



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 14, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0218

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 Using Force 1. Use of Force: When Authorized [Effective Date: 4/15/2021]	Not Sustained - Unfounded
# 2	13.031 – POL 13. Intentional Vehicle-to-Vehicle Contacts are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy [Effective Date: 2/19/2021]	Not Sustained - Training Referral
# 3	13.031 – POL 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed [...] [Effective Date: 2/19/2021]	Not Sustained - Unfounded
# 4	13.031 – POL 5. Officers Will Cease Pursuits when the Risk of Pursuit Outweighs the Need to Stop the Eluding Driver [Effective Date: 2/19/2021]	Not Sustained - Unfounded

***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:**

This investigation, as with all OPA investigations, was reviewed and certified by the Office of Inspector General (OIG). OIG found it timely, objective, and thorough.

### **SUMMARY OF INVESTIGATION:**

#### **A. OPA Complaint**

On July 18, 2022, the Complainant, an SPD captain, submitted a Blue Team complaint to OPA. That complaint alleged Named Employee #1 (NE#1) violated Department policy by using an unauthorized vehicle tactic during a pursuit. Specifically, NE#1 allegedly used his patrol car to ram a suspect's car. The Complainant further stated, while NE#1 claimed to pin the suspect's car, video showed NE#1 "clearly rammed [the suspect's car] or attempted to perform the PIT maneuver." Ramming and the PIT maneuver were unauthorized vehicle tactics.

#### **B. Complainant interview**

On July 13, 2022, OPA interviewed the Complainant.



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**C. General Offense (GO)/Incident Report**

Student Officer #1 (SO#1) wrote the related GO report. In summary, that report stated on April 25, 2022, SO#1 was partner with his field training officer, Witness Officer #1 (WO#1). At 9:49 PM near 36<sup>th</sup> Ave S and S Adams Street, NE#1 recognized an armed robbery suspect driving a stolen car. That car was reported stolen that evening around 7:20 PM from a Seattle dealership. The auto theft suspect gave the dealership a driver's license to test drive the car. That driver's license listed Suspect #1's (S#1) information. The King County Sheriff's Office (KCSO) also issued a bulletin for S#1's arrest for an April 22, 2022, armed robbery. That bulletin included several photos of S#1, his legal name, nickname, last known address, date of birth, physical description, and a synopsis of the crime. NE#1 attempted a traffic stop at Rainier Ave S/ S Genesee Street, but the stolen car sped off, swerved through traffic, and ran traffic control devices. In his patrol car, NE#1 pursued the stolen car. Near 42<sup>nd</sup> Ave S and S Holly Street, while trying to negotiate a roundabout, the stolen car crashed. NE#1's patrol car pushed the stolen car towards a curb to disable it. S#1 fled on foot. After a short chase, NE#1 and SO#1 arrested S#1 in a nearby front yard. During the arrest, while prone on his stomach, S#1 yelled he could not breathe. Officers repositioned S#1 into the recovery position before placing him in a patrol car. SO#1 found a loaded ArmaLite rifle (AR) pistol on the stolen car's driver side floorboard.

**D. NE#1's Supplemental Report (dated April 26, 2022 at 2:40 AM)**

In summary, NE#1's supplemental report stated on April 25, 2022, around 9:49 PM, he "observed a recently stolen vehicle." Earlier that day, NE#1 learned about KCSO's bulletin for S#1's arrest for an armed robbery. Specifically, that bulletin stated S#1 threatened an Infiniti dealership salesperson with a firearm and took a car. Later that day, NE#1 received a Departmentwide email stating S#1 stole another car from a Toyota dealership. That email included a photo of the stolen Toyota. While on patrol, NE#1 spotted a car "matching the [stolen Toyota's] description (same wheels, exact make, and model, no plates.)" NE#1 also recognized the stolen Toyota's driver as the suspect from the KCSO bulletin. NE#1 trailed the stolen Toyota and "radioed that [he] had found the car and the suspect." Considering the KCSO bulletin, NE#1 "considered [S#1] armed and dangerous." A failed traffic stop "turned into a pursuit." S#1 eluded NE#1 for about five minutes, where S#1 ran several red lights "(Rainier and Genesee St, MLK and S Holly, MLK and Myrtle,)" "drove over three times the speed limit (80+ mph in 25mph zone,) and navigated traffic at high speed. Ultimately, S#1 crashed into a curb while trying to navigate a roundabout at 42<sup>nd</sup> Ave S and S Holly Street. The crash caused the stolen car's "front tires to pop and go flat." S#1 fled on foot but was located and arrested. NE#1 saw "a loaded AR-style rifle on the [stolen car's] floorboard," which NE#1 assumed was the same gun used in the reported armed robbery. NE#1's report did not mention him using a vehicle tactic on the stolen car or S#1's reported troubled breathing during the arrest.

**E. NE#1's Type II Use of Force Statement**

Seattle Police Department (SPD) Policy 8.400-TSK-5 requires officers involved in Type II<sup>1</sup> uses of force to upload a statement detailing the incident "by the conclusion of the current shift, unless exigent circumstances require an extension." In summary, NE#1 stated he had lawful authority to arrest S#1 based on probable cause S#1 committed armed robbery (the KCSO bulletin). NE#1 stated de-escalation was unfeasible, where S#1 led him on a nearly five-minute high speed vehicle pursuit. S#1 also led NE#1 on a short foot chase, after NE#1 identified himself as an SPD officer and ordered him to stop. NE#1 stated he aimed his firearm at S#1 until backup arrived to assist with the arrest.

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<sup>1</sup> Type II- Force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm. SPD Policy 8.050 Use of Force Definitions.



NE#1's threat assessment deemed S#1 as "armed and dangerous," particularly a threat to officers and civilians. NE#1 noted S#1 reckless driving prior to the crash and his "driving on two flat tires" thereafter demonstrated he "was an active threat to pedestrians, other motorist [sic], and officers." NE#1 "concluded that [S#1] had started to develop a pattern of violent crimes and needed to be stopped before victimizing other community members." NE#1 described using "the push bar of the patrol vehicle to make physical contact with the stolen vehicle," where he intended to "stop [S#1] from continuing to drive recklessly with two flat tires in the residential neighborhood." Prior executing that tactic, NE#1 stated he "checked for pedestrians and occupied vehicles." NE#1 stated the stolen car slowed to around 10 MPH. NE#1 intended to push the stolen car's rear passenger side toward a curb to disable it. NE#1's patrol car impacted the stolen car's rear passenger side door, causing it to disable.

#### **F. Type II Use of Force Sergeant's Investigation**

SPD Policy 8.400-TSK-8 outlines a reviewing sergeant's duties for a Type II use of force investigation. Sergeant #1 investigated NE#1's Type II use of force. Sergeant #1 stated he approved a vehicle pursuit of an "armed car jacking [sic]" suspect. "The pursuit lasted approximately 4-5 minutes, and ended when the suspect vehicle struck a curb, disabling the vehicle." Sergeant #1 determined:

*[NE#1] saw the opportunity to end the pursuit and protect further danger to civilians by the suspect's eluding, and was then able to safely bump the suspect vehicle with the push bumpers of his patrol car, and the suspect vehicle was not able to continue eluding officers. Officers had no reasonable alternative to use in stopping the suspect from continuing to flee on two flat tires, which rendered his vehicle almost uncontrollable. If the suspect had continued to elude officers, he would have placed civilians, himself, and law enforcement officers in even more danger.*

Sergeant #1 concluded NE#1's lawful purpose was to apprehend a suspect wanted for armed robbery, eluding police, and auto theft who "posed a significant imminent threat of death or serious physical injury to others if he continued to elude pursuing officers." Sergeant #1 also spoke with S#1 on scene. S#1 reported that officers stepped on his neck<sup>2</sup> and caused leg pains during his arrest but did not report injury from NE#1's vehicle tactic.

#### **G. NE#1's In-Car Video (ICV)**

In summary, NE#1's ICV shows his patrol car following the stolen car. The stolen car, with NE#1 directly behind him, initially stops at a red light at S Genesee St and Rainier Ave. The stolen car then speeds through the red light, with NE#1 following him through it. The stolen car weaves into oncoming traffic and ran another red light, with NE#1 still following. The stolen vehicle turns westbound on S Alaska St from Rainier Ave S. While trailing the stolen car, NE#1 radioed that the stolen car was getting away and NE#1 would not pursue. Thereafter, Sergeant #1 broadcast's authorization for a vehicle pursuit. NE#1 activates his emergency equipment and speeds to catch up with the stolen car.

NE#1 broadcasts the stolen car passed S Dawson Street running red lights at an estimated speed of 40-50 MPH. NE#1 caught up to the stolen car at Martin L King Jr Way S & S Graham Street. The stolen car makes a U-turn at Martin L King Jr Way S & S Othello Street, NE#1 follows. The stolen car runs a stop sign at 38th Ave S E/B on S Holly Street, and

<sup>2</sup> OPA investigated S#1's report of officers stepping on his neck under 2022OPA-0153.



NE#1 continues pursuit. The stolen car runs a red light at S Holly Street and Martin L King Jr Way S with NE#1 trailing. The stolen car accelerates and gains separation. NE#1 broadcasts the stolen car may have struck a roundabout curb at S Holly Street and 42<sup>nd</sup> Avenue S. NE#1 closes the distance near S Holly St and 43rd Ave S. NE#1 positions his patrol car at the stolen car's rear passenger side, where his driver side bumper connected with the stolen car's rear passenger side quarter panel. As NE#1 collided with the stolen car, ICV captured WO#1 (who was in the patrol car directly behind NE#1) state "he's pinning him" then "he just tried a PIT." NE#1's ICV shows he traveled at 14 MPH at the point of impact. The stolen car's rear bumper detaches, and it slowly rolled over a speed bump and veers eastbound on S Holly St. S#1 jumps out of the moving stolen car's driver side door and flees on foot.

**Impact**



**S#1 Exiting Moving Stolen Car**



**Disabled Stolen Car**





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#### **H. NE#1's Body Worn Video (BWV)**

Following the collision, BWV captured NE#1's foot pursuit and arrest of S#1. Thereafter, NE#1 approaches the stolen car and asks another officer "is there a gun on the floorboard? Yeah, he was dumping it." That officer asked NE#1 "how'd he crash?" NE#1 responded, "he hit the curb and then I PIT'd him, well rammed him...pinned him." A few minutes later, several officers discussed how the vehicle pursuit ended. During that discussion, NE#1 states, "he blew his tire and he still kept going very slowly like ten miles an hour- and I pinned him... that's why he hit here and stopped and ditched the car."

#### **I. WO#1's interview**

On August 30, 2022, OPA interviewed WO#1. WO#1 worked at SPD for nearly 22 years. She was a field training officer. WO#1 and SO#1 responded to backup NE#1's broadcasted Terry stop at 36th Ave S and S Adams Street. Thereafter, that stop evolved into a vehicle pursuit, approved by Sergeant #1. WO#1 and SO#1 spotted the fleeing car and joined the vehicle pursuit as "the number two vehicle." SO#1 drove while WO#1 handled radio communications. WO#1 told OPA:

*[She saw NE#1] make contact with the back panel and use that to sort of pin him in so that he could end the pursuit. I got excited on the radio and made some comments about it being a PIT. I didn't go to the State Academy here. I'm a lateral. I was not trained in the PIT maneuver. I think it's a layperson's term. What I meant to say was there was some vehicle contact, but speeds were relatively low. It was, there was no impression in my mind that there was any potential risk to anybody it was not likely to cause injury or harm. He was just effectively getting that that the running vehicle pinned up against the sidewalk so that it could not continue.*

WO#1 also stated patrol officers were generally not trained or authorized to use PIT (Pursuit Intervention Technique) vehicle tactics. She further explained her description of the impact in the heat of the moment was based on her "limited experience" with vehicle tactics:

*After this event, I was looking at the policy trying to understand myself would this fall under ramming or vehicle to vehicle contact. I think given the low speed and the likelihood of this not to cause injury, that it was more appropriate to call vehicle to vehicle contact.*

#### **J. NE#1's interview**

On August 30, 2022, OPA interviewed NE#1. NE#1 worked at SPD for over five years. NE#1 stated he was at 36th Ave S and S Adams Street when spotted S#1 driving a car matching the description of a reported stolen Toyota. NE#1 recognized S#1 from the KCSO bulletin. Based on the armed robbery described in that bulletin and S#1's suspected involvement in another armed robbery, where during a test drive S#1 reportedly pulled a knife on a dealership employee and threatened to "gut him," NE#1 believed S#1 was armed and dangerous. NE#1 stated he initially followed S#1 but did not engage in a pursuit until Sergeant #1 approved it. NE#1 caught up with the stolen car at Martin Luther King Jr Way S and S Graham Street. NE#1 described the stolen car as recklessly attempting to elude him. After the stolen car hit the roundabout causing its front tires to deflate, NE#1 stated he attempted to use his patrol car to "pin him to the curb." NE#1 stated he did not want to position himself parallel with the stolen car because he feared S#1 would pull a weapon, so he opted to use his push bumper to guide the stolen car toward a curb. NE#1 estimated his



speed was around 10-14 MPH. NE#1 admitted not being PIT trained but denied attempting to PIT the stolen car. He also denied ramming the stolen car, explaining the speeds were too slow for that. NE#1 stated his description of the tactic to an officer on scene was inaccurate, where BWV captured NE#1 state “he hit the curb and then I PIT’d him, well rammed him...pinned him.” NE#1 explained he was exhausted and out of breath after just chasing S#1 for 300-400 yards in “full gear,” so his brain was not fully functioning, which caused him to say the first thing that came to mind.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***8.200 - Using Force 1. Use of Force: When Authorized***

An officer will use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons. SPD Policy 8.200-POL-1. In other words, officers will only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective. *Id.* The force used must comply with federal and state law and Seattle Police Department policies, and rules for specific weapons and tools. *See* 8.300 - Use of Force Weapons and Tools. Once it is safe to do so and the threat has ended, the force must stop. *Id.*

Here, we must first determine NE#1’s elected vehicle tactic. The Complainant suggested NE#1 either attempted a PIT or rammed the stolen car. Conversely, NE#1 and WO#1 considered the tactic vehicle-to-vehicle contact. SPD Policy 8.050 defines all three tactics:

- PIT (Pursuit Intervention Technique): A controlled and trained forced rotational stop of a non-compliant suspect vehicle used to reduce the risks in bringing a pursuit to a conclusion. PIT is always a use of force.
- Ramming: The intentional use of a vehicle to strike another vehicle for the purpose of interrupting or incapacitating that vehicle. Ramming is always a use of force.
- Vehicle-to-Vehicle Contact: Contact between vehicles designed to guide or prevent movement of a vehicle, but without significant impact (ramming) and not reasonably likely to cause injury.

Overall, OPA’s review of NE#1’s ICV suggests the tactic was closest to vehicle-to-vehicle contact. Prior to the contact, the stolen car had deflated front tires which caused it to slow considerably. At the point of impact, NE#1’s ICV showed him traveling at 14 MPH. That relatively slow speed preceding the contact does not indicate an intent to ram or PIT, where the stolen car faced imminent immobility.

#### **A. Reasonableness**

Reasonableness “is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” SPD Policy 8.050.<sup>3</sup> *See id.*

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<sup>3</sup> This policy outlines several factors to consider when determining the objective reasonableness of force.





i. Seriousness of the crime or suspected offense

Prior to utilizing vehicle-to-vehicle contact, NE#1 knew S#1 was wanted for two instances of Robbery 1<sup>st</sup> Degree<sup>4</sup>, Attempting to Elude Police<sup>5</sup>, and Theft of a Motor Vehicle<sup>6</sup>. Given the nature of S#1's reported offenses and those observed by NE#1, there was a reasonable belief he was armed and dangerous.

ii. The level of threat or resistance presented by the subject

S#1 posed a high level threat based on his reported crimes, including using a firearm that was later recovered, and presented significant resistance to officers and civilians, where he disregarded several traffic control devices, drove into oncoming traffic, and sped through residential blocks at over three times the speed limit.

iii. Whether the subject was posing an immediate threat to officers or a danger to the community

The Subject posed an imminent threat to officers and the community, where he recklessly sped through residential areas.

iv. The time available to an officer to make a decision

NE#1 had a small window of time to decide whether to use vehicle-to-vehicle contact to conclude the pursuit.

v. The training and experience of the officer

NE#1 had five years of law enforcement experience.

Overall, considering the totality of the circumstances, OPA cannot conclude NE#1's use of force was objectively unreasonable. While not an ideal tactic, given the possibility of injury, a reasonable officer under the same conditions may have acted the same.

**B. Necessary**

Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." SPD Policy 8.050.

Here, S#1 relentlessly eluded officers. There was no indication he would comply with orders to stop, considering he led multiple patrol units on a roughly five-minute pursuit. NE#1's vehicle-to-vehicle tactic appeared to be the least forceful option for ending the danger S#1 posed to officers, motorists, and pedestrians.

**C. Proportional**

Proportional force reflects the totality of the circumstances, including the nature and immediacy of threats posed to officers and others. SPD Policy 8.050.

Here, as mentioned above, the nature and immediacy of threats posed by S#1 made the relatively low level of force clearly proportional.

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

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<sup>4</sup> See RCW 9A.56.200.

<sup>5</sup> See RCW 46.61.024.

<sup>6</sup> See RCW 9A.56.065.



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Recommended Finding: **Not Sustained (Unfounded)**

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

**13.031 - Vehicle Eluding/Pursuits 13.031-POL 5.**

Officers will cease pursuit when the risk of pursuit driving outweighs the need to stop the eluding driver. SPD Policy 13.031- POL-5.

Here, there is insufficient evidence that risks created by the vehicle pursuit outweighed the need to stop and apprehend S#1.

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

Recommended Finding: **Not Sustained (Unfounded)**

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

**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 [...]**

Officers will not engage in a vehicle pursuit without probable cause to believe a person in the vehicle has committed a violent offense or a sex offense and there is probable cause to believe 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 the officer has received authorization to continue the pursuit from a supervisor.

Here, as discussed at Named Employee #1- Allegation #1, there was clearly probable cause that S#1 committed at least one violent offense (an armed robbery), he posed a significant imminent threat of serious physical injury to others and Sergeant #1 approved the pursuit.

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

**Named Employee #1 - Allegation #4**

**13.031-POL 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy**

Intentional vehicle-to-vehicle contacts such as the Precision Immobilization Technique (PIT), ramming, or the use of a patrol car as a roadblock are uses of force that officers may use only when consistent with Manual Section 8.300 and must be reported under 8.400.

As discussed above, NE#1's use of force was likely an unwilful and minor (where S#1 was uninjured by the force in question) policy violation where vehicle tactic training for patrol officers was limited and policy guidance was not issued prior to this incident.<sup>7</sup>

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<sup>7</sup> On January 13, 2023, SPD emailed Departmentwide guidance on vehicle tactics.





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Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

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