



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 12, 2024

FROM: DIRECTOR GINO BETTS, JR. 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0549

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 – Vehicle Eluding and Pursuits, 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities, 1. Sworn Employees May Not Pursue Unless the Following Requirements Have Been Met: (Effective May 19, 2023)	Not Sustained - Unfounded
# 2	13.030 – Emergency Vehicle Operations, 13.030-POL-5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained - Training Referral

Named Employee #2

Allegation(s):		Director's Findings
# 1	13.031 – Vehicle Eluding and Pursuits, 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities, 5. Sworn Employees Must Notify Communications of Pursuits (Effective May 19, 2023)	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.

EXECUTIVE SUMMARY:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) attempted to pull over Community Member #1 (CM#1) for driving a reportedly stolen vehicle. The Complainant alleged that NE#1 pursued CM#1 without authorization. It was also alleged that NE#1 failed to safely operate his patrol vehicle, and that NE#2 failed to broadcast their pursuit.

ADMINISTRATIVE NOTE:

On May 3, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On December 26, 2023, the Complainant—a lieutenant—submitted an OPA complaint. The Complainant wrote that the named employees operated a two-officer vehicle, with NE#1 as the driver and NE#2 as the passenger. The Complainant wrote that NE#1 followed, obeying traffic rules, a reportedly stolen vehicle for about five minutes and



then activated their lights and siren to initiate a traffic stop. The Complainant wrote that CM#1 drove normally for about five seconds and then accelerated into a dead-end driveway. The Complainant wrote that NE#1 accelerated, followed the reportedly stolen car for about four seconds, and stopped next to CM#1.

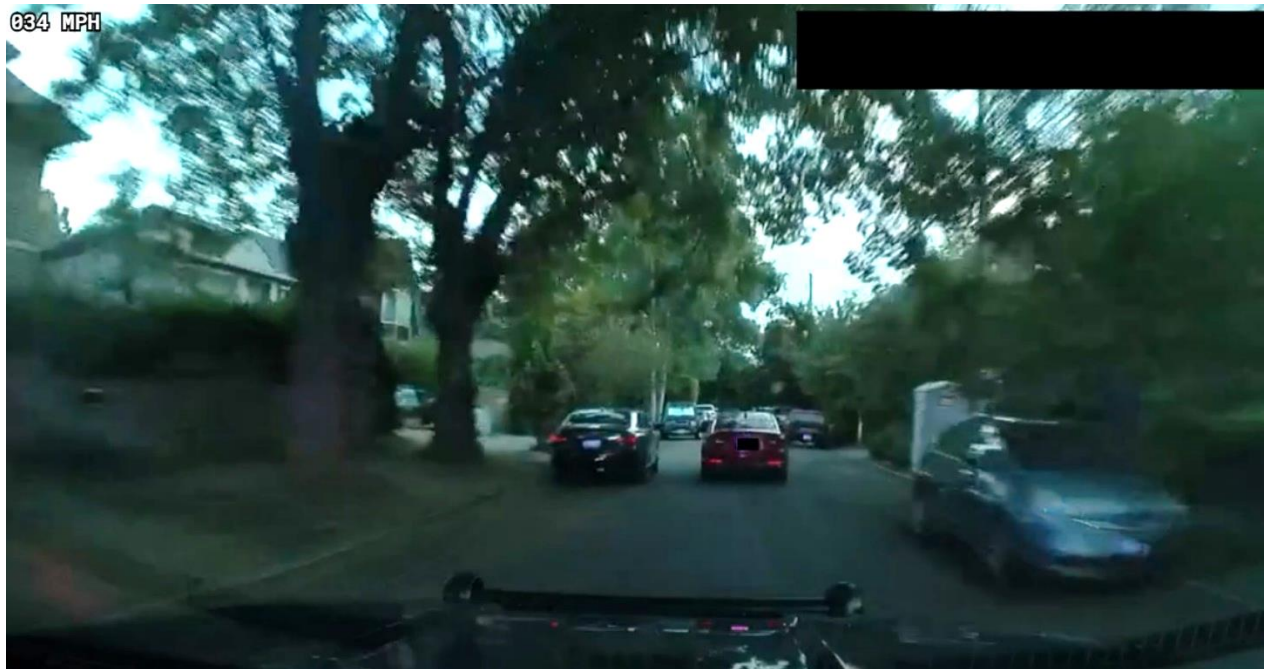
OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, in-car video (ICV), incident report, and vehicle pursuit report. OPA also interviewed the named employees.

B. Computer-Aided Dispatch (CAD) Call Report and In-Car Video (ICV)

On September 10, 2023, at 7:20 PM, CAD coded an automobile recovery.

ICV captured the following:

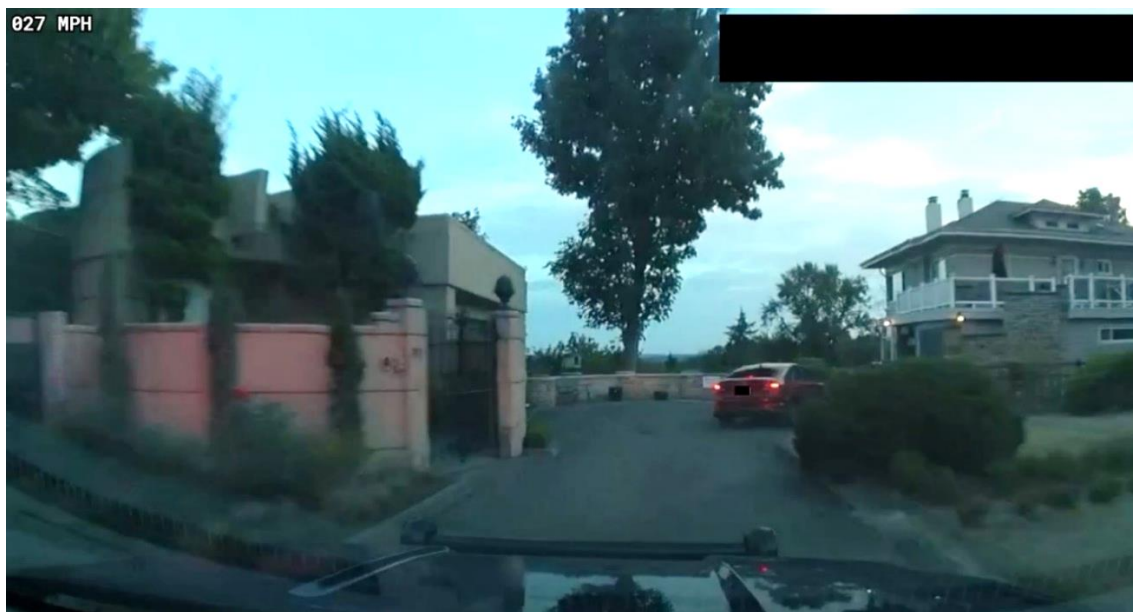
NE#1 followed CM#1 for over five minutes without activating his patrol vehicle's emergency equipment. CM#1 and NE#1 appeared to obey most traffic rules during that period.¹ At one point, CM#1 decelerated and waved for NE#1 to pass, but NE#1 did not. CM#1 reached a four-way intersection and then turned right. A second patrol vehicle was at that intersection. NE#1 turned right and followed CM#1. NE#2 announced, "He's gonna run." NE#1 stated, "It's a dead end." ICV recorded NE#1 traveling 34 MPH as NE#1 activated his emergency equipment.



ICV captured NE#1 activating his emergency equipment in a residential area

For about five seconds, CM#1 drove at a normal pace and then braked. For about four seconds, CM#1 accelerated, entered a dead-end driveway, and braked. NE#1 followed CM#1. ICV recorded NE#1's maximum speed at 37 MPH.

¹ ICV recorded NE#1 driving about 9 to 14 miles per hour above the speed limit and not fully stopping at two stop signs.



ICV captured CM#1 braking upon entering a dead-end driveway

NE#1 parked next to CM#1. The named employees exited the patrol vehicle and arrested CM#1.

C. Incident and Vehicle Pursuit Reports

NE#2's incident report documented that dispatch identified, after NE#2 ran its license plate, the pursued vehicle as an unverified stolen vehicle. NE#2 wrote that officers knew CM#1 approached a dead end, so officers activated their emergency equipment to instruct CM#1 to pull over. NE#2 wrote, "The suspect was observed increasing his speed to approximately 30 mph, and coming to an abrupt stop at [a dead-end driveway]."

NE#1's vehicle pursuit report documented that he "[did] not believe this was a pursuit." NE#1 wrote that CM#1 did not stop after NE#1 activated his emergency equipment but noted that people typically drive a few blocks before pulling over. NE#1 believed CM#1 never increased speed, made evasive maneuvers, or drove recklessly before stopping at the dead-end driveway.

D. OPA Interviews

1. Named Employee #1 (NE#1)

On April 12, 2024, OPA interviewed NE#1. NE#1 said he followed the suspect vehicle because it was reported stolen, and NE#1 needed a second patrol vehicle present before initiating a traffic stop. NE#1 said he questioned the vehicle's stolen status because CM#1 obeyed traffic rules and did not evade the officers. NE#1 believed he and CM#1 did not drive recklessly. NE#1 estimated CM#1 maintained a 30 to 35 MPH speed when NE#1 activated his emergency equipment. NE#1 believed CM#1 intended to pull over, noting that stolen vehicle drivers typically flee once officers follow them, even without their emergency equipment activated. NE#1 claimed he was prepared to stop following CM#1 if CM#1 drove evasively or recklessly. NE#1 described a limited decision-making timeframe, estimating he had



about three to four seconds to react before CM#1 stopped in the dead-end driveway. NE#1 denied “pursuing” CM#1, which is why he did not request permission to pursue CM#1.

2. Named Employee #2 (NE#2)

On April 12, 2024, OPA interviewed NE#2. NE#2 said CM#1 made no attempts to evade the police as they followed him. NE#2 said CM#1 continued driving and appeared to weave through traffic after NE#1 activated his emergency equipment. NE#2 said he was unsure whether CM#1 would flee or pull over after emergency equipment activation. NE#2 estimated having about 10 seconds to evaluate CM#1’s actions before CM#1 stopped in a dead-end driveway. NE#2 insisted that NE#1 did not “pursue” CM#1. NE#2 denied requesting permission to pursue CM#1 because he believed they would not pursue if CM#1 fled. NE#2 said he radioed updates—like traffic conditions, speed, and direction—while they followed CM#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

13.031 – Vehicle Eluding and Pursuits, 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities, 1. Sworn Employees May Not Pursue Unless the Following Requirements Have Been Met: (Effective May 19, 2023)

The Complainant alleged that NE#1 engaged in an unauthorized pursuit.

A pursuit is “an attempt by a uniformed peace officer in a vehicle equipped with emergency lights and a siren to stop a moving vehicle where the operator of the moving vehicle appears to be aware that the officer is signaling the operator to stop the vehicle, and the operator of the moving vehicle appears to be willfully resisting or ignoring the officer’s attempt to stop the vehicle by increasing vehicle speed, making evasive maneuvers, or operating the vehicle in a reckless manner that endangers the safety of the community or the officer (RCW 10.116.060).” SPD Interim Policy 13.031-POL-1 (effective May 19, 2023).

Sworn employees may not pursue unless the following requirements are met: (1) the pursuing sworn employee has completed an emergency vehicle operator’s course (EVOC), has completed an updated EVOC within the previous two years, and has been certified in at least one pursuit ending option; (2) there is probable cause to believe that a person in the vehicle has committed or is committing a violent offense or sex offense (RCW 9.94A.030); (3) 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; (4) the pursuing sworn employee has received authorization to continue the pursuit from a supervisor; and (5) a supervisor is actively monitoring and supervising the pursuit. SPD Interim Policy 13.031-POL-2(1) (effective May 19, 2023). A vehicle pursuit may not be initiated if these requirements are not met, and the pursuit must be terminated, unless circumstances change. *Id.* Sworn employees are prohibited from pursuing for the sole crimes of eluding, escape, or DUI. *Id.* Sworn employees will terminate a pursuit when the risk to any person outweighs the need to stop the eluding vehicle. *Id.*



This case concerns a fact pattern on the margins. About five seconds after NE#1 activated his emergency lights, CM#1 accelerated—for about four seconds—into a dead-end driveway.² The Complainant alleged NE#1 engaged in a pursuit because CM#1 appeared to willfully resist or ignore NE#1's attempt to stop him by increasing vehicle speed and, arguably, made evasive maneuvers. CM#1 stopped only because he was cornered in a dead-end driveway.

In his complaint, the Complainant argued that “pursuit,” as defined in RCW 10.116.060(5)—and the compliant SPD Policy—is dependent only on a suspect driver's actions. Said another way, the Complainant reasoned a pursuit would be established as soon as the suspect driver, reacting to the officer's emergency equipment activation, increased vehicle speed, made evasive maneuvers, or drove recklessly, even if that officer immediately stopped following the suspect driver. Not so.

OPA acknowledges that the RCW could be more clearly drafted, but a plain reading of the statute does not support the Complainant's interpretation that, “the current definition creates a pursuit anytime officers attempt to stop a vehicle and the vehicle flees.” Instead, both law and SPD policy define a pursuit as an attempt by an officer to stop a moving vehicle that appears to be willfully resisting or ignoring the officer's attempt to stop the vehicle by taking some kind of evasive action—increasing speed, evasive maneuvers, or recklessly operating the vehicle. Restated, the RCW appears to envision three stages to create a pursuit: (1) an officer attempts to stop a vehicle; (2) the vehicle's operator becomes aware of the attempt to stop them and eludes the officer by taking some kind of evasive action; and then (3) the officer attempts to stop the eluding vehicle. Contrary to the Complainant's interpretation, neither the RCW nor policy definition of “pursuit” is entirely “suspect actioned.” A pursuit is triggered by the officer's attempt to stop a vehicle that is already willfully resisting or ignoring the officer's prior attempts to stop the vehicle.

Additionally other provisions of the RCW and policy—though again, not perfectly drafted—suggest that there is some reasonable leeway for an officer to discontinue their prior attempt to stop a fleeing vehicle if the necessary conditions for a pursuit are not met. See RCW 10.116.060(3) (“A vehicle pursuit not meeting the requirements under this section must be terminated”); SPD Interim Policy 13.031-POL-2(1) (“A vehicle pursuit may not be initiated if all the requirements above are not met, *and the pursuit must be terminated*, unless circumstances change.”) (emphasis added). Finally, the Complainant's interpretation of the RCW—and the SPD policy based on the RCW—would lead to an absurd result: an officer's otherwise lawful attempt to stop a vehicle for an offense other than a violent offense or sex offense would instantly be unlawful the moment a suspect vehicle fled.³ Had the legislature intended to prohibit officers from even attempting to effect stops for all but the most serious offenses, it would have done so explicitly. Even if a plain reading of the RCW were ambiguous—which it is not—Washington courts generally “avoid literal reading[s] of a statute which would result in unlikely, absurd, or strained consequences.” *Fraternal Order of Eagles v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239 (Wash. 2002). “The spirit or purpose of an enactment should prevail over ... express but inept wording.” *Id.* (citations omitted).

Under these specific facts, a pursuit did not occur. Here, once CM#1 accelerated towards the dead-end driveway, NE#1 only had about four seconds to react before CM#1 came to a complete stop. There was insufficient time for

² During the roughly five minutes NE#1 followed CM#1, NE#1 was not engaged in a pursuit. NE#1 did not signal CM#1 to stop, nor did CM#1 increase vehicle speed, make evasive maneuvers, or drive recklessly. CM#1 appeared to exceed the speed limit, but otherwise complied with traffic rules during this period. During the roughly five seconds immediately after NE#1 activated his emergency equipment, NE#1 was not engaged in a pursuit since CM#1 maintained his speed and braked.

³ Further complicating this analysis, Initiative 2113.SL (effective June 6, 2024) revised the RCW to expand the permissible circumstances for an officer to engaged in a vehicle pursuit but left the definition of a “vehicular pursuit” unchanged. SPD's pursuit policy has not since been revised.



NE#1 to react. Moreover, NE#1 had no alternate routes due to the parked vehicles on the street. CM#1 was immediately ahead of NE#1 and a second patrol vehicle was behind NE#1. Under these circumstances, it would not have been possible for NE#1 to immediately disengage, especially since NE#1 knew that CM#1 was cornered on a dead end. In short, NE#1 did not engage in a “pursuit” because he did not have the opportunity to “attempt” to stop CM#1 after CM#1 appeared to willfully resist or ignore NE#1’s initial order to stop.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #2

13.030 – Emergency Vehicle Operations, 13.030-POL-5. Officers Are Responsible for the Safe Operation of Their Police Vehicle

It was alleged that NE#1 failed to safely operate his patrol vehicle.

Officers are responsible for safely operating their police vehicles. SPD Policy 13.030-POL-5. Officers must drive with due regard for everyone’s safety. *Id.* Officers will drive no faster than reasonably necessary to safely arrive at the scene. *Id.*

NE#1 followed CM#1 for over five minutes. During that period, ICV captured NE#1 driving at the following speeds: 29 MPH in a 20 MPH zone, 35 MPH in a 25 MPH zone, 39 MPH in a 25 MPH zone, and 34 MPH in a 20 MPH zone. NE#1 also failed to completely stop at two different stop signs. Ultimately, NE#1’s speeding and driving through a stop sign would be, at most, traffic infractions. See SPD Policy 5.002-POL-5(c) (defining traffic infractions as minor policy violations). As NE#1 does not have prior sustained allegations related the operation of his vehicle, OPA determined that this matter is best addressed by through a training referral.

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

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 13.030-POL-5 with NE#1, and provide any further retraining and counseling deemed appropriate. The 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 and Pursuits, 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities, 5. Sworn Employees Must Notify Communications of Pursuits (Effective May 19, 2023)

It was alleged that NE#2 failed to broadcast that he and NE#1 initiated a pursuit.

The primary pursuing unit will immediately advise Communications when initiating a pursuit and will update relevant details, including the reason for the pursuit, location, direction, description of the suspect vehicle and suspect, speed, and traffic conditions (pedestrians and vehicles). SPD Interim Policy 13.031-POL-2(5) (effective May 19, 2023). The



secondary unit, after joining the pursuit, unit will, if feasible, assume responsibility for all radio transmissions from the primary unit. *Id.*

As articulated in Named Employee #1 – Allegation #1, a pursuit did not occur under these specific facts because there was no opportunity to attempt to stop CM#1 after he fled but before he stopped, about four seconds later. Also, it would have been impossible for NE#2 to broadcast relevant details during this four-second window. However, NE#2 said he radioed relevant updates while NE#1 followed CM#1 for about five minutes before emergency equipment activation.

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

Recommended Finding: **Not Sustained - Unfounded**