



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2018

CASE NUMBER: 2017OPA-1074

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment	Not Sustained (Training Referral)
# 2	13.031 - Vehicle Eluding/Pursuits 3. Officers Will Not Pursue Without Justification	Sustained
# 3	13.031 - Vehicle Eluding/Pursuits 6. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)
# 4	13.031 - Vehicle Eluding/Pursuits 16. Officers will Disengage When Pursuit is Terminated	Not Sustained (Training Referral)
# 5	13.030 - Emergency Vehicle Operations 3. Officers Shall Use Emergency Lights and Siren for Emergency Response -See RCW 46.61.035	Sustained

Imposed Discipline

Written Reprimand

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 Complainant, a Department supervisor, alleged that the Named Employee violated policy by engaging in an out of policy pursuit and also for not using emergency lights and sirens as required.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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."

NE#1 viewed a vehicle, that he described travelling at a high rate of speed, which came from the direction of a reported assault with a handgun. He made a U-turn and followed that vehicle. Aside from the vehicle's rate of speed and the fact that it was coming from the "direction" of a specific crime, NE#1 had no other basis to believe that the vehicle contained the individual who was being sought. Moreover, the windows of the vehicle were tinted and NE#1 could not identify whether any of the occupants matched the suspect's description. Notably, no vehicle description had been provided.



Once NE#1 began to follow the vehicle, it increased speed and drove away from him. He also increased his driving speed in an attempt to catch up to the vehicle. NE#1 crossed over the median, drove at speeds higher than the posted speed limit, and pulled through a stop sign without stopping while chasing the subject vehicle. He further drove into an oncoming lane of traffic. All of this occurred prior to him turning on his patrol vehicle's emergency equipment. After turning on his emergency equipment, which occurred shortly after he pulled into the oncoming lane, he continued to pursue the subject vehicle, including driving through stop signs and intersections, driving at a high rate of speed, and driving across the median and at times crossing into other lanes of traffic.

Technically, under this version of the pursuit policy (which has since been updated), NE#1 was not in a pursuit until he turned on his emergency lights and siren. As such, even though he was functionally involved in a pursuit prior to that time, his failure to drive with his lights and siren on did not violate this section of the policy. This is the case even though I find that his failure to turn on his patrol vehicle's emergency equipment caused his driving to be unsafe to the other vehicles and pedestrians (a number of whom could be seen on NE#1's In-Car Video) around him. This conduct is instead captured by SPD Policy 13.030-POL-3, which is discussed below.

I note that under the new version of this policy, NE#1 would have been engaged in a pursuit at the moment he began driving after the subject vehicle and the subject vehicle accelerated away. As such, his conduct here would have violated the revised policy.

While I do not believe that this allegation should be sustained against NE#1, I recommend that he receive a Training Referral.

- **Training Referral:** NE#1 should receive training as to the elements of the revised pursuit policy. This training can be performed by his chain of command. NE#1 should be informed that his conduct in this case would have been in violation of the new policy. He should be counseled to learn the elements of the new policy and to conduct himself consistent with that policy going forward. This training and associated counseling should be memorialized in PAS entry.

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

Named Employee #1 - Allegation #2

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.*)



Based on my review of the ICV, NE#1 was engaged in a pursuit. When he initiated the pursuit, he believed that the subject vehicle possibly contained the suspect; however, aside from the fact that it drove at what NE#1 identified as a high rate of speed and travelled from the vicinity of the alleged criminal activity, there was no evidence connecting this vehicle to the crime. Notably, NE#1 did not have a vehicle description and because of the subject vehicle's tinted windows could not identify the occupants and determine whether any occupant matched the suspect's description. Accordingly, NE#1 engaged in a pursuit based on conjecture. Moreover, the basis for his ongoing pursuit was the fact that the vehicle was eluding him and was in traffic violation. For these reasons, this pursuit was not justified and was in violation of policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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

SPD Policy 13.031-POL-6 requires that the primary unit immediately advise the Communications Unit when initiating a pursuit. The policy further sets forth the details that the primary officer must provide, including the reason, location and direction, description of the subject and vehicle, speed, and traffic conditions. (SPD Policy 13.031-POL-6.)

Immediately before he initiated the pursuit, NE#1 went over the radio and stated the following: "I got a car, leaving at a high rate of speed from the area. Black Cadillac, tinted windows, couldn't see the driver, on...North bound 15 from 61." NE#1 then gave an update as to the direction of travel of the vehicle and then stated that he was "lighting it up." NE#1 gave three additional updates as to the location of travel prior to the order to terminate.

From a review of these statements, it is debatable that NE#1 gave a reason for the pursuit. Moreover, even if he did, it was an improper reason under SPD policy for initiating the pursuit. He further failed to provide any update to Communications of the traffic conditions and to provide ongoing updates as to his and the subject vehicle's speed. While I find that NE#1's radio transmissions fell below what was expected by the policy, I do not deem it necessary to sustain this finding. Instead, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training from his chain of command concerning the Department's expectations as to what information he will convey to the Communications Unit when initiating and engaging in a pursuit. NE#1 should be counseled that, unlike in this case, he should clearly communicate the legitimate reason for the pursuit, information concerning vehicle and pedestrian traffic conditions, and ongoing updates on the speed of his and the subject vehicle. This training and associated counseling should be memorialized in a PAS entry.

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



Named Employee #1 - Allegation #4

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

SPD Policy 13.031-POL-16 requires that, when a pursuit is terminated, officers disengage. Specifically, the policy requires officers to either pull over or turn off the eluding route and return to a normal driving pattern.

After the pursuit was terminated, NE#1 turned off his emergency equipment and returned to a normal traffic pattern; however, he did not immediately pull over or turn off the eluding route. The failure to do so violated policy. That being said, and given that I already recommend two sustained findings in this case, I conclude that a Training Referral is the appropriate disposition here. I also note that this section of the policy has since been amended and NE#1's actions in this case would no longer constitute a policy violation.

- **Training Referral:** NE#1 should receive counseling from his chain of command concerning how his conduct in this regard was inconsistent with existing policy and the Department's expectations. This counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #5

13.030 - Emergency Vehicle Operations 3. Officers Shall Use Emergency Lights and Siren for Emergency Response - See RCW 46.61.035

SPD Policy 13.030-POL-3 requires that officers use emergency lights and siren when driving in an emergency response. An emergency response is defined as: "When an officer operates an authorized police vehicle in a manner that is substantially outside of a normal traffic pattern."

As indicated above, I find that NE#1 failed to use his lights and siren while functionally pursuing the subject vehicle. During that time, NE#1 drove through stop signs and intersections, traveled at a high rate of speed, and drove across the median and at times crossed into other lanes of traffic. These vehicle operations were "substantially outside of a normal traffic pattern" and were unsafe given the lack of emergency lights and siren.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**