and this does not appear to have been effective. This convinces OPA that discipline is the appropriate result.

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

As discussed below, OPA finds that neither NE#1 nor NE#2 provided sufficient information over the radio concerning the pursuit. However, under SPD training, it is the responsibility of the passenger, not the driver, to do so. Accordingly, OPA issues NE#1 the below Training Referral rather than a Sustained finding.



- **Training Referral:** NE#1 should be reminded of the requirement to provide sufficient information over the radio to allow a supervisor to fully evaluate the pursuit. This includes road and traffic conditions and speeds. By failing to do so here, NE#1 prevented NE#3 from comprehensively assessing the pursuit and did not give him enough context to inform the decision to terminate the pursuit. 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 7. Officers Must Notify Communications of Pursuits

SPD Policy 13.031-POL-7 instructs that officers must notify communications of pursuits. The policy further provides guidance on what information should be shared over the radio. Most importantly, officers are required to provide the basis for the pursuit, to describe road and weather conditions, to disclose traffic patterns, and to itemize their speeds. Under SPD training, where there is a passenger officer in the patrol vehicle, that officer is tasked with providing the updates.

Here, NE#2 was the passenger in the patrol vehicle. While he took over the radio communications from NE#1, he provided only limited information during the pursuit. Most concerning was that fact that he provided no updates on traffic, road, and weather conditions, as well as no information concerning the officers' or the suspect vehicle's speeds.

OPA finds that his failure to provide this information was inconsistent with policy. OPA also finds that his failure caused NE#3 to have insufficient information to determine whether the pursuit should continue or be terminated.

The above being said, OPA recognizes that NE#2 is a newer officer, this was NE#2's first pursuit, that he had not received training on how to specifically carry out his role as a passenger officer, and that he was overwhelmed by the stress of the incident. Given these facts, OPA does not believe that discipline is necessary here and that retraining is a more appropriate result. Accordingly, OPA issues the below Training Referral.

- **Training Referral:** NE#2 should be reminded of the requirement to provide sufficient information over the radio to allow a supervisor to fully evaluate the pursuit. This includes road and traffic conditions and speeds. By failing to do so here, NE#2 prevented NE#3 from comprehensively assessing the pursuit and did not give him enough context to inform the decision to terminate the pursuit. The training and counseling provided to NE#2 should be documented in Blue Team

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

Named Employee #3 - Allegation #1

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

SPD Policy 13.031-POL-10 governs supervision of pursuits and explains that the controlling supervisor – here NE#3 – is ultimately responsible for the pursuit.



As discussed above, NE#3 tragically passed away during OPA's investigation of this case. As such, OPA recommends that this allegation be removed and does not recommend a finding against him. OPA notes, however, that even were it to issue a finding, it would have found that NE#3 acted consistent with policy and properly exercised his supervisory duties under the circumstances.

Recommended Finding: **Allegation Removed**