



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 28, 2018

CASE NUMBER: 2017OPA-0420

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification	Sustained
# 2	13.031 - Vehicle Eluding/Pursuits 16. Officers will Disengage When Pursuit is Terminated	Not Sustained (Training Referral)
# 3	13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment	Sustained
# 4	13.031 - Vehicle Eluding/Pursuits 6. Officers Must Notify Communications of Pursuits	Sustained

Imposed Discipline

3 Day Suspension

Named Employee #2

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification	Sustained
# 2	13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment	Not Sustained (Lawful and Proper)

Imposed Discipline

Written Reprimand

Named Employee #3

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification	Not Sustained (Training Referral)
# 2	13.031 - Vehicle Eluding/Pursuits 18. All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry	Not Sustained (Training Referral)
# 3	13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director's Findings
# 1	Vehicle Operation - 13.031 - Vehicle Eluding/Pursuits 19. The supervisor will review video and each officer's Blue Team entry	Not Sustained (Management Action)

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:

The Complainants, Seattle Police Department supervisors, alleged that the Named Employees violated the vehicle pursuit policy by engaging in a pursuit of a stolen vehicle. Additionally, it was alleged by a Department supervisor that Named Employee #1 failed to terminate the pursuit after having been ordered to do so by a supervisor over the radio.

During OPA intake, it was alleged that Named Employee #3 failed to write a Blue Team Pursuit entry, Named Employee #1 failed to notify communications of the initial pursuit, and all the Named Employees failed to use both emergency lights and continuous siren during the pursuit.

Lastly, during OPA's investigation, it was discovered that Named Employee #4 may not have ensured that all involved officers completed Blue Team Vehicle Pursuit entries in accordance with SPD policy.

ADMINISTRATIVE NOTE:

In the Director's Certification Memorandum, submitted on October 9, 2017, I determined that Named Employee #2 had violated two policies: (1) SPD Policy 13.031-POL-3 – engaging in a pursuit without justification to do so; and (2) SPD Policy 13.031-POL-2 – failure to activate emergency equipment. With regard to the latter violation, I initially found that Named Employee #2 failed to comply with SPD policy 13.031-POL-2 when he did not continuously operate his patrol car's emergency lights and siren while engaged in a vehicle pursuit.

At the Loudermill hearing in this matter, which was held on December 8, 2017, Named Employee #2 contended that he did not violate SPD Policy 13.031-POL-2. He persuasively stated that his position was supported by his In-Car Video. Based on this information, I re-reviewed the In-Car Video. As a result of that re-review, I agree with Named Employee #2 that his conduct did not violate this specific policy. While his In-Car Video reflected that his emergency equipment was not on when he was searching for the vehicle prior to engaging in the vehicle pursuit, it appears that once he actually began pursuing the subject vehicle he did continuously operate his emergency equipment.

Accordingly, I have updated OPA's files to reflect my amended recommendation that this allegation be changed from Sustained to Not Sustained – Lawful and Proper. My findings that Named Employee #2 violated SPD Policy 13.031-POL-3 is unchanged and remains Sustained. Moreover, my findings concerning Named Employee #1, Named Employee #3, and Named Employee #4 remain unchanged, including the recommended sustained findings against Named Employee #1.

STATEMENT OF FACTS:

On April 24, 2017 at approximately 19:55 hours, Named Employee #1 (NE#1) observed a car that was believed to be stolen stopped in a gas station in the vicinity of Aurora Avenue and 125th street. NE#1 activated his vehicle's emergency lights and got out of his vehicle and approached the stolen car on foot. At that time, however, the stolen car pulled out of the gas station and began driving eastbound on 125th street. NE#1 got in his vehicle and began driving in the direction of where the stolen car had traveled. NE#1 drove for a period of time until he located the stolen car. While attempting to locate the stolen car, NE#1 did not have his emergency lights and siren activated, but drove at faster than normal rates of speed and, at times, in the lanes of oncoming traffic. Moreover, during this time, NE#4 told the involved officers that if they were in a pursuit, it should be terminated. In response, NE#1



indicated that he was not in pursuit but was just trying to locate the vehicle. I note that in his review, the OPA Auditor indicated his belief that an audible snicker could be heard on NE#3's ICV in response to NE#1's statement. From listening to the ICV, I could not conclusively discern whether or not that occurred.

NE#1 located the stolen car in the vicinity of 1st Avenue NE and NE 125th Street and attempted to initiate a traffic stop. The stolen car continued to speed away and NE#1 followed with his emergency lights and sirens activated. NE#3 was behind NE#1 at that point. The pursuit continued, with NE#1 as the lead vehicle, until the intersection of 1st Avenue NE and Northgate Way. At that point, NE#2 became the lead vehicle and NE#1 followed as the secondary vehicle in pursuit. NE#3 remained behind NE#1. NE#1, NE#2 and NE#3 followed the car down Northgate Way until it drove over a portion of the sidewalk prior to taking a right into the parking lot of the Northgate Mall. The officers followed the stolen car into the parking lot until an order to terminate the pursuit was communicated over the radio. This order came from Sergeant Street.

In response to this order, the officers deactivated their emergency equipment. NE#3 stopped his vehicle completely. NE#1 and NE#2 continued to drive slowly through the Northgate Mall parking lot, but did not appear to continue to actively pursue the vehicle.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification

SPD policy 13.031 governs pursuits by SPD employees. The policy 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." (SPD Policy 13.031-POL-1.) Eluding is defined as when a driver is given a signal to stop and after a reasonable amount of time to permit the compliance with the signal to stop, the driver either increases speed, takes evasive actions or refuses to stop. (*Id.*)

The policy states that an officer may not engage in a pursuit without justification. (SPD Policy 13.031-POL-3.) The policy further mandates that "[o]fficers will not pursue solely for any of the following: Traffic violations/Civil infractions; Misdemeanors; Gross misdemeanors; Property crimes; the act of eluding alone." (*Id.*) Included in property crimes is the theft of a motor vehicle.

At his OPA interview, NE#1 contended that at the time he drove from the gas station in the same direction of the fleeing stolen car, he was not engaged in a pursuit and was only attempting to locate the car. (*See* NE#1 OPA Interview, at pp. 6-7.) NE#1 stated that the pursuit did not begin until he located the stolen vehicle, activated his lights and siren, and the car failed to pull over. (*See id.* at pp. 4-5.) Based on NE#1's description, this occurred in the vicinity of 1st Avenue NE and NE 117th Street. (*See id.*)

I disagree with NE#1's articulation of where the pursuit began. When NE#1 approached the vehicle on foot at the gas station, it was for the purpose of apprehending those who had stolen the car. At this time, NE#1's vehicle, which was parked close to the car, had its emergency lights activated. Once NE#1 neared the car it drove from the gas station at a high rate of speed. It should have been clear to NE#1 at that point that the subject car was eluding in order to avoid being apprehended. NE#1 then made the decision to get into his vehicle and drive at faster than



normal rates of speed in order to locate and presumably stop the car and cause the arrest of the driver. I note that both NE#3 and NE#4 believed, as I do, that the pursuit began at the time NE#1 drove from the gas station. NE#3 thought as much at the inception of the pursuit (*see* NE#3 OPA Interview, at p. 7), while NE#4 reached this conclusion after watching ICV of the incident and realizing that the stolen car was eluding at the time it left the gas station. (*See* NE#4 OPA Interview, at p. 3.) This discrepancy between the officers' accounts could possibly be attributed to the fact that pursuits are by their nature fast paced and complex. For this reason, the difference of opinion between the officers, particularly given alternate perspectives, could be expected. Ultimately this issue is largely academic as the pursuit was out of policy regardless of the starting point.

NE#1 knew that the sole reason he was seeking to stop the car was because of his belief that it was stolen. This is not a crime for which a pursuit is justified. Accordingly, NE#1's actions here were inconsistent with Department policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 16. Officers will Disengage When Pursuit is Terminated

SPD Policy 13.031(16) requires that, when a pursuit is terminated, pursuing officers: deactivate their emergency equipment; and "pull over or, if practical under the circumstances, turn off the eluding route and return to a normal driving pattern."

When the initial order to terminate the pursuit was made by NE#4, NE#1 responded that he was not pursuing at that time but was only trying to locate the stolen car. (*See* NE#1 OPA Interview, at pp. 6-7; *see also* NE#1 ICV.) As explained above, I conclude that NE#1 was engaged in a pursuit at that moment. However, based on my review of the record, I find that NE#1 genuinely believed, albeit incorrectly, that he was not presently engaged in a pursuit. As such, NE#1 did not think that, based on NE#4's order, he was required to stop trying to locate the vehicle.

When the second order to terminate the pursuit was made by Sergeant Street, NE#1 turned off his emergency equipment, but continued to drive slowly through the Northgate Mall parking lot. (*See* NE#1 ICV.) NE#1 drove for a short period of time until he parked his vehicle. (*See id.*) While NE#1 continued to drive in the same general direction as where the stolen car was last observed traveling and communicated the last known location of the vehicle over radio, he did not appear to be actively looking for the vehicle at that time. (*See id.*)

While NE#1, like NE#2, expressed what appears to be frustration with the decision to terminate the pursuit (*see id.*), I conclude that he did not actively continue to pursue the vehicle after the second and third orders to terminate. However, given his decision to continue to attempt to locate the vehicle after the first order to terminate, I believe that a training referral is appropriate.

- **Training Referral:** I recommend that NE#1 receive additional training concerning the requirements of SPD's pursuit policy, including: the elements of a pursuit; when pursuits are justified; the obligation to use



continuous emergency lights and siren; and the mandate to completely terminate a pursuit when ordered to do so. This training and any associated counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #3

13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment

SPD policy 13.031(2) requires that officers involved in a pursuit “shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren.” This policy is purposed to ensure the safety of civilian motorists and pedestrians during a pursuit.

Here, based on a review of NE#1’s ICV, he began to use his emergency siren intermittently while still engaged in the pursuit. (See NE#1 ICV; see also NE#1 OPA Interview, at pp. 9-10.) This pursuit occurred during daytime hours in a heavily populated area, ending in the Northgate Mall. (See generally NE#1 ICV.) This was exactly the type of situation in which it was crucial to turn on and keep on his emergency lights and siren. NE#1’s failure to continuously do so was a violation of policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

13.031 - Vehicle Eluding/Pursuits 6. Officers Must Notify Communications of Pursuits

SPD Policy 13.031(6) requires that officers involved in a pursuit “immediately advise Communications when initiating a pursuit” and must provide a number of details delineated in the policy.

Here, NE#1 stated at his OPA interview that he did not notify Communications at any point that he was initiating a pursuit or was actively pursuing. (See NE#1 OPA Interview, at p. 8.) NE#1 further indicated that he did not provide Communications with any of the details of the pursuit. (See *id.*) This failure to do so was contrary to policy.

Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification

At his OPA interview, NE#2 acknowledged that at the time he initiated his portion of the pursuit, he knew that the subject car was suspected of being stolen and that this was the sole reason for the pursuit. (NE#2 OPA Interview, at p. 5.) He further stated that he was aware that this was not a crime for which a pursuit was justified under policy. (*id.*) NE#2 initially told OPA that at the time he began following NE#1 and the stolen car he did not believe “that



there was a technical pursuit going on.” (*Id.*) However, he later stated that he did, in fact, engage a pursuit starting in the vicinity of Northgate Way and 1st Avenue NE. (*See id.* at p. 6.)

NE#2 reported not hearing NE#4’s initial direction to not pursue the vehicle. (*Id.* at p. 7.) This transmission came over the radio prior to NE#2 engaging in the pursuit. (*Id.*) NE#2 reasoned that he may not have heard NE#4’s radio transmission based on the act that he had turned on his emergency equipment. (*Id.*) However, NE#2 did hear NE#1’s subsequent statement that he was not pursuing but was only trying to locate the stolen car. (*Id.*) If NE#2 chose to engage in a pursuit in contravention of NE#4’s clear direct order to the contrary it would constitute a violation of policy. I take NE#2 at his word that this did not occur. NE#2 did deactivate his emergency equipment and terminate his portion of the pursuit once the second and third orders to do so came over the radio from Sergeant Street and NE#4. (*See* NE#2 ICV.) From a review of NE#2’s ICV, he was clearly and audibly frustrated with this decision. (*See id.*)

For the same reasons as with NE#1 above, NE#2 was not justified in engaging in a pursuit. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment

As set forth in the Administrative Note section above, this finding has been changed from Sustained to Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification

At his OPA interview, NE#3 affirmatively stated that the pursuit was out of policy and that he knew that from the outset. (*See* NE#3 OPA Interview, at p. 7.) NE#3 stated that while he did not view himself as being involved in actively pursuing, he was “associated with a pursuit.” (*Id.*) As rationalized by NE#3, he was solely focused on following the primary officer, NE#1, who he knew was the only officer in his vehicle. NE#3 was concerned with NE#1’s safety and followed him for that reason. (*See id.* at p. 8.)

Based on the letter of the policy, NE#3 was involved in an out of policy pursuit. However, the only reason he engaged in this conduct was to ensure the safety of NE#1. For that reason, I do not recommend that this allegation be Sustained as against him. I recommend instead that this allegation be Not Sustained – Training Referral.

- **Training Referral:** I recommend that NE#3 receive additional training concerning the requirements of SPD’s pursuit policy, including: the elements of a pursuit; when pursuits are justified; the obligation to use continuous emergency lights and siren; and the requirement to complete a Blue Team Vehicle Pursuit entry. This training and any associated counseling should be memorialized in a PAS entry.

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



Named Employee #3 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 18. All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry

It is undisputed that NE#3 did not complete a Blue Team Vehicle Pursuit entry. (NE#3 OPA Interview, at p. 8.) His rationale for why he did not do so was because it was relayed to him through his FTO that a supervisor, who he believed to be NE#4, indicated that he was not required to. (*See id.* at pp. 8-9.) NE#3 did not question that direction. (*Id.* at p. 9.)

While I find that NE#3 was in a pursuit and that he should have known that a Blue Team entry was required, he was entitled to rely on the direction of an immediate supervisor to not complete one. Accordingly, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** I refer to the training referral for Allegation #1, above.

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

Named Employee #3 - Allegation #3

13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment

During his OPA interview, NE#3 stated that while trailing NE#1 and the subject car, he used his emergency lights and siren intermittently. (NE#3 OPA Interview, at p. 8.)

SPD policy 13.031(2) requires that officers involved in a pursuit “shall drive with due regard for the safety of all persons, and will use both emergency lights and continuous siren.”

NE#3 stated that while he did not use his emergency equipment continuously, he did activate his lights and sirens intermittently for his safety and the safety of other people around him. (*Id.* at p. 8.) In rationalizing why he did not use continuous emergency lights and siren, NE#3 stated that he was not actively pursuing and thus had no such obligation. (*Id.*) Again, I disagree. However, for the same reasons as stated above, I believe that a Training Referral is the more appropriate recommendation here.

- **Training Referral:** I refer to the training referral for Allegation #1, above.

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

Named Employee #4 - Allegation #1

Vehicle Operation - 13.031 - Vehicle Eluding/Pursuits 19. The supervisor will review video and each officer's Blue Team entry

SPD Policy 13.031-POL-19 sets forth supervisors’ responsibilities in the context of documenting a pursuit. With regard to sergeants, these include, but are not limited to: reviewing ICV and/or other video to determine whether a pursuit did, in fact, occur; ensuring that all officers involved in the pursuit complete a Blue Team Vehicle Pursuit



entry and that the involved officer complete a General Offense Report; and reviewing each such entry and report. (See SPD Policy 13.031-POL-19.)

At his OPA interview, NE#4 stated that he did not believe it was necessary for NE#3 to complete a Blue Team Vehicle Pursuit entry because he was not “involved” in the pursuit as contemplated by the policy. (NE#4 OPA Interview, at p. 4.) NE#4, like NE#3, asserted that NE#3 was not involved due to the fact that NE#3 was not pursuing but was only trying to ensure the safety of NE#1. (See *id.* at pp. 4-5.) NE#4 stated that not requiring a report from NE#3 was consistent with his past experience. (*Id.* at p. 4.)

Regardless of NE#3’s rationale for his actions, NE#3 was involved in the pursuit. From my reading of the policy, I believe it to be clear that a Vehicle Pursuit entry should thus have been required from him by NE#4.

However, NE#4 raises a good point. This pursuit, and the failure to obtain documentation from NE#3, was not commented on by NE#4’s entire chain of command, even though one supervisor instructed further reporting from NE#2. (*Id.* at pp. 5-6.) The chain of command’s failure to require a report from NE#3 could plausibly be construed as approval. As such, and under these specific circumstances, I conclude that it would not be fair to sustain this allegation against NE#4. Instead, I issue the following Management Action Recommendation:

- **Management Action Recommendation:** The Department should clarify whether “involved” officers include those officers who are engaging in a pursuit but are only doing so to ensure the safety of officers who are actively pursuing. If this is the case, the policy should explicitly indicate that these officers, such as NE#3, are required to complete Blue Team Vehicle Pursuit entries.

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