



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0214

Issued Date: 10/04/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (2) Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #3	<u>Seattle Police Department Manual</u> 13.031 (6) Vehicle Eluding/Pursuits: Officers Must Notify Communications of Pursuits (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #4	<u>Seattle Police Department Manual</u> 13.031 (18) Vehicle Eluding/Pursuits: All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

<b>Named Employee #2</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 13.031 (2) Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #3	<u>Seattle Police Department Manual</u> 13.031 (6) Vehicle Eluding/Pursuits: Officers Must Notify Communications of Pursuits (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #4	<u>Seattle Police Department Manual</u> 13.031 (9) Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Management Action)
Allegation #5	<u>Seattle Police Department Manual</u> 13.031 (18) Vehicle Eluding/Pursuits: All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry (Policy that was issued 01/01/2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employees were involved in a vehicle pursuit.

### **COMPLAINT**

The complainant alleged that the Named Employees initiated and maintained a pursuit that was outside of policy.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of anonymous complaint
2. Review of In-Car Video (ICV)
3. Search for and review of all relevant records and other evidence
4. Interviews of witnesses
5. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

Named Employee #1 and Named Employee #2 were in an unmarked SPD vehicle and on-viewed a vehicle drive through a red light. The Named Employees followed the vehicle in order to obtain a license plate. This included following the vehicle onto I-5. The Named Employees continued to follow the vehicle as it exited I-5. Named Employee #1 did not activate the emergency equipment (lights and siren) on the unmarked SPD vehicle he was driving until after taking an exit from I-5. At that point the vehicle he had been following (subject vehicle) was stopped in traffic and, when Named Employee #1 activated the emergency lights, it immediately pulled over onto the shoulder. Both Named Employee #1 and Named Employee #2 made it clear in their interviews that, prior to the freeway exit; they made no attempt to pull over the subject vehicle and were never engaged in a pursuit. This is supported by the testimony of the driver and two passengers in the subject vehicle. None of them knew the black unmarked SUV behind them was a police car; none of them saw emergency lights (until the Northgate exit) or heard a siren from the black SUV; and none of them thought they were in a police pursuit. They only knew that the people in the black SUV were following them for some unknown reason after the subject vehicle went through a red light in Seattle. The driver and occupants in the subject vehicle were apprehensive and concerned the people following them may be engaging in an act of "road rage."

SPD Policy §13.031(1) defines a pursuit as, "when an officer, operating an authorized police vehicle with emergency lights and siren activated, proceeds in an effort to keep pace with and/or immediately apprehend an eluding driver." While Named Employee #1 was driving an authorized police vehicle equipped with emergency lights and a siren and attempting to keep pace with the subject vehicle, he was not engaged in a pursuit as defined by SPD policy because he did not activate the emergency lights and siren of the unmarked police vehicle he was driving. However, in nearly every other aspect this incident was similar to a pursuit. By his own admission and according to the testimony of Named Employee #2 and the three adults in the subject vehicle, Named Employee #1 was attempting to keep pace with the subject vehicle by increasing and decreasing his speed on I-5, changing lanes to keep the subject vehicle in sight, following the subject vehicle off and then back onto the interstate, and following the subject vehicle through a series of turns on surface streets.

The SPD policy definition of a pursuit also speaks of an eluding driver. SPD Policy §13.031(1) defines eluding in the following manner:

*For the purposes of this section, eluding exists when an officer operating an authorized police vehicle issues by hand, voice, emergency lights or siren a visual and/or audible signal to the driver of a vehicle to stop and, after a reasonable time to yield in response to the officer's signal, the driver does any of the following:*

- *Increases speed*
- *Takes evasive actions*
- *Refuses to stop*

While the driver of the subject vehicle was not eluding, as defined above, because neither Named Employee #1 nor Named Employee #2 issued any "visual and/or audible signal" to the driver of the subject vehicle that he was to stop, the effect was the same. The more Named Employee #1 attempted to keep the subject vehicle in view, the more the driver of the subject vehicle tried to get away. Clearly, the driver of the subject vehicle was trying to get away from the vehicle being driven by Named Employee #1. As a result of the actions of both drivers, they and the driving public around them were put at increased risk.

The application of sound judgment and calculated risk analysis lies at the heart of SPD's pursuit policy. The Department has rightly decided the heightened risks associated with a pursuit outweigh the potential benefits in all but the most serious of situations. In particular, SPD Policy §13.031(3) prohibits officers from engaging in a pursuit for traffic violations (among other things). SPD Policy §13.031(2), one of the policy sections Named Employee #1 is alleged to have violated, states, "Officers engaged in a pursuit shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren." While this incident was not technically a pursuit, Named Employee #1 assumed some of the risks of a pursuit as a result of his own decisions and driving behavior. Named Employee #1 would benefit from refresher training to help him apply the spirit and intent of the Department's pursuit policy in a manner consistent with his current assignment.

This incident did not meet the definition of a pursuit. The preponderance of the evidence shows that Named Employee #1 did not violate SPD Policy §13.031(3). The preponderance of the evidence shows that Named Employee #1 did not violate SPD Policy §13.031(6). In addition, it should be noted that Named Employee #1, who was the one using the police radio, never said he was in a pursuit. It was a dispatcher who first used that term in answering a question from an on-duty Patrol sergeant. Named Employee #1 asked the operator of the data channel to run the subject vehicle's license plate and then requested a marked police car from a precinct to make a traffic stop on the subject vehicle. Throughout the incident, Named Employee #1 provided the dispatcher with frequent updates over the radio as to his location and direction of travel. The preponderance of the evidence shows that Named Employee #1 was not required to complete a Blue Team Vehicle Pursuit Entry.

Named Employee #2 was the highest ranking supervisor aware of this incident as it was in progress. Had the incident been a pursuit as defined in SPD policy, that same policy would have required the designation of a controlling supervisor to assume command and responsibility for the pursuit. In such an instance, the prudent course of action might have been for Named Employee #2 to delegate command of the pursuit to an on-duty precinct sergeant or lieutenant. This would have been advisable for two reasons: (1) Named Employee #2 has no recent experience commanding a pursuit with the SPD and (2) Named Employee #2, as a passenger in the lead vehicle (had this actually been a pursuit), was too involved in the incident to have the broad situational awareness and objectivity necessary to be an effective incident commander.

While this incident did not meet the definition of a pursuit found in SPD Policy §13.031(1), it does raise concerns regarding the practical application of SPD's pursuit policy, concerns which have arisen in previous OPA reviews of similar incidents. Specifically, the requirements and limitations of pursuits can easily be avoided simply by not activating the emergency lights and siren on the police car. It is possible for an officer to follow a suspect vehicle for a minor traffic violation, civil infraction or non-violent property crime in such a way that the attendant risks of a pursuit are present without the officer's actions being subject to potential sanction under the Department's pursuit policy (other policies address the safe operation of police vehicles, but are not as clear-cut or restrictive as the pursuit policy). In the interest of both public safety and officer safety, SPD pursuit policy and training must be amended so it is clear to officers that "pursuing" a vehicle without activating emergency lights and siren will be subject to the same rules and restrictions had the emergency equipment been activated. The OPA Director has written a Management Action Recommendation letter to the Chief of Police on this subject.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

The evidence shows that Named Employee #1 would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment*.

**Required Training:** Named Employee #1 should receive appropriate training and counseling to gain a clear understanding of the purpose, intent and specific elements of the SPD pursuit policy. In particular, Named Employee #1 should gain the practical ability to apply the risk management purpose of the SPD pursuit policy to his specific assignment.

#### **Allegation #2**

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification*.

#### **Allegation #3**

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: Officers Must Notify Communications of Pursuits*.

#### Allegation #4

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry*.

#### Named Employee #2

##### Allegation #1

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment*.

##### Allegation #2

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification*.

##### Allegation #3

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: Officers Must Notify Communications of Pursuits*.

##### Allegation #4

While this incident did not meet the definition of a pursuit, in the interest of both public safety and officer safety, SPD pursuit policy and training must be amended so it is clear to officers that "pursuing" a vehicle without activating emergency lights and siren will be subject to the same rules and restrictions had the emergency equipment been activated. Therefore a finding of **Not Sustained** (Management Action) was issued for *Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit*.

##### Allegation #5

The evidence shows that this incident did not meet the definition of a pursuit. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Vehicle Eluding/Pursuits: All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*



September 21, 2016

Chief Kathleen M. O'Toole  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2016OPA-0214)

Dear Chief O'Toole:

The Office of Professional Accountability (OPA) recently concluded an investigation into a complaint that Seattle Police Department (SPD) officers engaged in a pursuit of a red light violator in violation of SPD policy. While the evidence from the OPA investigation clearly demonstrated that no pursuit took place, as defined by SPD Policy §13.031(1), it did raise a concern regarding the practical application of SPD's pursuit policy, a concern which has arisen in previous OPA reviews of similar incidents.

SPD policy rightly places clear limitations on the use of pursuits. The application of sound judgment and calculated risk analysis lies at the heart of SPD's pursuit policy. The Department wisely decided the heightened risks associated with a pursuit outweigh the potential benefits in all but the most serious of situations. In particular, SPD Policy §13.031(3) prohibits officers from engaging in a pursuit for traffic violations, civil violations, misdemeanors, and property crimes (even felony property crimes). In addition, SPD policy §13.031(2) states, "Officers engaged in a pursuit shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren."

The specific concern we noted is that officers sometimes "pursue" a vehicle without turning on their emergency lights and siren. SPD policy defines a pursuit as a situation in which "an officer, operating an authorized police vehicle with emergency lights and siren activated, proceeds in an effort to keep pace with and/or immediately apprehend an eluding driver." This means the wise restrictions placed on pursuits cannot be applied to a pursuit when the officer fails to turn on his or her lights and siren. As a result, it is possible for an officer to follow a suspect vehicle for a minor traffic violation, civil infraction or non-violent property crime in such a way that the attendant risks of a pursuit are present without the officer's actions being subject to scrutiny and potential sanction under the Department's pursuit policy. While other SPD policies address the safe operation of police vehicles, they are not as clear-cut or restrictive as the pursuit policy. In the interest of both public safety and officer safety, I am of the opinion that SPD's pursuit policy and training should be amended to make clear that "pursuing" a vehicle without activating emergency lights and siren is subject to the same rules and restrictions had the emergency equipment been activated.

Recommendation: I recommend SPD modify its Vehicle Eluding/Pursuits Policy (§13.031) so that all pursuits, including those in which an officer fails to activate his or her emergency lights and siren as required, are subject to the same prudent restrictions and regulations.



Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pierce Murphy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Pierce Murphy  
Director, Office of Professional Accountability