




## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 8, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0015

### 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 a Person in the Vehicle Has Committed a Violent Offense	Sustained
# 2	13.031 - Vehicle Eluding/Pursuits; 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry	Not Sustained - Unfounded
# 3	5.001 - Standards and Duties; 11. Employees Will Be Truthful and Complete in All Communication	Not Sustained - Inconclusive

**Proposed Discipline**

1 to 3 Days Suspension

**Imposed Discipline**

2 Days Suspension

***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.***

**ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:**

*When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee’s chain of command and the department’s human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.*

**EXECUTIVE SUMMARY:**

It was alleged that the Named Employee (NE#1) engaged in an unauthorized vehicle pursuit, misrepresented its justification, and failed to submit the required documentation.

**ADMINISTRATIVE NOTE:**

On May 26, 2023, the Office of Inspector General certified this investigation as thorough, timely, and objective. This amended DCM corrected issues found in the original DCM dated June 22, 2023.



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**SUMMARY OF INVESTIGATION:**

NE#1 completed a Blue Team entry detailing the pursuit. In summary, NE#1 wrote:

He responded to a drive-by shooting involving a GMC Yukon<sup>1</sup> near Rainer Avenue S and S Henderson Street. The driver, a Black male wearing a gray hooded sweatshirt and pants, abandoned the vehicle near Renton Avenue S and 43<sup>rd</sup> Ave S and ran eastbound on S Holden Street. An assault rifle and spent shell casings were inside the abandoned vehicle. At 48<sup>th</sup> Avenue S and Kenyon Street, NE#1 saw a silver Volvo sports utility vehicle (SUV) parked in the middle of the street. He saw movement inside, "...similar to someone getting in on the passenger side." It sped northbound. Based on his experience, NE#1 believed the SUV was involved in the drive-by. Specifically, he thought the driver of the abandoned Yukon was inside the SUV based on its proximity to the Yukon and the driver's flight path:

*In my experience with drive-by shootings, I've had multiple cases where shooters would travel in pairs in case one of the vehicles crashed, so they would use the second vehicle to get away. Specifically, I and [another officer] ran into an active drive-by, where the suspects ditched the vehicle blocked by our patrol car and jumped into a second vehicle, which usually trailed behind.*

NE#1 radioed his observation, including the SUV's flight path. NE#1 momentarily lost sight of the SUV, then spotted it at 46<sup>th</sup> Avenue S and S Holden Street. He and two other police cruisers pursued the SUV. NE#1 was third among the police cruisers in pursuit but became second when an officer stopped to avoid a motorist. NE#1 attempted to radio updates during the pursuit, but he "...was too far behind the lead vehicle and could not effectively relay timely information." The SUV got two flat tires and stopped. Its driver tried to flee on foot but was apprehended.

Witness Employee #1 (WE#1)—a sergeant—also wrote a Blue Team entry. In summary, WE#1 cited the department's pursuit policy and explained why NE#1's pursuit was inconsistent with it:

*In this incident the initiating officer lacked sufficient information to suggest that the drive by shooting suspect was on-board this vehicle. The other involved officers also lacked sufficient information to engage in this pursuit until several minutes into the pursuit when [NE#1] advises that he believed the drive by shooting suspect was in the vehicle. At the conclusion of the pursuit it was discovered that the drive by shooting suspect was not in this vehicle. For these reasons this pursuit was not within policy.*

In a supplemental report, Witness Employee #2 (WE#2) wrote that he responded to help locate the Yukon's driver. WE#2 said NE#1 broadcasted that he found the driver inside a silver sedan near 48<sup>th</sup> Avenue S and S Kenyon Street. WE#2 followed NE#1's flight path updates, spotted the SUV near Martin Luther King Way S and S Othello Street, and pursued it. The SUV drove at high-speed northbound on Martin Luther King Way S, "...blowing through some red lights..." It turned onto Rainier Avenue S and continued blowing red lights at high-speed. The SUV turned onto Dearborn Street, 6<sup>th</sup> Avenue S, then Seattle Boulevard S, where it hit a center island and deflated the driver-side tires. It stopped on Airport Way S. The female driver and male passenger exited and fled on foot. Both were apprehended.

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<sup>1</sup> The license plate number was also included.



Witness Employee #3's (WE#3) supplemental report was consistent with WE#2's. Additionally, he noted that the SUV almost collided with his cruiser near 46<sup>th</sup> Avenue S and S Holden Street. WE#3 also wrote, "[NE#1] advised that he located the other shooting suspect getting into another vehicle at 48<sup>th</sup> Avenue S / S Kenyon Street, which failed to stop for officers, resulting in a vehicle pursuit."

NE#1's supplemental report was consistent with his Blue Team entry but focused on what officers thought and did generally rather than his own beliefs and actions:

*Officers attempted to stop the Volvo, but it began eluding. Officers believed that the driver of the Yukon hopped into the Volvo. It's typical for cars involved in drive-by's to be driving in pairs. Officers activated lights and sirens and pursued the eluding Volvo. The driver of the Volvo drove recklessly at speeds approaching 100mph to avoid capture in the city of Seattle, and only stopped after popping the front driver's side tire (see [WE#2's] statement, who was right behind her, for detailed reckless driving observed). The driver of the Volvo, later identified as [driver's name] jumped out of the driver's seat as the Volvo came to a stop and attempted to run away. Officers quickly detained both [occupants.] [Emphasis added.]*

Body-worn video (BWV) and in-car video (ICV) showed NE#1 spotting and following the SUV. NE#1 was about a block behind as the SUV turned northbound on 48<sup>th</sup> Avenue S. NE#1 followed. As NE#1 approached, the SUV turned westbound onto S. Holden Street. NE#1 followed and radioed, "48th and Holden, we have a silver SUV taking off, high rate of speed." The SUV turned westbound onto Kenyon. WE#3 made a U-turn and followed the SUV south. At that point, NE#1's cruiser was positioned third among officers in the pursuit. About two minutes later, WE#1 radioed to ask how the officers established probable cause to initiate the pursuit. NE#1 replied, "We believe it's involved and picked up the [Yukon driver]." WE#2 estimated that the SUV traveled at 90 MPH. Seven minutes and 24 seconds later, the SUV slowed to a stop. Its occupants exited and fled but were caught. An officer asked NE#1, while indicating the SUV's male passenger, "This is the one you spotted, right?" NE#1 replied, "Yeah...It was two blocks from the shooting. I pulled up to Kenyon. They see me and flying off." The other officer noted that the Yukon driver's description said he wore 49ers gear, but the SUV passenger wore all black, including a black hat.



The SUV occupants explained they lived at 48<sup>th</sup> and Holden, had just left their home, and fled out of fear. NE#1 said, "I thought he jumped in," and "I pull up, they slow down. They're like, oh shit. And then take off. Two blocks away



from the shooting.” Minutes later, a radio dispatch updated the Yukon driver’s description to a light-skinned 6’ to 6’2” Black male with a 49ers beanie and dreads. WE#1—who saw and tried to stop the fleeing Yukon driver—arrived, looked at the detained SUV passenger, and confirmed it was not the Yukon driver. WE#2 asked WE#1 whether the SUV was involved in the drive-by, and this exchange followed:

- WE#1: “That’s not our guy. It doesn’t even come close to the description I put out.”
- WE#2: “I heard that it possibly picked up the shooter.”
- WE#1: “Yeah, who said that?”
- (WE#2 looked toward NE#1)
- WE#1: Yeah, that’s not, this is not it.”
- (About two minutes later, the conversation continued.)
- WE#2: “Myself and [another officer] hear [the SUV] was involved.”
- WE#1: “See, I was trying to figure out why you guys were pursuing this, and then someone told me, oh, they picked up.”
- WE#2: “That is the only reason I chased this car.”
- WE#1: “We don’t know where that came from?”

#### **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 a Violent Offense***

The Complainant alleged that NE#1’s pursuit of the SUV was unauthorized and unjustified.

An officer may not pursue a vehicle without probable cause that someone inside it committed a violent offense or a sex offense and probable cause 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 greater than the inherent risk of pursuit driving. SPD Policy 13.031-POL-4. Additionally, the officer must receive authorization from a supervisor to continue the pursuit. *Id.*

Here, due to the SUV speeding off upon his presence and its proximity to the abandoned Yukon, NE#1 suspected it was involved in the drive-by. Specifically, NE#1 thought it picked up the Yukon’s driver, who fled in the SUV’s direction. While those facts may have amounted to reasonable suspicion, probable cause was not established. Nevertheless, even if probable cause existed, NE#1, who initiated the pursuit by following the high-speeding SUV and radioing that the suspected drive-by-shooter was inside it, failed to obtain a supervisor’s authorization. Further, when WE#1, a supervisor, radioed asking about probable cause, NE#1 said, “We believe it’s involved and picked up the [Yukon driver].” That response suggested other officers concurred with that belief when they only joined based on NE#1’s representation that the shooter was inside the SUV. Moreover, NE#1 never explained to WE#1 why he thought probable cause existed, leaving WE#1 with insufficient information to determine whether to authorize the pursuit. Arguably, WE#1 should have probed for details. Still, he should also be able to rely on his officer to provide material information—particularly when WE#1 is tasked with making a high-stakes decision, like whether to compromise public safety for the lawful purpose of capturing a high-level offender. NE#1 should have fully apprised WE#1 of the circumstances—that NE#1’s suspicion that the SUV contained the Yukon driver was merely a hunch—for an informed decision.



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Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

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

***13.031 - Vehicle Eluding/Pursuits, 13.031-POL-19 All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry***

The Complainant alleged that NE#1 failed to make a Blue Team entry for the pursuit.

Driver officers will detail their involvement in the pursuit using a Blue Team entry titled "Vehicle Pursuit." SPD Policy 13.031-POL-19.

Here, on December 29, 2022, NE#1 made a Blue Team entry entitled "Vehicle Pursuit." It included the details required by the department's policy, like lighting, weather, traffic, and roadway conditions, the number of officers in the pursuing police cruiser, whether the cruiser was marked and had activated emergency equipment, and the travel routes.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 5.001-POL 11. Employees Will Be Truthful and Complete in All Communication***

The Complainant alleged that NE#1 untruthfully reported his role in the pursuit.

Employees must be truthful and complete in all communications. SPD Policy 5.001-POL-11. Further, under the Seattle Police Officers' Guild's collective bargaining agreement (SPOG CBA), a sustained complaint involving dishonesty during an officer's official duties carries a "presumption of termination." SPOG CBA, at § 3.1. For termination cases where the allegation is stigmatizing to a law enforcement officer, the standard of review is elevated (i.e., more than a preponderance of the evidence). *Id.*

Here, NE#1 listed himself as a secondary officer for the pursuit in a Blue Team entry. However, he initiated it and broadcasted information enticing WE#2 and #3 to join. Although NE#1 no longer led the pursuit after WE#2 and WE#3 cut him off to join, he remained its impetus. Moreover, when NE#1 responded to WE#1's question about probable cause for the pursuit, NE#1 suggested that all the pursuing officers saw the shooter enter the SUV. That claim was misleading, as he was the only officer that indicated the shooter was inside the SUV.

Overall, while NE#1's actions caused an inherently dangerous multi-car pursuit ending with the SUV crashing and disabling, the heightened standard applied to dishonesty allegations calls to question whether NE#1 was a deceitful or inartful communicator.



Accordingly, OPA recommends this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**