



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 23, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0207

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause...	Not Sustained (Training Referral)
# 2	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	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 engaged in an out of policy pursuit and did not notify radio.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) was involved in a vehicle pursuit. The pursuit was reviewed by NE#1's chain of command and was approved up to the Assistant Chief level. However, after conducting his review of the incident, the Assistant Chief of Patrol Operations – the Complainant in this case – deemed the pursuit to be inconsistent with policy. The Complainant identified several issues with the pursuit, as well as with the chain of command's review. The Complainant noted that the chain of command trained and counseled the officer, as well as issued him a PAS entry; however, the Complainant believed that it should have been referred to OPA. This OPA investigation ensued.

As part of its investigation, OPA reviewed the chain of command review, the Complainant's OPA complaint, and the Department video capturing the pursuit. OPA further interviewed NE#1.

The video showed NE#1 attempt to pull the subject vehicle over. The subject vehicle continued to drive away with NE#1 following it. NE#1 drove at speeds up to 42 miles per hour (the posted limit was 25 miles per hour for most of the pursuit). The pursuit continued for approximately two minutes prior to the subject vehicle turning into an alley and colliding with a tree. The driver got out and fled the scene. NE#1 did not notify radio that he was in the pursuit; however, after the collision, he reported what occurred and that the driver had fled over the radio. He noted that the crime at issue was a traffic violation. The video further showed NE#1's direct supervisor respond to the scene. The supervisor spoke to NE#1 about what occurred, and NE#1 said that he did not think he was in a pursuit. Based on what he was told, the supervisor agreed.



In the chain of command review, NE#1's Sergeant wrote that NE#1 "inadvertently engaged in a vehicle pursuit prior to recognizing the suspect vehicle was in fact eluding his efforts to stop the vehicle..." The reviewing Lieutenant also found that NE#1 was in a pursuit and that it was inconsistent with policy. The Lieutenant noted that NE#1 received retraining, counseling, and a PAS entry. The Lieutenant opined that an OPA referral was "not necessary." The Lieutenant provided the following rationale: "I reviewed SPD Manual section 5.002 concerning OPA violations. Vehicle pursuits are not expressly mentioned in the policy and I do not believe [NE#1's] policy violation was intentional or reckless, nor a serious neglect of duty. [NE#1] was very responsive to [the Sergeant's] mentoring and review of vehicle pursuits."

The Acting Captain also noted that no OPA referral was made. He wrote that NE#1 "was receptive to the training and was notified that any further pursuits outside of policy will be referred to OPA." The Acting Captain provided the following conclusion: "I conclude that this pursuit was not justified and that it was not within department policy. I do believe that [NE#1] at the time did not fully understand what a pursuit entailed and was not acting with intentional or serious neglect of duty."

During his OPA interview, NE#1 asserted that, at the time of this incident, he did not believe that he was involved in a pursuit. However, he noted that, since that time, he realized that he was, in fact, pursuing as set forth in policy. He stated that there were a number of changes to the pursuit policy immediately prior to this incident. He said that he may not have been completely familiar with the revised policy at the time. He told OPA that, if he experienced a similar incident in the future, he would not pursue and would let the driver go. NE#1 confirmed that he did not notify radio until after the collision.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause...***

SPD Policy 13.031-POL-4 sets forth when officers may engage in pursuit. As a general matter, officers must have "probable cause to believe a person in the vehicle has committed a violent offense or a sex offense." Officers must also have: (1) "Probable cause to believe that 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 considered to be greater than inherent risk of pursuit driving"; and (2) "authorization to continue the pursuit from a supervisor."

As set forth above, the only crime that NE#1 had probable cause for was a traffic violation. Given this, he was not permitted to pursue under policy.

The above being said, OPA issues NE#1 a Training Referral rather than a Sustained finding. In reaching this decision, OPA finds it significant that: NE#1 had never previously engaged in an out of policy pursuit; the pursuit was not conducted at excessive speeds and did not unduly endanger the public in OPA's perspective; and the pursuit lasted for a relatively short period of time. OPA further finds that NE#1's chain of command thoroughly trained and counseled him, and he accepted responsibility for this incident and explained how he would not revisit it. Lastly, OPA notes that issuing a Training Referral is consistent with recent precedent in similar cases.



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- **Training Referral:** NE#1 should receive retraining and counseling concerning his engaging in an out of policy pursuit and failing to notify radio during the pursuit as required by policy. NE#1 should further be reminded that any further violations of this policy will result in a Sustained finding and the imposition of discipline. This training and counseling should be documented in Blue Team.

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

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

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

SPD Policy 13.031-POL-7 requires officers to notify communications of pursuits. These notifications should occur at the inception of the pursuit and continue during the pursuit. The policy further sets forth what information the officers must provide.

As indicated herein, NE#1 did not notify communications of the pursuit or provide any of the information required by the policy. However, for the same reasons as set forth above (see Named Employee #1 – Allegation #1), OPA recommends that NE#1 receive a Training Referral rather than a Sustained finding.

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