



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0469

Issued Date: 07/01/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (9) Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-7 Use of Force Tools: Use of Force – Vehicle-Related Force Tactics (Policy that was issued 09/01/2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Allegation #3	<u>Seattle Police Department Manual</u> 13.031 (13) Vehicle Eluding/Pursuits: Only Trained Personnel May Use Pursuit-Ending Tactics (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Final Discipline	N/A

#### **INCIDENT SYNOPSIS**

A suspect armed with a handgun carjacked and attempted to carjack several persons resulting in the theft of several vehicles in a short amount of time. When the last vehicle stolen was spotted by Seattle Police Officers, the suspect fled in the vehicle at an excessively high rate of speed through numerous neighborhoods. The suspect drove the wrong way on one-way streets. At one point during the pursuit, the suspect fired his handgun at the pursuing officers. During the pursuit, the Named Employee is heard on the radio monitoring the pursuit. Following a request of a patrol unit over the radio, the Named Employee authorized units to ram the fleeing vehicle.

## **COMPLAINT**

The complainant, a supervisor within the Department, alleged that the Named Employee may have violated policy when he authorized employees not trained in specific pursuit ending techniques to use the Pursuit Intervention Technique (PIT) or ram a fleeing vehicle.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Search for and review of all relevant records and other evidence
3. Review of Force Investigation Team (FIT) investigation
4. Interview of SPD employee

## **ANALYSIS AND CONCLUSION**

The Named Employee took over as Incident Commander of the entire incident involving SPD efforts to stop and capture an armed subject who had committed armed carjackings, driven recklessly without any regard for public safety and was firing a gun at pursuing police officers. As such, he was the "controlling supervisor" of an on-going and far-flung pursuit of the vehicles driven by the subject. While acknowledging the complexity and chaotic nature of the rapidly evolving events faced by the Named Employee, he bore responsibility for determining whether the pursuit was in policy and for taking appropriate action based on his assessment. "A pursuit exists when an officer, operating an authorized police vehicle with emergency lights and siren activated, proceeds in an effort to keep pace with and/or immediately apprehend an eluding driver." Multiple officers under the Named Employees's command were attempting to keep up with and stop the vehicle being driven by the subject. The Named Employee had several very serious public safety concerns to address as Incident Commander and events were unfolding at a rapid pace and in unpredictable ways. The record from the FIT and OPA investigations leads the OPA Director to conclude the Named Employee should have exercised better control over the pursuit aspect of this event or delegated the role of "controlling supervisor" of the pursuit portion of this event to a different supervisor.

The Named Employee gave verbal authorization over the police radio for officers to use a tactic known as "PIT" (Pursuit Intervention Technique) if they were trained to do so. The Named Employee, in response to a request from an officer over the radio also authorized officers to "ram" the fleeing vehicle if it were safe to do so. The Named Employee's interpretation that the policy allows for the use of other vehicle-related force tactics, such as ramming, so long as they are objectively reasonable given the totality of the circumstances, is not unreasonable. However, a reference to ramming elsewhere in SPD Policy (Allegation #3) could be seen as prohibiting ramming. This potential confusion and contradiction between different policy sections was noted by the Force Review Board and the Named Employee. I believe the Department has an obligation to provide unambiguous policy guidance and corresponding training on such an important and potentially dangerous subject.

The Named Employee told OPA he believed it was only a matter of time before the subject killed a police officer and/or members of the public. This was an entirely reasonable conclusion based on what the Named Employee knew at the time. As such, argued the Named Employee, deadly force was necessary, reasonable and proportional to stop the deadly threat posed by the subject's driving behavior and use of a firearm to rob members of the public and shoot at pursuing police officers. The OPA Director found the Named Employee's conclusion to be reasonable given the totality of the circumstances known to him at the time. According to the Named Employee, when he authorized the use of police cars to ram the fleeing vehicle, he was authorizing officers to use their vehicles as deadly weapons. The Named Employee told OPA he was not so much thinking of his authorization to use ramming as a pursuit-ending technique, but as an authorization to use vehicle-related deadly force to stop the subject's ability to kill or gravely injure officers and the public. Finally, it must be acknowledged that this was a highly unusual and tense situation for which it would be difficult to be fully prepared.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

The evidence supports that the Named Employee should have exercised better control over the pursuit aspect of this event or delegated the role of "controlling supervisor" of the pursuit portion of this event to a different supervisor. Therefore a finding of Not Sustained (Management Action) was issued for *Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit*.

#### **Allegation #2**

The evidence supports that the Named Employee was reasonable in his interpretation of this policy. Therefore a finding of Not Sustained (Management Action) was issued for *Use of Force Tools: Use of Force – Vehicle-Related Force Tactics*.

#### **Allegation #3**

The evidence showed that the conclusion made by the Named Employee was reasonable given the totality of the circumstances known to him at the time. Therefore a finding of Not Sustained (Management Action) was issued for *Vehicle Eluding/Pursuits: Only Trained Personnel May Use Pursuit-Ending Tactics*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*



# City of Seattle

Office of Professional Accountability

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June 29, 2016

Chief Kathleen M. O'Toole  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2016OPA-0469)

Dear Chief O'Toole:

The Office of Professional Accountability (OPA) recently completed an investigation into the events of December 6, 2015, during which an armed individual endangered the lives of the public and police officers alike while engaged in a crime spree ranging from the Belltown neighborhood north of downtown Seattle, to the Laurelhurst neighborhood of northeast Seattle. The suspect committed acts of armed carjacking and drove in a manner that displayed an utter disregard for the lives of other motorists and pedestrians. A large number of Seattle Police Department (SPD) officers pursued, followed and attempted to stop him. More than once, the suspect fired a weapon at pursuing SPD officers. The evidence from the extensive investigation by the Force Investigation Team (FIT) leaves little doubt the situation caused by the actions of this one person was extremely dangerous and, for some time, created the threat of death or great bodily harm to officers and the public. It is also a fact that the actions of the subject created a dynamic and rapidly changing environment in which police commanders, supervisors and officers made split-second decisions.

With this as context, I make the following two recommendations.

Recommendation #1: I recommend the formation of an internal SPD "Study Team" to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident. Several times throughout the incident, SPD officers actively pursued the vehicle being driven by the subject. A SPD lieutenant took command of the police response, including but not limited to the pursuit aspect of it. Based on the FIT and OPA investigations and drawing on the discussions conducted by the Force Review Board during their deliberations, I believe the Department will gain great insight into how command and control of such events can be improved. For example, the lieutenant acting as the overall incident commander also held the role of "controlling supervisor" of the on-again/off-again pursuit of the suspect. The supervision of the pursuit itself required close attention and split-second, life and death decisions. It would be very easy for an incident commander in a situation such as this to become overwhelmed by the complexity of the incident and the increasing number of responsibilities required by policy and the reality of the situation. In this particular incident, the incident commander might have benefited by delegating certain responsibilities to others, a key element of the Incident Command System (ICS) used by SPD and most emergency services

throughout the country<sup>1</sup>. It is my hope, should SPD decide to form such a “Study Team” and act on its insights and suggestions, the Department will be prepared in the future to exercise even better command and control over similar or worse situations (e.g., a coordinated crime spree or a Mumbai/Paris-style terrorist attack).

Recommendation #2: I recommend a thorough review and reconciliation of SPD’s policies and training concerning the use of police vehicles to end a pursuit and/or stop a driver who poses a deadly threat.

The FIT investigation and Force Review Board deliberation into this incident clearly demonstrate the suspect posed a real, present and on-going threat to public safety. Armed with a gun, he violently took cars from drivers, operating those stolen cars so dangerously that multiple collisions occurred, placing the general public in extreme danger. The suspect also put the lives of police officers in immediate danger by shooting at them from his vehicle and trying to ram them. There is no doubt the suspect was an immediate and on-going threat to the lives of officers, motorists and pedestrians.

In an effort to save lives and end this deadly threat, the incident commander authorized officers to ram the suspect vehicle. The incident commander viewed this authorization as permission for officers to use their police cars as improvised deadly weapons, believing it was a safer alternative than using a firearm from one moving car to another in an attempt to shoot the suspect. Shooting from and at a moving vehicle creates the risk that innocent people could be hit by police gunfire and, should the suspect driver be shot, may turn the car he was driving into a two thousand pound unguided missile. At the same time, intentionally ramming a police car into another vehicle creates danger for officers, other motorists and pedestrians. As was the case in this particular incident, officers can easily be injured as a result of impact or by the deployment of airbags following impact. So too, other motorists and pedestrians may be injured if the suspect vehicle and/or the police car spin off in unexpected directions following an intentional, police-initiated collision.

SPD policy, taken as a whole, does not provide SPD officers, supervisors and commanders with clear guidance and rules regarding the use of a police vehicle as a deadly weapon. The following SPD Policy sections address this topic in varying and contradictory ways:

- 8.050 – Use of Force Definitions: Improvised Weapons
- 8.200 – Using Force: (4) Use of Deadly Force
- 8.200 – Using Force: (5) Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Believe That It Is Necessary and That There is Probable Cause
- 8.300-POL-7 – Use of Force: Vehicle-Related Force Tactics
- 13.031 – Vehicle Eluding/Pursuits: (12) Only Trained Personnel May Use Pursuit-Ending Tactics

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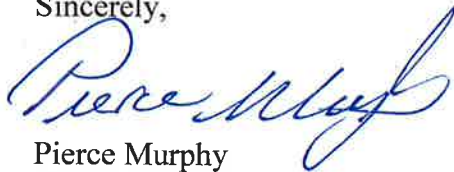
<sup>1</sup> “ICS is a standardized on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.”  
[https://www.osha.gov/SLTC/etools/ics/what\\_is\\_ics.html](https://www.osha.gov/SLTC/etools/ics/what_is_ics.html)

In addition, SPD provides no training to its officers in how to use a police car as a weapon to end a deadly threat or as a tool to stop a dangerous pursuit. Some SPD SWAT officers attend specialized training put on by other agencies in a technique known as the Pursuit Intervention (also used: Immobilization) Technique (PIT), but this training is not overseen or tracked by the SPD Education and Training Section.

I strongly encourage SPD to create a clear, consistent and coherent set of policies supported by training regarding the use of a police vehicle as a weapon to end a deadly threat or as a tool to stop a dangerous pursuit.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,



Pierce Murphy  
Director, Office of Professional Accountability