



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0274

Allegations of Misconduct & Director's Findings

Named Employee #1

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)

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:

The Complainant alleged that Named Employee violated policy when he chose to engage in a vehicle pursuit.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA determined that Named Employee #1 had a delayed activation of his Body Worn Video. OPA sent that matter back to his supervisor to address through counseling, mentoring, and retraining.

OPA also identified that the passenger officer in the vehicle also bore some responsibility for the out of policy pursuit. However, since she was not the driver, OPA sent that matter back to her supervisor to address through counseling, mentoring, and retraining.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – 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

On April 25, 2020 at 2:33 a.m., NE#1 and Witness Officer #1 (WO#1) were on routine patrol when they observed a vehicle with no taillights on fail to stop at several stop signs. The officers also observed the driver swerving from left to right on the roadway. Based on what they observed, NE#1 believed that the driver posed a significant risk to public safety and he activated his patrol vehicle's emergency lights and sirens in order to initiate a traffic stop. The driver did not respond to NE#1's emergency lights and sirens and NE#1 continued to follow the vehicle. The driver then slammed on her brakes as if to pull over but then heavily accelerated away and continued to increase the distance between her car and the officers' patrol vehicle. The officers traveled another seven or eight blocks before



they self-terminated the pursuit. The officers lost sight of the driver, who eventually collided with a traffic electrical box, destroying the vehicle, and igniting the engine. The driver had to be extricated from the vehicle and suffered an ankle injury and multiple lacerations on both hands. The driver was belligerent and non-cooperative, and officers could smell of alcohol on her breath.

SPD Policy 13.031-POL-4 states that “officers will not pursue without articulable justification that the public safety need to stop the eluding vehicle outweighs the inherent risk of pursuit driving. The policy indicates that “[t]he circumstances justifying the decision to pursue an eluding vehicle must be articulable at the time the officer initiates the pursuit.” Relevant to this case, pursuant to Directive 20-00006 and effective March 1, 2020, the SPD amended this policy the exception that allowed officers to pursue drivers suspected of DUI.

In his report, NE#1 explained that he made the decision to pursue the driver because he believed that she was DUI. A Sergeant subsequently reviewed this incident and NE#1’s decision making shortly afterwards. The Sergeant determined that NE#1’s decision to initiate a pursuit of the driver based solely on his suspicion that she was DUI was inconsistent with policy. The Sergeant conducted immediate one-on-one training and counseling with NE#1. The Sergeant also forwarded this matter to OPA for review, which led to this investigation. Lastly, the Sergeant organized a roll call training the following day, where he used a discussion of this incident to make sure that other officers were aware that policy no longer allowed for pursuits of drivers where the sole suspected crime was DUI.

While OPA finds that NE#1 clearly acted contrary to policy, OPA does not believe that a Sustained finding is warranted here for three main reasons. First, at the time of the pursuit, NE#1 was a newer officer and did not have significant experience with pursuits. Second, the removal of the DUI exception was a recent change and, while this does not excuse NE#1’s actions, OPA considers it to be a mitigating factor. Third, NE#1 has not been disciplined for failure to comply with the DUI policy previously. Fourth, he received comprehensive and thoughtful counseling, mentoring, and retraining from his Sergeant, and this appears to have been well received and effective. Fifth, and last, OPA’s recent past precedent has been to issue Training Referrals to officers under similar circumstances. OPA expects that NE#1 has learned from this incident and will apply these lessons to future incidents to continually evolve and improve his decision-making.

As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** From OPA’s perspective, NE#1’s sergeant has already thoughtfully and thoroughly counseled and retrained NE#1. No further counseling or retraining is required by OPA and any additional action concerning this matter is within the discretion of the chain of command. To the extent the chain of command takes any additional steps, please document same in an appropriate database.

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