



## CLOSED CASE SUMMARY

ISSUED DATE:      SEPTEMBER 19, 2019

CASE NUMBER:     2019OPA-0231

### 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 Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Lawful and Proper)
# 2	13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained (Training Referral)
# 3	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)
# 4	15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate	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 Employee may have engaged in an out of policy pursuit, that he failed to terminate the pursuit when required, that he did not fully and completely notify Communications of the pursuit, and that his report was not complete and thorough.

#### ANALYSIS AND CONCLUSIONS:

##### **Named Employee #1 - Allegations #1**

##### ***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

Named Employee #1 (NE#1) reported that he was on a routine patrol when he observed a vehicle traveling towards him. NE#1 noted that this car was driving slowly and that, once the driver of the car appeared to observe him, the car “rapidly accelerated to a high rate of speed.” NE#1 also determined that the car did not have license plates. NE#1 turned around to follow the car, activating his emergency lights and siren in an attempt to effectuate a traffic stop. NE#1 wrote that the car entered Highway 99 and drove quickly for a period of time. NE#1 documented that, when the car slowed, he was able to pull behind the car. NE#1 believed that, at this time, the driver could reasonably see his patrol vehicle’s emergency equipment. The car again sped up and, in NE#1’s description, began weaving. NE#1 recounted that this, along with the driver’s continuing to speed up and slow down and the driver’s



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decision to not stop, made him believe that the driver could possibly be impaired. NE#1 stated that his supervisor was monitoring the pursuit at that time.

NE#1 documented that the driver turned left onto another road and started driving north in the southbound lanes. NE#1 followed and described that the driver passed two oncoming vehicles. NE#1 stated that there were no other vehicles in the vicinity. NE#1 documented that, at this time, he was driving approximately 75 miles per hour. NE#1 stated that he and the driver turned onto the First Avenue Bridge. NE#1 wrote that there was not a high volume of traffic on the road but that this increased as the driver neared downtown Seattle. NE#1 stated that, given the frequent intersections and the driver's continued high rate of speed, the car began to amass distance from NE#1's patrol vehicle. At 04:14 hours, approximately six minutes after NE#1 first spotted the car, NE#1 recounted that he terminated the pursuit based on an order from his supervisor that he do so. NE#1 explained that he highest speed he recalled reaching was 85 miles per hour; however, he noted that he was not monitoring his speedometer during the entirety of the pursuit.

The pursuit was later reviewed by NE#1's chain of command. His Sergeant, Lieutenant, and Captain approved the pursuit as being within policy, but all noted concerns that, at times, the risk of the pursuit may have outweighed the need to take the driver into custody. NE#1 was counseled and retrained by his chain of command and this was documented in a PAS entry. The Assistant Chief of Patrol performed the final review of the pursuit. While the Assistant Chief found that the pursuit was initially justified, he believed that NE#1's failure to terminate the pursuit when the risk outweighed the need to apprehend the driver, failure to immediately notify a supervisor at the time he engaged in the pursuit, and the failure to accurately relay what was happening during the pursuit were inconsistent with policy. As such, the Assistant Chief referred this matter to OPA, and this investigation ensued.

As part of its investigation, OPA reviewed the documentation concerning the pursuit, as well as the video. OPA additionally interviewed NE#1. At his interview, NE#1 reiterated his belief that the driver was potentially DUI and that this provided a justification for the pursuit. He recognized that, absent this belief, he would not have been allowed to pursue under policy. He asserted that, at the time he initiated the pursuit (which he asserted was at approximately 04:07:36 hours (the 02:01 mark of NE#1's In-Car Video)). NE#1 contended that, when he began pursuing, the risk of engaging in the pursuit did not outweigh the need to apprehend the driver, who he reasonably believed was impaired. In this regard, NE#1 told OPA the following:

At the time, based on the traffic conditions, I believe that the risk did not outweigh the pursuit, because there was little to no traffic on the road...The lighting conditions, the streets were well lit, the weather, it wasn't raining. We were in a part of town, that doesn't get a lot of traffic, or pedestrians. Not a residential neighborhood. A bunch of closed businesses.

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. This policy directs that, among the crimes for which a pursuit is impermissible, are gross misdemeanors and misdemeanors. (SPD Policy 13.031-POL-4.) However, the policy exempts DUIs from this restriction and instructs that, when engaging in a pursuit for this crime, officers must "adhere to the restrictions in this policy." (*Id.*)



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Based on OPA's review of video, OPA finds that whether or not the pursuit was justified at its inception is a close call. From an analysis of the video, it does not necessarily appear that the driver of the subject car was intoxicated as it is equally possible that the car was driving as it did in order to avoid being stopped. However, NE#1 provided a convincing explanation for why he believed the driver to be DUI and why he felt the pursuit to be warranted even when evaluating the risks both in his reports and at his OPA interview. OPA believes that, even if this determination by NE#1 was not ultimately supported by the facts, it was made by NE#1 in good faith. OPA is further sensitive to the fact that NE#1's determination that the driver was potentially DUI and his decision to engage in the pursuit were made in moments, while OPA's evaluation is conducted with the benefit of time. However, as discussed in another recent case – 2019OPA-0280 – OPA is concerned that, given the expansion of the policy to permit pursuits for DUIs, it opens the door for officers to justify otherwise prohibited pursuits by describing drivers as potentially DUI. OPA articulated these same concerns when this policy change was first made and remains worried that allowing pursuits for possible DUIs could conceivably create an exception to the policy that subsumes the rule. As discussed in 2019OPA-0280, OPA will be continuing to monitor such pursuits and whether or not whether the policy needs to be modified to ensure potential negative consequences of the DUI exception.

The above being said, in the meantime and when applying the elements of the current policy to the facts of this case, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

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

***13.031 - Vehicle Eluding/Pursuits 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 states that: "Officers will cease [a] pursuit when the risk of pursuit driving outweighs the need to stop the eluding driver." In making this determination, officers are expected to evaluate multiple factors including: the underlying reason for the pursuit; the location of the pursuit; the officer's speed and the speed and operation of the eluding vehicle; and the traffic conditions and presence of pedestrians and other vehicles. (SPD Policy 13.031-POL-5.)

Even if the pursuit, itself, was justified, NE#1 acted contrary to policy when he failed to cease the pursuit after it began to pose an unreasonable risk of harm to others that outweighed the need to stop the driver. When evaluating the relevant factors set forth in this policy, OPA believes that each one weighed in favor of terminating the pursuit.

First, the underlying reason for the pursuit, a potential DUI, did not justify continuing the pursuit in light of the other factors. It was not a crime of violence, the subject car was not connected to another serious crime, and the evidence that the driver was actually DUI was uncertain. Second, during significant portions of the pursuit, the driver weaved in and out of traffic, drove at extremely high speeds, and drove into the lanes of oncoming traffic, often for sustained periods of time. While NE#1 asserted in his report that there was minimal traffic on the road, the video depicted multiple other motorists, including a number who drove straight for the driver and NE#1.

All of the above factors weigh in favor of a finding that, as the pursuit developed, the risk of potential harm outweighed the need to stop the driver of the subject car. As such, when the danger of the pursuit continued to rise, NE#1 should have terminated and, when he did not, he acted contrary to policy.



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However, as discussed in the context of Allegation #1, I note that NE#1 is a young officer who was trying to do the right thing during this incident. As such, OPA believes that retraining would be more impactful than discipline. OPA accordingly recommends that this allegation be Not Sustained and issues the below Training Referral.

- **Training Referral:** NE#1's chain of command should debrief this incident with him. This debrief should include retraining on SPD Policies 13.031-POL-7, 13.030-POL-5, and 15.180-POL-5. NE#1 should be counseled to ensure compliance in the future with these policies and the other policies concerning pursuits and emergency driving. To the extent these matters have already been fully covered by NE#1's chain of command, no further retraining or counseling is necessary. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

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

***13.031 - Vehicle Eluding/Pursuits - 7. Officers Must Notify Communications of Pursuits***

SPD Policy 13.031-POL-7 requires that officers immediately notify communications of pursuits and specifies the information that must be provided. This information includes the following: reason for pursuit; location; direction; description of suspect vehicle and suspect(s); speed; and traffic conditions (pedestrians and vehicles). (SPD Policy 13.031-POL-7.)

As identified by the Assistant Chief, NE#1 did not provide an immediate notification of the pursuit. Indeed, he did not first go over the radio until around one minute after the pursuit commenced. NE#1 articulated that this was due, at least in part, to heavy radio traffic regarding another ongoing incident. Moreover, while NE#1 provided much of the information required by policy, he did not give detailed updates concerning the vehicle traffic on the road or ongoing updates as to his and the driver's speed.

Given the above, NE#1's updates to the radio did not meet the level and quality of information contemplated by the policy. Moreover, his initial notification was also not immediate as the policy requires. This being said, OPA recognizes that this was not a case where NE#1 provided absolutely no information and that this incident was fast evolving. Lastly, OPA notes that NE#1 is a relatively new officer and this influences OPA's determination that the failure to provide timely and sufficiently complete information was a mistake rather than intentional misconduct. For these reasons, OPA recommends that this allegation be Not Sustained and refers to the Training Referral set forth in Allegation #2, above.



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

**Named Employee #1 - Allegations #4**

***15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate***

SPD Policy 15.180-POL-5 states that reports generated by SPD officers must be complete, thorough, and accurate.

There were several errors and omissions in NE#1's report. Most notably, NE#1 understated the number of vehicles that were on the road when both the driver and NE#1 were driving in the opposite lanes and facing oncoming traffic. Similarly, NE#1 did not sufficiently describe the duration of time in which he and the subject driver drove at high speeds in the opposite lanes and the specific manner in which they both operated their vehicles.

While the report had the above shortcomings, OPA finds that it was otherwise complete and accurate. As such, OPA believes that retraining rather than discipline is the appropriate disposition for this case. For this reason, I recommend that this allegation be Not Sustained and refer to the Training Referral set forth in Allegation #2, above.

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