



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-1398

Issued Date: 06/15/2017

| Named Employee #1 | |
|-------------------|---|
| Allegation #1 | <u>Seattle Police Department Manual</u> 13.031 (3) Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Training Referral) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 13.031 (8) Vehicle Eluding/Pursuits: Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Lawful and Proper) |
| Final Discipline | N/A |

| Named Employee #2 | |
|-------------------|---|
| Allegation #1 | <u>Seattle Police Department Manual</u> 13.031 (9) Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit (Policy that was issued January 1, 2015) |
| OPA Finding | Not Sustained (Lawful and Proper) |
| Final Discipline | N/A |

INCIDENT SYNOPSIS

Named Employee #1 engaged in a pursuit of a vehicle, and Named Employee #2 became the controlling supervisor for the pursuit.

COMPLAINT

The complainant, a supervisor within the Department, alleged that Named Employee #1 may have initiated a pursuit that was sanctioned by Named Employee #2 in a supervisory capacity contrary to Seattle Police Manual section 13.031 subsection 3: Officers will not pursue solely for any one of the following: Traffic violations / Civil Infractions- Misdemeanors- Gross misdemeanors- Property crimes- The act of eluding alone.

In this case, the subject was under arrest for the gross misdemeanor of DUI--backed into an unoccupied police vehicle and sped away.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Videos
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The preponderance of the evidence from the OPA investigation showed that Named Employee #1 engaged in a pursuit of a vehicle as defined in SPD Policy 13.031(1). At the time of the initiation of the pursuit, Named Employee #1 had reason to believe that the driver of the eluding vehicle was suspected of committing a number of misdemeanors and traffic infractions. Named Employee #1 also heard over the police radio that the driver had "just rammed [an officer's] patrol car" and was fleeing. Dispatch broadcast that the driver was wanted for "hit and run on a patrol car." Named Employee #1 told OPA he assumed that the driver of the fleeing vehicle was wanted for a felony connected with the ramming of a police car; Named Employee #1 did not know whether or not the car was occupied at the time it was rammed. The evidence was clear that Named Employee #1 did not specifically inquire of anyone at the scene from which the car had fled regarding the nature of the crimes for which the driver was wanted. As the pursuit continued, Named Employee #2, a supervisor, came on the radio and asked Named Employee #1 for speed and traffic conditions. Named Employee #1 responded with details. Named Employee #2 then asked over the radio what the eluding driver was wanted for. An officer at the scene replied, "DUI, obstructing and ramming my patrol car; no one's injured." No felony or violent crimes were mentioned. The evidence from this investigation showed that the driver was

wanted for suspicion of DUI, property hit and run, obstructing and various traffic infractions/misdemeanors.

However, Named Employee #1 had some basis for assuming that the term “rammed,” as communicated to him by officers on the scene, meant that the driver of the fleeing vehicle had committed a felony assault on a police officer by intentionally ramming a police car with an officer inside. While the subsequent police and OPA investigations showed that the driver of the fleeing car had not committed an assault but had merely done property damage, this conclusion was not known to Named Employee #1 at the time he decided to pursue the fleeing car. A discussion at the Discipline Meeting for this case developed a consensus opinion that the root error committed by Named Employee #1 was in not asking more questions of the officers on scene to help him decide whether or not the pursuit was consistent with policy.

The section of the SPD policy relating to allegation #2 states, “Officers must receive authorization from a supervisor to continue a pursuit outside the Seattle city limits.” The preponderance of the evidence from the OPA investigation showed that Named Employee #1 neither requested nor received approval from a supervisor to continue his pursuit beyond the limits of the City of Seattle. The same evidence showed that Named Employee #1 continued his pursuit into the City of Shoreline outside of the Seattle city limits. Named Employee #1 acknowledged this fact during his OPA interview. However, Named Employee #1 stated that he clearly broadcast over the radio that he was about to leave the city limits and continue the pursuit into Shoreline. Named Employee #1 further stated that Named Employee #2 was clearly monitoring radio traffic about the pursuit, was aware of the fact that the pursuit was leaving Seattle and did not object or order Named Employee #1 to stop.

During the Discipline Meeting for this case, the SPD chain of command informed OPA that the sergeant’s known presence via radio and his active monitoring of the pursuit meant that his silence when informed that the pursuit was about to leave the Seattle City limits was tacit approval. In other words, once Named Employee #2 (the supervisor) took command of the pursuit, he was responsible for all decisions made regarding continuing or terminating the pursuit. The pursuing officer (Named Employee #1) was only responsible for safe operation of his police car and regularly communicating pursuit-related information to Named Employee #2.

As discussed above in Allegation #1 for Named Employee #1, the preponderance of the evidence showed that the pursuit engaged in by Named Employee #1 did not comply with the restrictions contained in SPD Policy 13.031(3). Named Employee #2 came on the radio, took over command of the pursuit and became the “controlling supervisor” as discussed in SPD Policy 13.031(9). As such, Named Employee #2 was responsible for determining whether or not the pursuit was in policy by communicating over the radio with Named Employee #1 and learning the reason for the pursuit and the various conditions surrounding it. As already stated, above, Named Employee #2 inquired about the traffic and road conditions, but also the reason for the pursuit. An officer at the scene replied that the driver of the eluding vehicle was wanted for “DUI, obstructing and ramming my patrol car; no one’s injured.” Based on what Named Employee #2 knew at the time, he should have declared the pursuit out of policy and ordered

Named Employee #1 to terminate the pursuit. Instead, Named Employee #2 allowed the pursuit to continue. When Named Employee #1 announced over the radio that the pursuit was about to leave the Seattle city limits and enter Shoreline, Named Employee #2 did not order its termination. Instead, he passively allowed it to continue. Named Employee #2 told OPA that he considered the pursuit in policy. He said:

“My understanding of the policy, the specific language in the policy says that, Officers shall not pursue for solely any one of the following incidents, and it enumerates several circumstances that are excluded events. This particular incident did not have any one of those, it had a total of four separate elements that I used to evaluate whether or not the pursuit was warranted or not. Those specifically being, the underlying offense that the vehicle was stopped for, which was DUI, which is a more serious public safety offense than just a traffic offense. The suspect actively resisted arrest. He’d had been informed that he was under arrest. He then used his vehicle as a weapon, possibly to disable the stopping officer’s vehicle, showing an intent to create a, a safety hazard. He also then damaged private property during the flight of the incident from the scene, which is another offense. He then operated his motor vehicle in a reckless manner to flee the scene, which is another offense. So at the moment—at the time, I was monitoring the incident, the totality of the circumstances, that I was aware of them, led me to believe that there was in fact four offenses to be dealt with.”

Despite Named Employee #2’s assertion that the accumulation of five offenses validated the pursuit, the OPA Director found that Named Employee #2 failed to exercise his obligation under SPD Policy 13.031(9) to declare the pursuit out of policy and order its termination.

Following a robust and thorough discussion of this matter at the Discipline Meeting for this case, the OPA Director decided that a finding of Not Sustained (Training Referral) would have the greatest chance of helping Named Employee #2 understand under what conditions a pursuit is authorized and what he must do as a supervisor to control, evaluate and, if necessary, terminate a pursuit.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Vehicle Eluding/Pursuits: Officers Will Not Pursue Without Justification*.

Required Training: Named Employee #1 should receive training and counseling from his supervisor regarding the Department’s pursuit policy and the reasons why the authorization to pursue fleeing vehicles is strongly restricted. In particular, Named Employee #1 should be counseled to understand how devastating it can be when a fleeing vehicle and/or pursuing police cars collide with innocent and uninvolved vehicles. In addition, Named Employee #1

should be encouraged to be more assertive and direct in asking questions and understanding the reason(s) why the driver of a fleeing vehicle is wanted by the police.

Allegation #2

A preponderance of the evidence showed that Named Employee #1 was only responsible for safe operation of his police car and regularly communicating pursuit-related information to Named Employee #2. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Vehicle Eluding/Pursuits: Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies*.

Named Employee #2

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Vehicle Eluding/Pursuits: The Controlling Supervisor is Responsible for the Pursuit*.

Required Training: Named Employee #2 should receive training and counseling from his supervisor regarding the restrictions placed on pursuits by Department policy, including the rationale behind those restrictions. This training should emphasize the important role Named Employee #2 plays as a supervisor in keeping the officers under his command safe from injury and free from unnecessary liability and legal jeopardy.

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.