



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2018

CASE NUMBER: 2017OPA-1101

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 19. Supervisors Will Review Video and Each Officer’s Blue Team Entry	Not Sustained (Unfounded)
# 2	13.031 - Vehicle Eluding/Pursuits 9. The Controlling Supervisor is Responsible for the Pursuit	Not Sustained (Unfounded)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Unfounded)

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 18. All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry	Not Sustained (Training Referral)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained
# 4	13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment	Not Sustained (Training Referral)
# 5	13.031 - Vehicle Eluding/Pursuits 6. Officers Must Notify Communications of Pursuits	Sustained
# 6	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Cease Pursuit When the Risk of the Pursuit Outweighs the Danger to the Public if the Suspect is not Captured	Sustained
# 7	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 8	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 9	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained

Imposed Discipline

Four (4) Day Suspension



Named Employee #3

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 18. All Officers Involved in a Pursuit will complete a Blue Team Vehicle Pursuit Entry	Sustained
# 3	13.030 - Emergency Vehicle Operations 4. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Training Referral)
# 4	13.030 - Emergency Vehicle Operations 3. Officers Shall Use Emergency Lights and Siren for Emergency Response -See RCW 46.61.035	Not Sustained (Training Referral)
# 5	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Not Sustained (Training Referral)
# 6	13.031 - Vehicle Eluding/Pursuits 2. Pursuing Officers Will Exercise Due Care and Activate Emergency Equipment	Sustained
# 7	13.031 - Vehicle Eluding/Pursuits 6. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)
# 8	13.031 - Vehicle Eluding/Pursuits 4. Officers Will Cease Pursuit When the Risk of the Pursuit Outweighs the Danger to the Public if the Suspect is not Captured	Sustained
# 9	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 10	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 11	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

Imposed Discipline

Two (2) Day Suspension

Named Employee #4

Allegation(s):		Director's Findings
# 1	13.031 - Vehicle Eluding/Pursuits 19. Supervisors Will Review Video and Each Officer's Blue Team Entry	Not Sustained (Unfounded)
# 2	13.031 - Vehicle Eluding/Pursuits 9. The Controlling Supervisor is Responsible for the Pursuit	Not Sustained (Unfounded)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	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:

During interviews conducted by the Department's Force Investigation Team, Named Employee #2 and Named Employee #3 disclosed information suggesting that they had engaged in an out of policy vehicle pursuit on the date in question. A review of the officers' In-Car Video and Body Worn Video confirmed this fact. However, neither officer generated any paperwork documenting the pursuit as required by policy. Based on a review of the evidence, OPA also determined that it was possible that Named Employee #2 and Named Employee #3 engaged in dishonesty concerning their actions on this date. Lastly, OPA determined that there was no supervisory review or approval of the pursuit and, as such, the officers' sergeants, Named Employee #1 and Named Employee #4 were also added to this case based on a possible failure to supervise.

ADMINISTRATIVE NOTE:

At the discipline meeting in this matter, the Named Employees' chain of command raised questions of some of OPA's initial recommendations. First, the chain contended that the violation of policy that concerned the failure to drive with emergency equipment should be sustained against the driver of the vehicle – Named Employee #3, but not against the passenger – Named Employee #2. Based on the chain's reasoning, OPA agreed to reverse this finding for Named Employee #2 and instead recommended that he receive a Training Referral. Second, the chain also asserted that the violation of policy that concerned the failure to notify radio of the nature and scope of the pursuit should be sustained against the passenger – Named Employee #2, but not the driver – Named Employee #3. The chain explained that to ensure safe vehicle operation this responsibility was tasked to the passenger. OPA also agreed to reverse this finding for Named Employee #3 and instead recommended that he receive a Training Referral.

Lastly, the chain disagreed with OPA's recommendation that the dishonesty allegations against both Named Employee #2 and Named Employee #3 be sustained. While the chain shared OPA's concerns regarding the numerous misstatements made by these officers and their material inaccuracies, the chain believed that the evidence was insufficient to prove that they engaged in intentional dishonesty when applying the higher burden of proof. After deliberation, OPA agreed; however, as discussed below, this should not be construed to mean that OPA is any less convinced of the veracity in this instance of Named Employee #2 and Named Employee #3.

STATEMENT OF FACTS:

The actions of Named Employee #2 (NE#2) and Named Employee #3 (NE#3) during this incident were recorded by their In-Car Video (ICV) and Body Worn Video (BWV) systems. The ICV indicated that they were driving together in the vicinity of West Commodore Way. The officers saw a dark sedan (the "subject car") parked near several RVs to the left of their vehicle. A white male was walking to the rear of the subject car at that time. The officers spotted the car at approximately 02:11:45 hours. Shortly thereafter, the officers made a U-turn so that they were facing the car. They approached the car and shined their spotlight on it illuminating the driver's side. The officers did not stop their vehicle before the car pulled away and the officers followed. Approximately six to seven seconds after beginning to follow the subject car, the officers activated their light bar in an apparent attempt to signal to the driver that he should pull over. The car did not do so and accelerated away.

The officers continued to follow the subject car with both their lights and siren activated. However, shortly thereafter, the officers de-activated their vehicle's emergency equipment. This was the case even though they continued to try



to keep pace with the subject car at speeds higher than the posted speed limit, followed the car through a red light and a stop sign without stopping or clearing oncoming traffic, twice drove into oncoming lanes of traffic, and trailed the car the wrong way onto the Ballard Bridge.

The officers determined that the subject car was a stolen vehicle approximately 44 seconds into the pursuit. They then made the decision to call the vehicle's description in via the radio. At 02:12:58, NE#2 called in the fact that the vehicle was stolen, their vehicle's and the subject car's direction of travel, the fact that the car was going the wrong way over the Ballard Bridge, and the car's license plate number. At approximately 59 seconds into the pursuit, NE#2 stated over radio: "We initiated a stop and he is eluding, were gonna not pursue." Named Employee #4 (NE#4), who with Named Employee #1 (NE#1) was one of NE#2's and NE#3's supervisors that night, acknowledged NE#2's radio transmission.

NE#2 and NE#3 continued to follow the subject car, but at reduced speeds. They continued to call out the car's direction of travel until they lost sight of it after the car took a left onto NW 61st Street. The officers drove through residential streets keeping watch for the subject car. During this time, they discussed their following of the vehicle. NE#3 stated, apparently regarding whether they had engaged in a pursuit: "He kind of like. I think because we didn't like chase after him like necessarily." NE#2 later stated: "Without a pursuit policy. Once he frickin' eludes...what do you do? You have to let a stolen car go...technically." NE#3 responded: "Unless it is a BARK [burglary, arson, robbery, kidnapping] felony."

The officers generated a CAD Call Log at 02:13:37, wherein they referred to their law enforcement activity as a pursuit and indicated that it occurred in the vicinity of the northbound lanes of the Ballard Bridge. They cleared the call and indicated that there would be no report written. The officers added the following in the notes section: "ICV/BWV, Terminated due to policy." However, approximately 16 minutes later, at 02:29:54, another CAD Call Log was generated wherein the officers referred to their law enforcement activity as "suspicious circumstances – suspicious vehicle." They listed the location of the "suspicious circumstances" as 24th Avenue West and West Commodore Way, which was the location that they first saw the subject vehicle. They did write a General Offense Report for this CAD Call Log.

In that report, NE#2 indicated that they had observed the subject car and an individual standing outside of it. The individual was described as a "lookout" who had his "attention focused towards a fenced in parking lot for King County work trucks." NE#2 wrote that they turned around and drove towards the car and, as they were doing so, they saw the subject get inside and drive away at a high rate of speed. NE#2 indicated that they "got close to the vehicle to get the license plate information" and verified that the car was stolen. NE#2 wrote that they "broadcast[ed] the situation on the air and initiated a traffic stop." NE#2 further described that: "The vehicle then drove northbound at a high rate of speed and officers disengaged emergency lights and sirens and slowed down." NE#2 wrote that they lost sight of the vehicle when it turned left onto NW 61st Street off of 15th Avenue NW.

Aside from generating this report, which was related to a "suspicious circumstances" not a pursuit, NE#2 and NE#3 completed no other documentation concerning this matter, including no Blue Team Vehicle Pursuit Entries.

Two days after this incident, NE#2 and NE#3, as well as two other officers, again came into contact with the subject car. They were notified that a car matching its description was parked in an alley in the Eastlake neighborhood of Seattle. The officers confronted the car and it again attempted to flee. During this incident, NE#2 and another officer together discharged their firearms 27 times at the car and its occupants. This matter (which is currently being investigated by OPA under 2017OPA-1059) was investigated by the Department's Force Investigation Team (FIT).



During its investigation, FIT interviewed both NE#2 and NE#3. In his FIT interview, NE#2 described that the subject was standing in a place where they normally did not see people at that time of night, so they turned around to further investigate. When they did so and approached the subject car, the subject sped off at a high rate of speed. NE#2 stated that he and NE#3 caught up with the car and were able to see the license plate. He indicated that they determined that the car was stolen and called that in over the radio. NE#2 said that, as the subject car began to drive northbound over the Ballard Bridge, they activated their emergency lights and siren and attempted to stop the vehicle. He recounted that the vehicle drove off at an even higher rate of speed than before and the officers went over the radio and indicated that they were terminating their pursuit.

During his FIT interview, NE#3 described the subject as looking into a fenced area and appearing “lost” or “confused.” NE#3 recounted that NE#2 commented that the individual appeared to be suspicious and they decided to turn around and further investigate. NE#3 stated that when they performed the U-turn and pulled up to the subject car, both he and NE#2 got out of their vehicle; however, the subject car drove away. NE#3 told FIT that he spoke to NE#1 about the incident that night but that their conversation was not very “specific.” With regard to this conversation, NE#3 stated that NE#1 “had just asked us, uh... where it had took off to, but that was it.”

Given their FIT statements and given the lack of any documentation of the actual pursuit, this investigation was initiated by OPA. During its investigation, OPA interviewed all of the Named Employees. OPA also reviewed the FIT interviews provided by NE#2 and NE#3, the ICV and Body Worn Video, and all of the other documentation relating to this case. This evidence and OPA’s findings in this matter are discussed below.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 19. Supervisors Will Review Video and Each Officer’s Blue Team Entry

SPD Policy 13.031-POL-19 requires that supervisors review video and the Blue Team Vehicle Pursuit Entry for every officer under their supervision that is involved in a pursuit. The policy further sets forth what steps supervisors are required to take during their review and their obligation to forward the completed review to the chain of command for approval.

This allegation was classified against both NE#1 and NE#4 based on the fact that they were supervisors of NE#2 and NE#3 and because there was no supervisory review of NE#2’s and NE#3’s pursuit in this matter.

NE#1 told OPA that he was not NE#2’s and NE#3’s direct supervisor and that he was unaware that they had engaged in a pursuit. He contended that he did not hear any radio transmissions that suggested that NE#2 and NE#3 were involved in a pursuit. In addition, there was no evidence that NE#1 ever reviewed the General Offense Report generated by NE#2. Lastly, NE#1 contended that he had no recollection of NE#3 speaking with him concerning his activities that evening. He told OPA that had he engaged in such a conversation with NE#3, he would have required that NE#3 document his actions. NE#3, for his part, said that this conversation was not very “specific,” and that they just discussed where the subject car “took off to.”

There was no evidence in the record that either NE#2 or NE#3 spoke to NE#4 about their actions and informed him that they had engaged in a pursuit. While NE#4 did respond to NE#2’s radio transmission, it was not clear from that



transmission that the officers had engaged or were presently engaging in a pursuit. Indeed, the radio transmission was worded to suggest the opposite – that no pursuit had occurred.

Accordingly, and applying a preponderance of the evidence standard, I find that there was no supervisory review of the pursuit in this matter because NE#2 and NE#3 never reported that they had engaged in a pursuit or documented the pursuit using a Blue Ream Vehicle Pursuit Entry. As discussed below, both NE#2 and NE#3 even took steps to apparently attempt to conceal the pursuit from their supervisors. Given these facts, NE#1 and NE#4 could not have been expected to review a pursuit of which they were never informed and that was never provided to them for their approval.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#4.

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

Named Employee #1 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 9. The Controlling Supervisor is Responsible for the Pursuit

SPD Policy 13.031-POL-9 states that the controlling supervisor is responsible for a pursuit. Here, both NE#1 and NE#4 were supervisors on duty during NE#2's and NE#3's shift. As such, even if NE#1 did not directly supervise these officers, either he or NE#4 would have been responsible for the pursuit had they known that it was occurring.

I find that NE#1 and NE#4 were not aware of the pursuit while it was occurring. Notably, the radio transmission made by NE#2 did not clearly indicate that a pursuit was ongoing. Indeed, it suggested the opposite. As such, NE#1 and NE#4 could not have been responsible for a pursuit that they did not know was occurring.

Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#4.

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

Named Employee #1 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires that when supervisors become aware of potential policy violations they either investigate those violations or refer them to OPA. As a general matter, allegations of minor misconduct may be investigated by the supervisor, while allegations of serious misconduct must be referred to OPA.

As indicated above, I find, applying a preponderance of the evidence, that NE#1 and NE#4 were not aware that NE#2's and NE#3's conduct in this case violated a host of Department policies. I find that by the time they were aware of the potential misconduct, this matter had already been referred to OPA.

Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#4.

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



Named Employee #2 - 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.*)

Here, the officers believed that the subject could be surveying a location to commit a burglary. When they activated their emergency equipment and attempted to pull the subject over and he drove away at high speeds, the subject was eluding under the policy. When they attempted to keep pace with and apprehend the subject, they were involved in a pursuit. Moreover, that they shut their vehicle’s emergency equipment off shortly after commencing the pursuit did not end the pursuit. To the contrary, the officers continued to try to keep pace with the subject car at speeds higher than the posted speed limit, followed the car through a red light and a stop sign without stopping or clearing oncoming traffic, twice drove into oncoming lanes of traffic, and trailed the car the wrong way onto the Ballard Bridge.

Notably, the pursuit was commenced due to the subject’s failure to pull over when signaled and then the fact that the subject car eluded the officers. This was an impermissible basis upon which to commence and maintain a pursuit.

At their OPA interviews, both NE#2 and NE#3 stated that, at the time of the incident, they did not believe that they had engaged in a pursuit but, after reviewing the policy, they now believed that they had done so inconsistent with policy. First, this appears contrary to what NE#2 and NE#3 discussed in the aftermath of the pursuit while in their vehicle. Notably, during that conversation, NE#2 referenced the pursuit policy and his understanding of its restrictions. Second, ignorance of a policy is not a defense to misconduct.

While NE#3 was the driver, NE#2 was equally involved in the pursuit and made no attempt to convince NE#3 to terminate. Accordingly, I hold them both equally responsible for this violation of policy. For these reasons, I recommend that this allegation be Sustained against both NE#2 and NE#3.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

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

As discussed below, NE#3, as the driver in the pursuit, was required to complete a Blue Team Vehicle Pursuit Entry. His failure to do so violated policy. The policy states that all officers “involved” in the pursuit must complete



documentation. Thus, the question here is whether NE#2 was “involved” in the pursuit given his role as the passenger in the vehicle. This language has generally created confusion Department-wide. For this reason, the policy was recently clarified to make clear that passenger officers must generate a witness officer statement.

Accordingly, while NE#2’s failure to report was not a clear violation of the previous SPD Policy 13.031-POL-18, it would be in violation of the current iteration. I further note that NE#2 documented his and NE#3’s actions – albeit not in a complete, thorough, and accurate manner – in a General Offense Report. This report is addressed below.

For these reasons, I recommend that NE#2 receive a Training Referral instead of a Sustained finding.

- **Training Referral:** NE#2 should receive training from his chain of command concerning the current SPD pursuit policy and, specifically, the requirement that he document his involvement in a pursuit regardless of whether he is the driver or a passenger. This training and any associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 requires that SPD employees who learn of possible misconduct report that misconduct. Minor misconduct must be reported to a supervisor, while serious misconduct must be referred to both a supervisor and OPA. SPD Policy 5.002-POL-5 defines minor and serious misconduct. An out of policy pursuit is serious misconduct that must have been reported to a supervisor and OPA (I note that SPD currently trains officers that they only need to report to a supervisor *or* OPA, not both).

This case did not come to OPA’s attention because NE#2 reported potential misconduct to a supervisor. Instead, OPA did not learn of the fact that NE#3 was the driver and NE#2 the passenger in an out of policy pursuit until the officers’ FIT interviews and the subsequent review of ICV and BWV. I find that the fact that this pursuit was out of policy was clear and it should have been apparent to NE#2, regardless of his stated lack of understanding of the policy.

NE#2 was obligated to report violations of policy. Here, he did not do so and, accordingly, I recommend that this allegation be Sustained as against him.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #4

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.”



As discussed below, and as indicated by NE#2's chain of command, it was NE#3's responsibility, as the driver of the vehicle, to exercise due care and activate emergency equipment. Accordingly, I do not recommend that this allegation be sustained as against him. Instead, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should receive re-training concerning the elements of this policy and, specifically, the requirements that officers involved in a pursuit exercise due care and continuously activate their emergency equipment. NE#2 should further be counseled concerning his and NE#3's collective failure to abide by this policy in this instance. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #5

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

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

The officers commenced their pursuit of the vehicle once they turned on their emergency equipment, the subject car failed to pull over, and they continued to pursue the car in an attempt to keep pace and apprehend the subject. However, the officers did not even mention that they were following the subject vehicle until nearly a minute after beginning the pursuit. At that time, they gave the subject car's direction and description. However, they did not provide the reason for the pursuit, their rate of speed, the subject vehicle's rate of speed, or the traffic conditions.

Moreover, the information they did provide via radio was misleading at best. After they had been pursuing the subject car for nearly a minute, NE#2 stated: "We initiated a stop and he is eluding, were gonna not pursue." This gave the impression that the stop had been initiated at that moment, the car had not complied, and that the officers did not pursue. It did not convey the fact that the officers had already been involved in an ongoing pursuit.

As indicated by NE#2's chain of command, the Department expectation is that the passenger officer, not the driver, will be responsible for communicating with dispatch. NE#2 was the passenger and, thus, was ultimately tasked with doing so. His failure to provide accurate and complete information regarding this pursuit was in violation of policy and, as such, I recommend that this allegation be Sustained as against NE#2.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #6

13.031 - Vehicle Eluding/Pursuits 4. Officers Will Cease Pursuit When the Risk of the Pursuit Outweighs the Danger to the Public if the Suspect is not Captured

SPD Policy 13.031-POL-4 states that "officers will cease pursuit when the risk of the pursuit outweighs the danger to the public if the subject is not captured."



As discussed above, there was no justification for the pursuit in this case. Accordingly, once the subject vehicle began accelerating away from the officers at high speeds, drove through a red light and a stop sign, and traveled through oncoming lanes of traffic, the officers should have ceased the pursuit. This was particularly the case given the risk of harm presented to the public from both the subject's driving and the officers' driving, during which they largely did not have their emergency equipment activated. This risk outweighed any speculative danger to the public if the subject was not caught. Indeed, the officers were unable to articulate any such risk during their interviews relating to this case.

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

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #7

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

SPD Policy 6.220-POL-1 stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a Terry stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it "cannot provide the justification for the original stop." (*Id.*)

NE#2 and NE#3 each articulated their belief that the subject was engaged in suspicious activity when they first viewed him. They cited that he was standing in an area that not many people were in at that time of night and that he was looking at a fenced off area. As such, they believed that he could be in the process of attempting a burglary. The officers turned around to conduct further investigation and when they approached the subject car it fled. The officers drove after the subject car until it began to speed away. At that point, the officers activated their emergency equipment and attempted to stop the car.

Arguably, even had the car not sped off, the officers would have been warranted in conducting a Terry stop of the vehicle to further investigate the driver. This was the case as not only were his initial actions suspicious, but his driving away immediately after the officers pulled towards him suggested possible criminality. Regardless, when the car drove away from them, the officers were permitted to stop it for a traffic infraction; namely, speeding.

For these reasons, I find that there was sufficient reasonable suspicion to stop the subject car. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#2 and NE#3.

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



Named Employee #2 - Allegation #8

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires that employees be truthful and complete in all communications.

Here, it is alleged that NE#2 was dishonest in a number of respects, which are detailed below.

During his FIT interview, NE#2 told investigators that he had not been involved in a pursuit. However, that assertion was inconsistent with the initial CAD Call Log that he generated, as well as with the ICV. Moreover, he later admitted at his OPA interview that realized after the fact that he had been in a pursuit.

At his OPA interview, NE#2 claimed that NE#3 initiated the vehicle's emergency equipment twice: the first time when the vehicle initially pulled out from the lot; and the second time right before the car drove through a red light. This recounting of a second occasion during which NE#3 activated emergency equipment was inconsistent with the ICV. Moreover, it was inconsistent with NE#2's radio transmissions, his General Offense Report, and his FIT interview, wherein he only discussed the non-existent second activation.

NE#2 additionally provided misleading information during his radio transmission concerning the vehicle. At that time, he stated that: "We initiated a stop and he is eluding, were gonna not pursue." However, at the time this statement was made, the officers had already been pursuing. Notably, even NE#3 ultimately admitted to OPA that this statement was inaccurate.

Moreover, in the first CAD Call Log generated by the officers, they indicated that they had engaged in a pursuit in the vicinity of the Ballard Bridge. However, as discussed above, the pursuit actually began well prior to that point. By wording the CAD Call Log as such, the officers made it seem as if they had initiated a stop in the vicinity of the Ballard Bridge, the subject car had failed to pull over and sped off, and that they did not pursue and called in the description and direction of travel of the car. This was inconsistent with the objective evidence.

Further, as discussed below, NE#2's General Offense Report was inaccurate for the same reasons. Most notably, the statements that the officers "broadcast[ed] the situation on the air and initiated a traffic stop" and that the "vehicle then drove northbound at a high rate of speed and officers disengaged emergency lights and sirens and slowed down" were demonstrably false.

Lastly, at his OPA interview, NE#2 stated that, at the time of the incident, he did not believe that they had engaged in a pursuit but, after reviewing the policy, he now believed that they had done so inconsistent with policy. However, NE#2's contention that he was unfamiliar with the policy was inconsistent with the conversation he had with NE#3 immediately after the pursuit, wherein he referenced the pursuit policy and his understanding of its restrictions. NE#2 also stated at his OPA interview that he knew now that officers could only pursue for "BARK felonies," but that he did not know this at the time of the incident. However, the officers' ICV captured NE#3 conveying this exact information to NE#2 immediately after the pursuit. However, they still did not properly document or report their conduct.

Standing alone, none of above may rise to the level of dishonesty; however, when viewed collectively and in concert with the radio broadcasts, the CAD Call Logs, the General Offense Report, and the officers' interviews, these



inaccuracies and misstatements cause me significant concern and lead me to doubt NE#2's veracity. Indeed, I believe it very possible that these were deliberate misrepresentations of material facts that were meant to conceal that the officers engaged in an out of policy pursuit. That being said, given the quantum of proof required to establish this allegation, I find that there is insufficient support in the record to prove that he engaged in intentional dishonesty. This should not be construed to suggest that I believe that he was not dishonest, but merely that the higher burden of proof cannot be satisfied. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #9

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. It further requires that such reports be complete, thorough and accurate. (SPD Policy 15.180-POL-5.)

As discussed above, NE#2 did not complete a Blue Team Vehicle Pursuit Entry. He did complete a General Offense Report. However, this report was not a complete, thorough, and accurate record of his and NE#3's conduct on that evening.

First, NE#2 failed to note in the General Offense Report that he engaged in a pursuit. Instead, the General Offense Report couched their actions as trying to initiate a traffic stop, the vehicle speeding away, and the officers properly declining to pursue. This was, at best, misleading and, at worst, a deliberately dishonest attempt to paint their actions as being consistent with policy.

Second, NE#2's statement that the officers "broadcast[ed] the situation on the air and initiated a traffic stop" was inaccurate. The ICV is clear that this did not occur as NE#2 described. Instead, the officers initiated the traffic stop by activating their emergency equipment six to seven seconds after they began to follow the subject car. The officers did not provide an update over radio concerning the vehicle until nearly a minute later and after they had already deactivated their emergency equipment. They did not attempt to initiate a traffic stop at this time as the vehicle was well ahead of them and they did not turn on their lights and siren.

Third, NE#2 was similarly inaccurate when he wrote that the "vehicle then drove northbound at a high rate of speed and officers disengaged emergency lights and sirens and slowed down." Again, as discussed above, this did not occur as NE#2 described.

When read in conjunction with the two CAD Call Logs, the radio transmissions, and the officers' interviews, the language of the General Offense Report indicates an attempt to cover up the fact that the officers engaged in an out of policy pursuit. I find that these misstatements, misrepresentations, and inaccuracies violated policy.

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

Recommended Finding: **Sustained**



Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

SPD Policy 13.031-POL-18 requires that all officers involved in a pursuit will complete a Blue Team Vehicle Pursuit Entry. While this policy was arguably unclear as to whether a passenger or witness officer was required to complete a Vehicle Pursuit Entry, it is unambiguous that a driver involved in a pursuit must complete such documentation.

Here, it is clear that NE#3 was the driver in a pursuit. As such, he was required to complete a Vehicle Pursuit Entry. His failure to do so in this case violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #3

13.030 - Emergency Vehicle Operations 4. Officers Are Responsible for the Safe Operation of Their Police Vehicle

SPD Policy 13.030-POL-4 states that "officers are responsible for the safe operation of their policy vehicle." This policy further sets forth that: "Officers shall not be relieved of the obligation to drive with due regard for the safety of all persons. Officer shall drive no faster than reasonably necessary to safely arrive at the scene." (SPD Policy 13.030-POL-4.)

While NE#3 engaged in a pursuit for approximately one minute, he only kept his vehicle's emergency equipment activated for a matter of seconds. However, after the lights and siren were deactivated, NE#3 continued to try to keep pace with the subject car at speeds higher than the posted speed limit, followed the car through a red light and a stop sign without stopping or clearing oncoming traffic, twice drove into oncoming lanes of traffic, and trailed the car the wrong way onto the Ballard Bridge. This vehicle operation, without emergency equipment activated, was unsafe and contrary to policy. However, I find that, under the circumstances of this case, NE#3's conduct is better captured under SPD Policy 13.031 than this policy. Moreover, I recommend that the allegations arising under SPD Policy 13.030-POL-4 be Sustained. As such, I recommend here that NE#3 receive the below Training Referral.

- **Training Referral:** NE#3 should receive re-training concerning the elements of SPD Policy 13.030, as well as the revised SPD Policy 13.031. He should be counseled concerning the Department's expectation that he engages in safe vehicle operations in the future, including that he uses his emergency equipment and that he terminates vehicle operations when appropriate and where safety considerations compel such action. This re-training and associated counseling should be memorialized in a PAS entry.



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

Named Employee #3 - Allegation #4

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." (SPD Policy 13.030-POL-3.)

Given that I already find that NE#3's failure to keep his emergency lights and siren activated during the pursuit violated policy and recommended that allegation be Sustained, I find it unnecessary to also sustain this allegation. Moreover, I find that SPD Policy 13.031, which governs pursuits, is applicable to this case, not SPD Policy 13.030, which governs emergency vehicle operations.

That being said, I recommend that NE#1 receive a Training Referral and refer to the Training Referral set forth above. (See Named Employee #3, Allegation #4.)

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

Named Employee #3 - Allegation #5

13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk

SPD Policy 13.030-POL-2 states that officers may drive in an emergency response only when the need outweighs the risk. The policy further states that: "The preservation of life is the highest priority." (SPD Policy 13.030-POL-2).

As discussed in the context of the pursuit, I find that the need to engage in the pursuit to apprehend the subject was outweighed by the risk of harm to the public. This was particularly the case given that the subject was suspected of, at most a commercial burglary, and was being pursued for traffic violations and eluding. I find that this conduct was already captured by other Sustained findings (*see, e.g.*, Named Employee #2; Allegation #6; Named Employee #3, Allegation #8), and that it is unnecessary to also sustain this allegation. Instead, I recommend that NE#3 receive a Training Referral and refer to the Training Referral set forth above. (See Named Employee #3, Allegation #4.)

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

Named Employee #3 - Allegation #6

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."

The officers initiated a pursuit when they activated their emergency equipment in an attempt to signal the subject car to pull over, the subject car did not do so and eluded them, and the officers attempted to keep pace. However,



16 seconds after beginning to follow the subject car and nine seconds after turning on their lights and siren, NE#3 de-activated their emergency equipment. NE#3 did not reactivate their lights and siren, even though they continued to pursue the subject car. Indeed, without using their emergency equipment, NE#3 continued to try to keep pace with the subject car at speeds higher than the posted speed limit, followed the car through a red light and a stop sign without stopping or clearing oncoming traffic, twice drove into oncoming lanes of traffic, and trailed the car the wrong way onto the Ballard Bridge.

The failure to keep their emergency equipment activated during the entirety of the pursuit was in violation of policy. As such, I recommend that this finding be Sustained as against NE#3.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #7

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

As the driver, NE#3 was not expected to be responsible for notifying communications of the nature and scope of the pursuit. That obligation fell to the passenger, NE#2. However, I find NE#3's failure to correct NE#2's obvious misstatements and inaccuracies in his radio transmissions to have been contrary to the Department's expectations.

That being said, I recommend that NE#3 receive a training referral, rather than a Sustained finding.

- **Training Referral:** NE#3 should receive re-training on the elements of this policy and, specifically, the requirement that officers involved in a pursuit notify communications and provide the required information concerning the nature and scope of the pursuit. Moreover, NE#3 should be counseled concerning his and NE#2's failure to do so in this case, as well as his inaction concerning the clear and material inaccuracies in NE#2's radio transmissions and reporting. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #3 - Allegation #8

13.031 - Vehicle Eluding/Pursuits 4. Officers Will Cease Pursuit When the Risk of the Pursuit Outweighs the Danger to the Public if the Suspect is not Captured

For the same reasons as set forth above (see Named Employee #2, Allegation #6), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #9

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful



For the same reasons as stated above (see Named Employee #2, Allegation #7), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #10

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

As with NE#2 (see Named Employee #2, Allegation #8), NE#3 was also alleged to have engaged in potential dishonesty concerning this incident.

At his OPA interview, NE#3, like NE#2, stated that he was unaware of the specifics of the pursuit policy prior to the incident and that he did not know at the time that he was in a pursuit. However, I believe this to be contradicted by his conversation with NE#1 wherein he discussed his understanding that pursuits were only appropriate for a “BARK felony.” Moreover, this understanding was inconsistent with the radio transmissions and the initial CAD Call Log generated by the officers. There, the officers made clear their understanding that they could not pursue the subject car under policy (the officers specifically indicated: “We initiated a stop and he is eluding, were gonna not pursue”; and “ICV/BWV, Terminated due to policy”).

In addition, NE#3’s statement to both OPA and FIT that, when he first approached the subject car, both he and NE#2 got out of the vehicle and gave verbal orders to the subject is plainly inconsistent with the ICV and never occurred.

Further, during his OPA interview, NE#3 agreed that NE#2’s radio transmissions were inaccurate; however, he made no attempt to correct what NE#2 said and did not report those inaccuracies to anyone, including a supervisor.

Moreover, as discussed in the context of NE#1, in the first CAD Call Log generated by the officers, they indicated that they had engaged in a pursuit in the vicinity of the Ballard Bridge. However, as discussed above, the pursuit actually began well prior to that point. By wording the CAD Call Log as such, the officers made it seem as if they had initiated a stop in the vicinity of the Ballard Bridge, the subject car had failed to pull over and sped off, and that they did not pursue and called in a description and direction of travel of the car. This was inconsistent with the objective evidence.

Similar to the discussion of this allegation in the context of NE#2, the nature and amount of inaccuracies and misstatements attributable to NE#3 cause me significant concern and lead me to doubt his veracity. As with NE#2, I believe it very possible that NE#3 deliberately misrepresented material facts for the purpose of concealing that he and NE#2 engaged in an out of policy pursuit. That being said, given the quantum of proof required to establish this allegation, I find that there is insufficient support in the record to prove that NE#3 engaged in intentional dishonesty. Again, this should not be construed to suggest that I believe that he was not dishonest, but merely that the higher burden of proof cannot be satisfied. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #3 - Allegation #11

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

Given that NE#3 was the driver in a pursuit, he was required to complete a Blue Team Vehicle Pursuit Entry. As discussed above, his failure to do so was in violation of policy. I do not find, however, that he was mandated to complete a General Offense Report. However, he should have generated one or the other.

For these reasons, I recommend that NE#3 receive a Training Referral instead of a Sustained finding.

- **Training Referral:** NE#3 should be instructed by his chain of command concerning the Department's expectation that he will properly record the law enforcement activity that he engages in. His chain of command should instruct him that his failure to generate any documentation concerning his pursuit in this matter was unacceptable and inconsistent with the Department's recordkeeping obligations. This counseling should be memorialized in a PAS entry.

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

Named Employee #4 - Allegation #1

13.031 - Vehicle Eluding/Pursuits 19. Supervisors Will Review Video and Each Officer's Blue Team Entry

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

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

Named Employee #4 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 9. The Controlling Supervisor is Responsible for the Pursuit

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

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

Named Employee #4 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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