



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 16, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0121

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 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 [...]	Not Sustained - Training Referral

Named Employee #2

Allegation(s):		Director's Findings
# 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 [...]	Not Sustained - Training Referral

Named Employee #3

Allegation(s):		Director's Findings
# 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 [...]	Not Sustained - Training Referral

Named Employee #4

Allegation(s):		Director's Findings
# 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 [...]	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:

It was alleged that the named employees engaged in an unauthorized vehicle pursuit.

ADMINISTRATIVE NOTE:

The Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.



SUMMARY OF INVESTIGATION:

The Complainant—an SPD captain—filed an OPA complaint alleging that the named employees engaged in an unauthorized vehicle pursuit.

OPA opened an investigation, including reviewing the complaint, computer-aided dispatch (CAD) call report, incident report, in-car videos (ICV), and vehicle pursuit documents. OPA also interviewed the named employees.

a. Incident Summary

ICV captured the pursuit, also documented with contemporaneous CAD updates.

On February 17, 2023, at 8:42 p.m., Named Employee #1 (NE#1) responded to a disturbance at a cannabis shop on Rainier Avenue South. At the incident location, NE#1 saw Vehicle #1 enter the opposing travel lane, drive around a stopped vehicle, and turn left onto Rainier southbound before running a red light. Despite it being dark outside, Vehicle #1's headlights were off. It also had two flat tires, both partially separated from the rim. Named Employee #4 (NE#4), in a separate police cruiser, pointed out Vehicle #1 to NE#1. NE#1 activated his emergency lights and followed Vehicle #1 southbound on Rainier.

NE#4 trailed NE#1, who followed Vehicle #1. Named Employee #3 (NE#3) followed NE#4. Throughout the pursuit, vehicle speeds ranged from about 9 to 25 miles per hour in a 25 miles per hour zone.

After NE#1 approached Vehicle #1, NE#1 radioed Vehicle #1's license plate and advised that Vehicle #1 failed to stop. NE#4 radioed, "At this point, all I have is that it ran a red light." NE#1, NE#3, and NE#4 followed Vehicle #1 southbound along Rainier for almost two minutes. NE#1's emergency lights were activated, and occasionally his siren.

As Vehicle #1 approached the intersection of South Henderson and Rainier, NE#1 broadcasted that he believed Vehicle #1's driver (the Subject) was under the influence. Named Employee #2 (NE#2), with activated overhead lights, blocked traffic with his police cruiser at the intersection of South Henderson and Rainier. NE#2 repeatedly chirped his siren as Vehicle #1 approached. Vehicle #1 ran another red light at that intersection. NE#1, NE#3, and NE#4 also ran that red light following Vehicle #1. NE#2 made a U-turn to join the pursuit, trailing NE#4.

As Vehicle #1 traveled southbound on Rainier, NE#1 entered a center lane and pulled nearly parallel with Vehicle #1. NE#1 shined his spotlight on the Subject. The Subject made a hand gesture, apparently waving NE#1 to pass him. An unidentified supervisor radioed, asking about the pursuit's justification. Vehicle #1 ran another red light at the intersection of South Fisher Place. The named employees followed Vehicle #1 through that red light. NE#4 radioed that Vehicle #1 ran three red lights. NE#1 drove into oncoming (northbound) traffic lanes and through the intersection. NE#1 reentered the center/turning lane, following Vehicle #1. Shortly thereafter, NE#1 again entered an oncoming traffic lane to maneuver around a barrier in the center turn lane.



Vehicle #1 cut off NE#1's vehicle before traveling southbound in an oncoming (northbound) traffic lane. NE#1 radioed that he suspected the Subject was under the influence, drove into oncoming traffic and that NE#1 would be "backing off." Vehicle #1 entered a grocery store parking lot at the intersection of Rainier and 52nd Avenue South. Shortly thereafter, Vehicle #1 proceeded down 52nd Avenue South with NE#1 following and NE#2's SPD vehicle ahead with emergency lights activated. Vehicle #1 turned and ran over a sidewalk curb to avoid both SPD vehicles. NE#1 followed Vehicle #1 through the parking lot—updating dispatch that Vehicle #1 was driving only on rims—until Vehicle #1 returned to Rainier Avenue heading northbound. NE#1 followed Vehicle #1, pulling into oncoming (southbound) traffic at the intersection of Rainier and Fisher to keep pace.

As NE#1, traveling approximately 25 miles per hour, closed the distance with Vehicle #1, Supervisor #1—an SPD supervisor—radioed asking whether Vehicle #1 was being pursued solely for traffic violations. NE#4 responded, "Affirm and probably 450."¹ Twenty seconds later, Supervisor #1 ordered the Named Employees to terminate the pursuit and to follow Vehicle #1 without emergency lights and sirens and within the traffic laws. The named employees followed Vehicle #1 for another minute within the traffic laws² until the Subject exited and fled on foot. The Subject was apprehended a short time later and arrested.

The pursuit lasted about five and a half minutes, from when NE#1 activated his emergency lights to pull over Vehicle #1 until Supervisor #1 ordered the named employees to terminate.

b. Vehicle Pursuit Documentation

Each named employee uploaded a Vehicle Pursuit statement to Blue Team outlining their reasons for the pursuit.

NE#1 wrote that he "believed there was probable cause to arrest the driver for reckless driving and suspicion of DUI," and he "feared that if the driver was not stopped and apprehended, he would have continued driving in a manner that would have eventually cause a collision," possibly injuring or killing others. NE#1 believed that failing to apprehend the Subject outweighed the inherent risk of pursuit driving. NE#1 also wrote that he activated his emergency equipment to stop Vehicle #1 and "warn the other drivers on the roadway (Rainier Ave S) to the presence of the vehicle, again because it had no headlights activated."

NE#2, NE#3, and NE#4's statements raised similar safety concerns as NE#1's. NE#3 and NE#4 also noted that the pursuit never exceeded 25 miles per hour and that their emergency lights were intended to alert other drivers to Vehicle #1's dangerous driving, particularly when it did not have illuminated headlights.

Supervisor #2—the reviewing acting sergeant—noted, "Initially, this call was not a pursuit, but a community caretaking." Supervisor #2 wrote that the pursuit was justified under SPD policy due to "extenuating circumstances." Supervisor #2 also noted that the named employees followed Vehicle #1 at low speeds and that Vehicle #1 posed a significant public risk due to likely intoxication and driving without illuminated headlights. Supervisor #2 further

¹ "450" is an SPD radio code for driving under the influence.

² The sole exception was NE#1 running a stop sign at South Henderson Street and Seward Park Avenue South.



opined that the named employees were uncertain that the Subject knew of their presence or tried to evade the officers until Vehicle #1 ran over the sidewalk curb in the grocery parking lot, after which Supervisor #1 terminated the pursuit. Supervisor #2 concluded, “[t]he officer (sic) involved in this pursuit were facilitating a community care taking (sic) role until the suspect vehicle jumped the curb.”

Supervisor #3—the reviewing acting lieutenant—concluded that the situation never met the definition of a “pursuit” since the named employees believed the Subject was too impaired to realize that officers were attempting to pull him over. Supervisor #3 reasoned that the Subject—who never increased his speed—did not take “evasive” actions or “refuse” to stop, so he never “eluded” the officers. See SPD Policy 13.031-POL-1 (defining “eluding” and “pursuit”). Accordingly, since the Subject never “eluded,” Supervisor #3 stated there was never a “pursuit.” See *id.* Supervisor #3 also believed that the circumstances were unique and fell under the preface to the SPD Manual: “Deviation from these written standards may be acceptable on a case-by-case basis under the totality of the circumstances and must be reasonable.”

c. OPA Interviews

Overall, the named employees’ OPA interviews reflected their reasonings articulated in their vehicle pursuit statements.

NE#1 stated that he first perceived Vehicle #1 was driving outside the normal traffic patterns when Vehicle #1 jumped the sidewalk curb in the grocery parking lot. NE#1 also stated his belief that the Subject’s impairment was affecting his perception of events such that the Subject was unaware that police were stopping him. NE#1 believed the Subject was unaware he ran the red lights but intentionally tried to elude by jumping the sidewalk curb. NE#1 also noted that Vehicle #1’s low speed impacted his decision-making and would have disengaged if it exceeded 25 miles per hour. Instead, NE#1 felt that his actions of following Vehicle #1 served as much to alert other drivers as to apprehend the Subject. NE#1 admitted that he did not seek permission to continue the pursuit stating, “I didn’t get permission. And again, I didn’t ask because I honestly, at that point, I was like, juggling in my head, like, what do I have?” NE#1 acknowledged he did not have probable cause to arrest the Subject for a violent crime or sex offense but reiterated the significance of the public safety risk he perceived from the Subject. NE#1 admitted that he violated policy by trying to stop the Subject but said he did so to protect the public, apprehend the Subject, and alert others to the hazard posed by Vehicle #1.

NE#2 explained his decision to block the intersection of Rainier and Henderson as “trying to prevent a collision.” NE#2 said he did not block the intersection to apprehend the Subject or corner him but to alert other drivers to prevent a collision. NE#2 opined that the Subject was eluding when he ran the red light at Rainier and Henderson but was unsure if the Subject knew that officers were following him. NE#2 believed the officers conducted a public safety service rather than a vehicle pursuit. NE#2 suggested that the officers’ duty to protect the public was paramount, saying, “I feel that it was justified specifically because we needed to stop him because somebody was going to get hurt.”

NE#3 also stated that he believed Vehicle #1 first “eluded” when the vehicle drove over the sidewalk curb and that the Subject’s intoxication altered their awareness of the officers’ attempts to stop him. NE#3 admitted they did not have probable cause to arrest the Subject for a violent crime or sex offense. NE#3 highlighted the low speeds and reiterated that the officers’ lights and sirens alerted others to Vehicle #1’s presence.

NE#4 suggested that the officers never technically pursued Vehicle #1 because their “main goal” was “community caretaking” rather than apprehending the Subject. NE#4 said he believed the Subject began “eluding” when NE#1



pulled alongside Vehicle #1, and at that point, “it was probably clear that the guy saw us and knew we were there.” NE#4 stated, despite this, he did not believe a “pursuit” ever existed because his motivation was to alert other drivers to the presence of Vehicle #1, not to apprehend the Subject.

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 or a Sex [...]

The Complainant alleged that NE#1 engaged in an out-of-policy pursuit.

Officers may only engage in a vehicle pursuit when there is probable cause that an occupant committed a violent or sex offense. See SPD Policy 13.031-POL-4. Additionally, the following factors must exist: (1) the officer must have probable cause to believe the suspect poses a significant imminent threat of death or serious physical injury to others such that the risk of allowing the suspect to escape outweighs the risk of the pursuit, and (2) the officer received authorization to continue the pursuit from a supervisor. See *id.*

Here, the named employees lacked probable cause that the Subject committed a violent or sex offense. During their OPA interviews, they conceded that, at most, they had probable cause that the Subject drove under the influence or committed other traffic offenses.

Nevertheless, the named employees and their chain of command argued that the pursuit was justified for two reasons. First, the Subject did not “elude” the officers by increasing speed, taking “evasive” actions, or refusing to stop. See SPD Policy 13.031-POL-1 (“A pursuit exists when an officer, to keep pace with and/or immediately stop or apprehend *an eluding driver*, drives in a manner that is outside of normal traffic restrictions”) (emphasis added). Second, the named employees acted reasonably under unique circumstances to protect the public from danger. See SPD Manual Preface.

While OPA finds both arguments creative, it does not find them persuasive.

OPA appreciates that the words “in response,” “evasive,” and “refuses” in the definition of “eluding” imply some level of awareness of the “officer’s signal” on the part of the driver. This is logical because at least part of the justification behind the pursuit policy is to prevent the additional safety hazard caused by drivers who *try* to elude police. However, that is not the only risk the pursuit policy seeks to minimize. As noted in the policy, another concern is the “inherent risk of *pursuit driving*” (emphasis added), SPD Policy 13.031-POL-4. That is the additional risk officers create when driving outside normal traffic patterns—as the named employees did—to keep pace with an eluding driver. Moreover, OPA finds that, whatever level of awareness a driver must have to “elude,” the Subject crossed that threshold when NE#1 shone a spotlight in his face. The Subject indicated awareness by waving NE#1 to pass him. When the Subject “refused to stop,” he was eluding. When the named employees drove outside normal traffic restrictions to follow the Subject, that constituted a pursuit.

OPA also appreciates the public safety issue the named employees attempted to address. Due to either intoxication or reckless disregard for the safety of others, the Subject endangered himself and others. However, the pursuit policy does not allow officers to pursue every individual who poses a public safety risk. Instead, the pursuit policy notes the



“inherent risk of pursuit driving” and narrowly limits the circumstances when it is permissible. Nor does the pursuit policy contain a “community caretaking” exception. While OPA is sympathetic to NE#4’s argument that his “main goal” was community caretaking, the Named Employees still needed to drive outside normal traffic restrictions—such as by not stopping at red lights—to “keep pace” with the Subject. Also, however important the community caretaking aspect of this encounter was, OPA found that the named employees were also trying to stop or apprehend the Subject.

Overall, given the named employees’ threat levels assessments (including the Subject’s possible intoxication and driving without illuminated headlights and on deflated tires) and low speeds during the pursuit, OPA finds that there was a potential, but not a willful, violation of policy that did not amount to misconduct.

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

- **Training Referral:** The named employees’ chains of command should discuss OPA’s findings with them, review SPD Policy 13.031 with them, and provide retraining and counseling deemed appropriate. Retraining and counseling should emphasize the requirement for officers to have probable cause that a violent or sex offense exists before engaging in a vehicle pursuit. Additionally, both should emphasize that interim policy 13.031 POL 2(1) prohibits vehicle pursuits solely for DUI suspicion. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #2 - 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 or a Sex [...]

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #3 - 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 or a Sex [...]

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #4 - 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 or a Sex [...]

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained - Training Referral**