



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 7, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0287

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 9. Supervisors Will Approve and Monitor All Pursuits	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 2. Unmarked Units Without Emergency Equipment Will Not Engage in Pursuits	Not Sustained (Unfounded)
# 2	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Unfounded)
# 3	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe...	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 2. Unmarked Units Without Emergency Equipment Will Not Engage in Pursuits	Not Sustained (Unfounded)
# 2	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Unfounded)
# 3	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe...	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:

It was alleged that Named Employee #1 approved an out of policy pursuit that was engaged in by Named Employee #2 and Named Employee #3.

SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint concerning a vehicle pursuit that occurred on June 12, 2021. The Complainant reported that a shooting occurred in the vicinity of the Shilshole Marina and the suspect fled. The suspect was later located, and a pursuit was approved and initiated. The Complainant contended that the pursuit and its approval by a



supervisor – Named Employee #1 (NE#1) – was improper. The Complainant specifically contended that: “no probable cause existed to show that the suspect posed an imminent risk of serious bodily injury or death to anyone now that their crime was complete.” OPA further identified that Named Employee #2 (NE#2) and Named Employee #3 (NE#3), who were assigned to an unmarked vehicle, were involved in the out of policy pursuit. Based on the Complainant’s allegations, OPA alleged that NE#2 and NE#3 may have acted contrary to the Department’s pursuit policy. OPA further alleged that they may have failed to sufficiently communicate the characteristics of the evolving pursuit over the radio.

OPA’s investigation included watching Body Worn Video (BWV) and In-Car Video (ICV), as well as reviewing documentation concerning the incident. OPA further interviewed all of the Named Employees, as well as a witness Sergeant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 9. Supervisors Will Approve and Monitor All Pursuits

SPD Policy 13.031-POL-10 governs supervision of pursuits and explains that NE#1, as the controlling supervisor, was required to approve and monitor any pursuits that occurred under his watch.

NE#1 told OPA that, prior to the pursuit occurring, he was aware that an unmarked vehicle was following the suspect vehicle based on the suspect’s involvement in a shooting. NE#1 said that the scene was very chaotic at that time, and he requested that additional units from the Community Response Group respond to the scene to track and apprehend the suspect vehicle. NE#1 subsequently went over the radio and stated that a pursuit was authorized. NE#1 expressly noted to OPA that he was approving the pursuit for marked vehicles only and that he had no intent to allow unmarked vehicles to participate. NE#1 was also familiar with the policy that precluded unmarked vehicles from doing so.

NE#1 believed that there was probable cause to stop the suspect vehicle because of its involvement in a homicide or attempted homicide. He further contended that, as a function of the underlying crime, the suspect was believed to be armed and dangerous, thus presenting a continued imminent threat to others. Accordingly, NE#1 asserted that the pursuit met the parameters set forth in policy and was justified at its inception. After reviewing the evidence, OPA reaches a similar conclusion.

However, OPA notes that this case, like another recent case (*see* 2021OPA-0281), is emblematic of confusion held throughout the Department on the “significant imminent threat of death or physical injury to others” language from the policy. OPA believes this language to be vague. As OPA noted in 2021OPA-0281, it is unclear whether, to engage in a pursuit, an officer must have information indicating that the suspect is actively threatening to cause imminent death or physical injury to others or, for example, that the suspect (like in this case) is described as armed and dangerous, has just been involved in a shooting, and appears to have escalating behavior.

OPA believes that the latter scenario is the more logical interpretation of the policy. Given this, OPA concludes that NE#1’s approval of the pursuit was appropriate. In reaching this determination, however, OPA notes that it may very well be that the Department prefers a stricter interpretation that would significantly lessen pursuits. If this is the case, SPD should modify the policy or the training it provides on the policy to make clear that this is so.



Accordingly, OPA renews its recommendation that the Department reevaluate this language and clarify what showing it expects officers to make concerning the “significant imminent threat of death or physical injury to others.” SPD should instruct officers on any changes and provide guidance Department-wide on this matter.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 2. Unmarked Units Without Emergency Equipment Will Not Engage in Pursuits

SPD Policy 13.031-POL-2 expressly prohibits unmarked vehicles that do not have emergency lights and sirens from engaging in pursuits. Given this, had NE#2 and NE#3 engaged in a pursuit here, they would have violated policy as they were operating an unmarked vehicle that did not have emergency equipment.

As discussed below (see Named Employee #2 – Allegation #3), OPA finds that NE#2 and NE#3 did not engage in a pursuit. In reaching this determination, OPA reviewed the manner in which they operated their vehicle, as well as credited their statements that they knew of the prohibition under policy and did not engage in a pursuit for that reason.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #2

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

SPD Policy 13.031-POL-7 instructs that officers must notify communications of pursuits. The policy further provides guidance on what information should be shared over the radio. Most importantly, officers are required to provide the basis for the pursuit, to describe road and weather conditions, to disclose traffic patterns, and to itemize their speeds. Under SPD training, where there is a passenger officer in the patrol vehicle, that officer is tasked with providing the updates.

A review of radio transmissions indicated that the officers provided information concerning their location and direction of travel. They did not provide other information, such as that concerning their speeds, the road and traffic conditions, and a description of how the suspect vehicle was operating.

When asked about this, the officers stated that they did not provide all of the communications required by policy because they were not in a pursuit. As discussed more fully below, OPA agrees with this determination. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #2 - Allegation #3

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

SPD Policy 13.031-POL-4 governs when pursuits are permitted. The policy states that, in order to engage in a pursuit, an officer must have “probable cause to believe a person in the vehicle has committed a violent offense or a sex offense.” The officer must also demonstrate both of the following: (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 from a supervisor.

OPA concurs with NE#2 and NE#3 that they were not involved in a pursuit as contemplated by SPD policy. They did not try to pull the suspect vehicle over or activate emergency equipment (their vehicle did not have it). They also did not drive outside of normal traffic patterns except for one instance where they pulled through a red light after making sure that the intersection was clear of traffic. They also did not continuously drive in a manner purposed to keep pace with the suspect vehicle, particularly when the suspect vehicle began to increase speed. Lastly, as discussed above, they were prohibited from being involved in a pursuit because they were in an unmarked vehicle without emergency equipment. Both NE#2 and NE#3 affirmed their understanding of this policy and said that this influenced their decision to not pursue the suspect vehicle.

As OPA finds that NE#2 and NE#3 did not engage in a pursuit, OPA recommends that this allegation be Not Sustained – Unfounded as against both officers.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 2. Unmarked Units Without Emergency Equipment Will Not Engage in Pursuits

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained - Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #2

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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Not Sustained - Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #3 - Allegation #3

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

For the same reasons as stated above (see Named Employee #2 – Allegation #3), OPA recommends that this allegation be Not Sustained - Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**