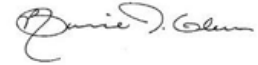

Issued Date: MAY 23, 2024

From: Deputy Director Bonnie Glenn on Behalf Of Director Gino Betts, Jr.
Office of Police Accountability



Case Number: 2024OPA-0044

Allegations of Misconduct & Director's Findings

Named Employee #1

- 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
Finding: Sustained
 - 2. Allegation #2:** 13.031 - Vehicle Eluding and Pursuits, 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities, 4. Sworn Employees in Pursuits Will Activate Emergency Lights...
Finding: Sustained
- Imposed Discipline:** Written Reprimand

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Executive Summary:

Named Employee #1 (NE#1) and officers responded to a stolen vehicle incident at a Jack in the Box. The suspect driver reversed, striking NE#1's patrol vehicle, then fled. The Complainant alleged that NE#1 pursued the suspect vehicle without authorization, driving above the speed limit and through a solid red light. The Complainant also alleged that NE#1 pursued the suspect vehicle without activating his patrol vehicle's emergency equipment.

Administrative Note:

On April 25, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

On January 20, 2024, Witness Supervisor #1 (WS#1)—a sergeant—filed an OPA complaint. WS#1 wrote that a reportedly stolen vehicle reversed and struck NE#1's patrol vehicle, then fled. WS#1 wrote that NE#1 believed his patrol vehicle was "rammed," pursued the suspect vehicle, accelerated over the posted 25 MPH speed limit, and drove through a solid red light. WS#1 wrote

that NE#1 terminated the pursuit after his request to pursue was denied. WS#1 wrote that NE#1 pursued the suspect vehicle without activating his patrol vehicle's emergency equipment.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, incident report, in-car video (ICV), supplement report, employee-involved collision report, and training records. OPA also interviewed NE#1.

Computer-Aided Dispatch Call Report

On November 13, 2023, at 11:31 AM, CAD call remarks noted, "[REPORTING PARTY'S] VEH[ICLE] TAKEN FROM IN FRONT OF HIS HOUSE APPROX[IMATELY] 5-10 MIN[UTE]S AGO LEFT [NORTHBOUND] ON 33 AV[ENUE] S[OUTH] AT HIGH SPEEDS."

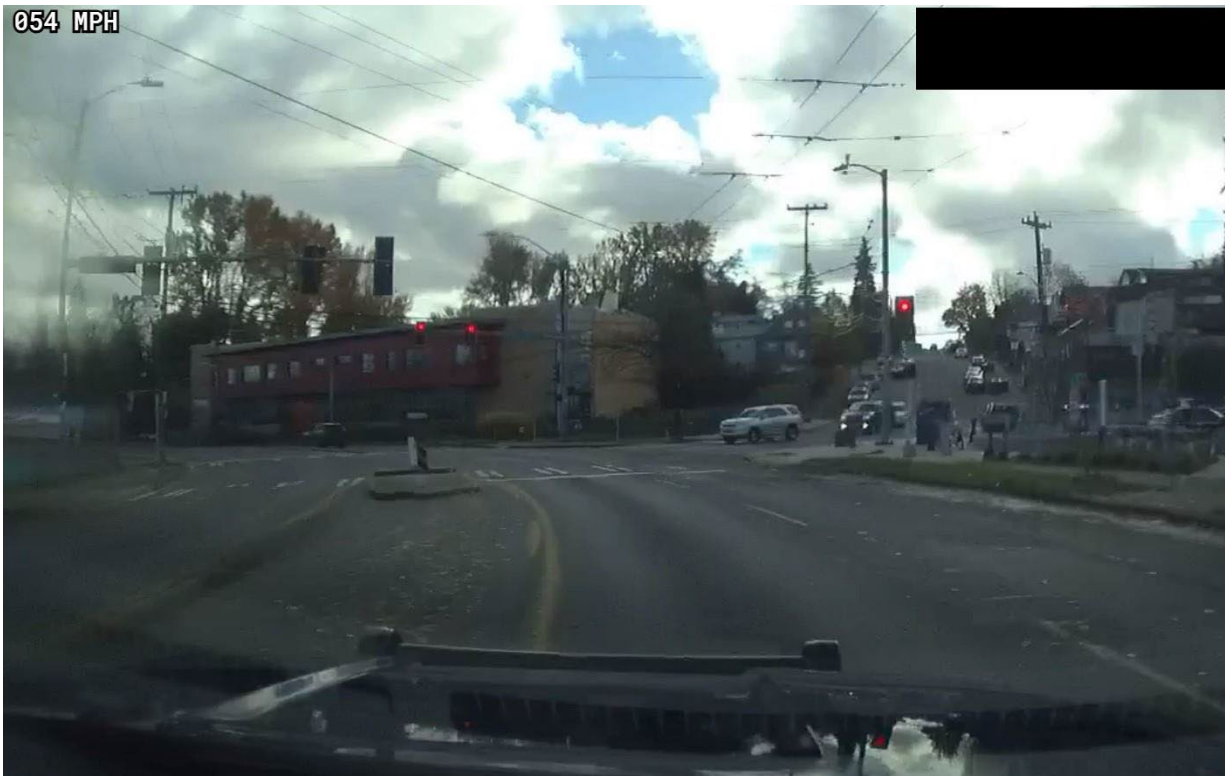
Incident Report

Witness Officer #1's (WO#1) incident report documented that the reporting party gave officers access to his insurance account, which had vehicle tracking capabilities. WO#1 wrote that the reporting party's vehicle was tracked to a Jack in the Box.

In-Car Video

NE#1's ICV captured the following:

NE#1's patrol vehicle slowly approached a Jack in the Box as the suspect vehicle reversed over a sidewalk and struck the front passenger side of NE#1's patrol vehicle. The suspect vehicle accelerated straight. NE#1 pursued, driving through a green light. At the next intersection, the suspect vehicle drove through a red light. ICV recorded NE#1's speed at 54 MPH before NE#1 drove through the red light, depicted below.



NE#1's ICV captured NE#1 driving 54 MPH before passing a solid red light. Vehicles to NE#1's right remained still.

The suspect vehicle accelerated straight, increasing its distance from NE#1. NE#1 followed. ICV recorded NE#1's speed at 75 MPH—the maximum speed recorded—as NE#1 accelerated straight. Seconds later, NE#1 decelerated, radioed a discontinuing confirmation, and entered a parking lot. NE#1 decelerated because a supervisor denied NE#1's request to pursue the suspect vehicle. NE#1's request was not captured on NE#1's ICV due to a standard buffering period. NE#1 exited his patrol vehicle to inspect the front damage.

Other officers' ICV captured NE#1 pursuing the suspect vehicle without his patrol car's emergency equipment activated.

Named Employee #1's Supplement Report

NE#1's supplement report was consistent with the events captured on ICV. NE#1 wrote that the suspect vehicle "continued reversing recklessly" from the Jack in the Box parking lot. NE#1 also wrote, "After ramming my vehicle, he then drove away at a high rate of speed."

Employee-Involved Collision Report

Witness Supervisor #2 (WS#2)—a sergeant—wrote an employee-involved collision report. WS#2 wrote that officers coordinated a containment plan to arrest the occupants in the suspect vehicle, but the driver quickly reversed and struck NE#1's patrol vehicle. WS#2 wrote that NE#1 radioed that the suspect vehicle rammed his patrol vehicle. WS#2 wrote that he denied NE#1's request to pursue the suspect vehicle because of "the nature of the crime" and "electronic tracking for the stolen vehicle was still available." WS#2 wrote that officers tracked the suspect vehicle to Renton where it was found unoccupied.

Named Employee #1's Interview

On March 29, 2024, OPA interviewed NE#1. NE#1 characterized the collision as an assault in the third degree (assault 3) because the suspect driver intentionally struck his patrol vehicle. A person is guilty of assault in the third degree if the person, under circumstances not amounting to assault in the first or second degree, assaults a law enforcement officer who was performing his or her official duties at the time of the assault. RCW 9A.36.031(1)(g). NE#1 believed this crime permitted a pursuit, saying the suspect driver posed an imminent threat to officers and the public since he was willing to use a stolen vehicle as a weapon. NE#1 said the suspect driver was aware that the police tried to stop him. NE#1 said he followed the suspect vehicle, believing his request to pursue would be granted. NE#1 said he tried to initiate a "pursuit" but denied pursuing the suspect vehicle, saying he only followed the suspect vehicle in case a pursuit was authorized. NE#1 characterized his driving as an attempt to "keep up" with the suspect vehicle. NE#1 said he drove through the red light because "traffic was probably clear." NE#1 did not recall how fast he was driving, saying he was preparing to initiate a pursuit. NE#1 also did not recall whether his patrol vehicle's emergency equipment was activated, though he acknowledged he may have forgotten to activate it.

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 pursued the suspect vehicle without authorization.

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.*

Here, the suspect driver was aware that officers tried to stop him and willfully resisted their attempts. ICV captured the suspect driver “increasing vehicle speed” and “making evasive maneuvers” to avoid NE#1 and other officers. Additionally, ICV captured the suspect driver “operating the vehicle in a reckless manner” when he drove over a sidewalk, struck NE#1’s patrol vehicle, and sped through a solid red light. The circumstances indicate NE#1 engaged in a pursuit to stop the suspect vehicle before WS#2 ordered him to terminate that pursuit.

NE#1 was not permitted to pursue under the circumstances. First, NE#1’s training record did not reflect that he completed an updated EVOC within the prior two years. Second, NE#1 lacked probable cause to believe the suspect driver committed a violent offense or sex offense, as defined in RCW 9.94A.030. NE#1 cited assault 3 as justification for the pursuit, but assault 3 is not included in the definition of violent offense. See RCW 9.94A.030(58). Third, the suspect driver, under investigation for stealing a vehicle, did not pose a “significant imminent threat of death or serious physical injury to others.” WS#2 reached the same conclusion, denying NE#1’s

request to pursue the suspect driver because of “the nature of the crime” and “electronic tracking for the stolen vehicle was still available.” Finally, NE#1 received no supervisory authorization for his brief pursuit, and no supervisor actively monitored and supervised that pursuit. Because these requirements for pursuing were not met, NE#1 was not permitted to initiate a vehicular pursuit.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #2

13.031 – Vehicle Eluding and Pursuits, 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities, 4. Sworn Employees in Pursuits Will Activate Emergency Lights and Will Use Their Sirens Continuously to Warn Others of the Emergency Nature of the Situation (Effective May 19, 2023)

The Complainant alleged that NE#1 pursued the suspect vehicle without activating his patrol vehicle’s emergency equipment.

Sworn employees in pursuits will activate emergency lights and use their sirens continuously to warn others of the emergency nature of the situation. SPD Interim Policy 13.031-POL-2(4) (effective May 19, 2023).

As articulated in Named Employee #1 – Allegation #1, NE#1 engaged in a brief pursuit. However, NE#1 failed to recall whether he activated his patrol vehicle’s emergency equipment but acknowledged he may have forgotten to activate it. ICV from other officers’ patrol vehicles corroborated NE#1’s account, capturing NE#1 pursuing the suspect vehicle without activating any emergency equipment. ICV captured NE#1 speeding up to 75 MPH in a 25 MPH zone, driving through a solid red light, and making evasive maneuvers. NE#1 failed to activate his emergency lights and sirens continuously, as he was required, to warn others of the emergency nature of the situation.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**