



PORT ORCHARD POLICE DEPARTMENT
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POLICY REVIEW – IR# 20-091

DATE: January 11th, 2021

IR# 20-091

SUBJECT: Pursuit D20-002508

BY: 
Matt Brown, *Chief of Police*

REQUIRED REPORTING – POPD [PURSUIT POLICY 307]

Date/Time: December 22nd, 2020 @ 0103

Length of Pursuit: 4.8 miles – 6 minutes

Involved Units/Officers: Wofford / Culbert

Initial Reason for the Pursuit: Suspicious Vehicle

Starting Point: 1400 Olney Av.

Termination Point: Phillips / Sedgewick

Disposition: Self-terminated

Injuries/Property Damage: None

Medical Treatment: N/A

Supervisor: Wofford

Preliminary Determination: Policy Violation

Additional Review/Investigation Needed: No

Related Reports: None

BACKGROUND:

On December 22nd, 2020, Sgt. Wofford and Off. Culbert were dispatched to suspicious circumstances behind a closed business at 1400 Olney Av. The caller advised of several vehicles parked behind the business with at least two persons on foot using flashlights.

Both officers arrived at 0103 hrs and a gold colored Honda immediately fled. Off. Culbert activated his emergency equipment signally the vehicle to stop. It did not.



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Both Sgt. Wofford and Off. Culbert pursued the vehicle for roughly six minutes and covered 4.8 miles. The maximum speed of the pursuit was 74 mph with average speeds of 40-60 mph.

Sgt. Wofford terminated the pursuit near the intersection of Phillips and Sedgewick.

ANALYSIS:

To conduct this policy review, I reviewed all written reports, sergeant's documentation, and audio files provided by Kitsap 911 related to this incident.

Officers had a lawful purpose for being in the area. A private citizen contacted 911 and requested a police response for suspicious activity. The citizen advised there were two vehicles behind a closed business in the dark and they could see flashlights being used. This created a reasonable suspicion that a crime was occurring or might occur.

As one of the vehicles left, Officer Culbert attempted a vehicle stop by activating his emergency equipment. He then immediately broadcast that the vehicle was fleeing at a high-rate of speed. Sgt. Wofford took over voice command of the pursuit and continuously broadcast his position, speed, traffic conditions, roadway conditions, and other traffic violations the suspect was committing during the pursuit. Sgt. Wofford remained calm throughout the incident and did not appear to be overwhelmed. Both vehicles are fully marked and equipped with emergency lighting and sirens.

POPD policy states, "It is the policy of this department to weigh the importance of apprehending suspects who unlawfully flee from law enforcement against the risks associated with vehicle pursuits." We must objectively and continuously weigh the seriousness of the offense against the potential danger to motorists and the public when electing to continue a pursuit. Pursuits for misdemeanor crimes not involving violence or weapons are generally discouraged.

Upon initiation of the pursuit, neither Sgt. Wofford nor Off. Culbert had any specific information that a crime had occurred. One vehicle fled while the other remained. During the pursuit there were no other available units able to establish if a crime had actually occurred outside of a possible trespassing. However, the parking lot is open, unfenced, and does not contain any signage that advises persons they could be trespassing. There are signs that state the area is under video surveillance.

Several minutes into the incident, Sgt. Wofford advised dispatch the reason for the pursuit was for a possible burglary, vehicle theft, or drug deal. I was unable to locate information in the documentation provided that indicated where this suspicion arose.

Sgt. Wofford demonstrated in his radio transmissions that he was actively monitoring speed, road, and driving conditions throughout the event. I would submit that Sgt. Wofford's decision to



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terminate the pursuit as it continued without mutual aid assistance demonstrates he was aware that continuing was diminishing in importance and necessity.

There are a several concerns with the actions taken:

- Based upon the facts presented by the 911 caller, it can be recognized officers had established reasonable suspicion there was a crime occurring or was about to occur. However, initial statements by Officer Culbert that the crime was possibly trespassing are insufficient. While not well-lit, the area is not fenced nor blocked to any pedestrian/vehicle traffic after hours. There is no signage to indicate that persons in the area after hours would be unwelcome and considered to be trespassing.

The scenario, including all facts known to the officers at the time, was proposed to a Kitsap County prosecutor, Kelly Montgomery. She agreed that officers had reasonable suspicion but not enough information to develop probable cause. The mere presence of persons in that area is not enough to make a probable cause arrest absent any additional information as to their actions. Even with the development of probable casue, the crime of trespassing simply does not rise to the level where it would be appropriate to pursue a vehicle.

- Several minutes into the pursuit, Sgt. Wofford states, "I don't know if this is going to be an attempted burg to the business, or a drug deal going down we interrupted, or theft of a car..." There were no articulable facts provided in the documentation to support this belief as valid. Without known and articulated facts it is difficult to come to any conclusion as to why the driver is choosing to flee law enforcement.

Port Orchard Police Department policy is purposefully written to provide officers and sergeants great latitude in making decisions. However, this latitude is granted in so long as decisions and actions can be clearly articulated. The policy states, "numerous factors shall be considered, both individually and collectively, when deciding to initiate or continue a pursuit."

307.3.1(a): The seriousness of the known or reasonably suspected crime and its relationship to community safety.

- Officers had no articulable facts of a specific crime, and the information presented only appears to establish a reasonable suspicion of a possible property crime, (i.e. trespassing, burglary, etc.)

307.3.1(b): The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.

- Reasonable suspicion of a property crime does not appear to have been weighed against the suspect's actions. The speed of the pursuit combined with the failure to stop at red



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lights and stop signs, as well as driving through the parking lot of an apartment complex, created a significant risk to the protection of the public.

307.3.1(c): The safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic (e.g., school zones) and the speed of the pursuit relative to these factors.

- It is recognized the time of day (0103 hrs) reduces the amount of vehicular and pedestrian traffic. However, this does not drop the level of risk to zero. The risk was also increased when the vehicle fled through the parking lot of an apartment complex. Even at that hour, there is a likelihood of pedestrians.

307.3.1(k): The availability of other resources, such as air support assistance.

- Officers did request additional resources, such as stop sticks, from our partner agencies. Sgt. Wofford chose to terminate when advised no other units were available to assist.

CONCLUSION

It is my opinion that, based upon the totality of the events, Sgt. Wofford's and Off. Culbert's actions were within policy but this incident exposed some serious concerns about member's understanding of reasonable actions and how they are applied in context to our policy. While department policy is broadly written to allow officers latitude in rapidly evolving circumstances, this incident demonstrates that just because we can do something doesn't necessarily mean we should.

In recognition of this concept, Deputy Chief Main and I spoke with Sgt. Wofford and learned there were facts not included in either case report that would have more clearly articulated why the decision to continue the pursuit had been made. This is an additional issue that must be addressed.

RECOMMENDATION:

Command staff, to include Sgt. Wofford, reviewed the pursuit policy as a group on December 9th, 2020, to determine if tighter restrictions were recommended. After a lengthy discussion, the group decided to let the policy remain in current form. This incident, occurring less than two weeks after that discussion, demonstrated that more work needs to be done.

Command staff again met on January 6th, 2021, and conducted a focused discussion on the Vehicle Pursuit policy. Policies from the partner agencies of the Bremerton Police Department and the Kitsap County Sheriff's Office were reviewed. Bremerton's policy is highly restrictive while the County policy is very similar to ours.



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The group's consensus was to make policy changes to clarify expectations for officers and supervisors. The following language will be added to the pursuit policy:

"Without specific and articulable facts describing the necessity of the pursuit, officers are strongly discouraged from pursuing vehicles for non-violent criminal activity. Vehicle pursuits initiated upon the reasonable suspicion of criminal behavior, property crimes, traffic infractions, and other minor offenses should be immediately terminated once the driver has made it reasonably apparent they have no intention of complying."

Clarifying language regarding the use of police motorcycles will be added:

"When involved in a pursuit, police department motorcycles should be replaced by marked emergency vehicle as soon as practicable."

Clarifying language regarding pursuit trailing will be added:

"In the event that initial pursuing officers relinquish control of the pursuit to another agency, the initial officer may, with the permission of a supervisor, trail the pursuit to the termination point in order to provide information and assistance for the arrest of the suspect and for reporting the incident."

Clarifying language regarding supervisory control will be added:

"Upon becoming aware that a vehicle pursuit has been initiated, the supervisor shall acknowledge over the air, monitor and continuously assess the situation, and ensure the pursuit is conducted within the guidelines and requirements of this policy. The supervisor has the final responsibility for the coordination, control, and termination of a vehicle pursuit and shall be in overall command."

[The supervisor is responsible for] reviewing all pertinent reports for content, obtaining any audio or visual recordings, and preparing a post-pursuit review to forward to the Deputy Chief."

These additions allow our policy to more closely match that of the Kitsap County Sheriff's Office; this is the most likely agency to respond to a mutual aid request and the group found necessary clarity in having both agencies share policy and philosophy.

Sgt. Wofford and Sgt. Horsley are the department's instructors for the Emergency Vehicle Operations Course (EVO). They will develop additional language for the policy to match our current training expectations and present it to the group at the next command staff meeting. Once all of the changes are finalized, Sgt. Wofford and Sgt. Horsley will conduct training on the updated policy during an in-service training day.



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Finally, there was broad recognition amongst the group that more focused training on report writing must be conducted. There has been a past practice amongst a few officers to write less information into pursuit reports should the pursuit be terminated. The understanding was this was being done because the pursuit ended without any referred criminal charges. This practice must stop and officers must receive regular training on full and accurate reporting.

In conclusion, the department will take the following steps:

1. Update the Vehicle Pursuit policy to provide clarity and match current training.
2. Provide training on the updates to the Vehicle Pursuit policy and department expectations regarding vehicle pursuits.
3. Provide additional and on-going training on report writing.