



## CLOSED CASE SUMMARY

ISSUED DATE:      OCTOBER 1, 2018

CASE NUMBER:     2018OPA-0238

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

| Allegation(s): |  | Director’s Findings               |
|----------------|--|-----------------------------------|
| # 1            | 5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication                                 | Not Sustained (Inconclusive)      |
| # 2            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer                                  | Not Sustained (Inconclusive)      |
| # 3            | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity   | Not Sustained (Lawful and Proper) |
| # 4            | 13.031 - Vehicle Eluding/Pursuits 9. Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies | Not Sustained (Lawful and Proper) |
| # 5            | 13.031 - Vehicle Eluding/Pursuits 10. The Controlling Supervisor is Responsible for the Pursuit                                | Not Sustained (Lawful and Proper) |
| # 6            | 13.031 - Vehicle Eluding/Pursuits 18. Officers Will Not Reinitiate Pursuits That Have Been Terminated                          | Not Sustained (Lawful and Proper) |
| # 7            | 5.001 - Standards and Duties 6. Employees May Use Discretion   | Not Sustained (Lawful and Proper) |

**Named Employee #2**

| Allegation(s): |  | Director’s Findings               |
|----------------|--|-----------------------------------|
| # 1            | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity   | Not Sustained (Training Referral) |
| # 2            | 8.200 - Using Force 1. Use of Force: When Authorized   | Not Sustained (Lawful and Proper) |
| # 3            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer  | Not Sustained (Unfounded)         |
| # 4            | 13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy                               | Not Sustained (Lawful and Proper) |
| # 5            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.                                       | Not Sustained (Lawful and Proper) |
| # 6            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics  | Not Sustained (Lawful and Proper) |
| # 7            | 8.200 - Using Force 1. Use of Force: When Authorized   | Allegation Removed                |
| # 8            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |



**Named Employee #3**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity  | Not Sustained (Training Referral) |
| # 2            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer   | Not Sustained (Unfounded)         |
| # 3            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |
| # 4            | 13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy                              | Not Sustained (Lawful and Proper) |
| # 5            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.                                      | Not Sustained (Lawful and Proper) |
| # 6            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics | Not Sustained (Lawful and Proper) |
| # 7            | 8.200 - Using Force 1. Use of Force: When Authorized  | Not Sustained (Lawful and Proper) |
| # 8            | 5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication  | Not Sustained (Unfounded)         |
| # 9            | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests   | Not Sustained (Training Referral) |

**Named Employee #4**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity  | Not Sustained (Training Referral) |
| # 2            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer   | Not Sustained (Unfounded)         |
| # 3            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |
| # 4            | 13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy                              | Not Sustained (Lawful and Proper) |
| # 5            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.                                      | Not Sustained (Lawful and Proper) |
| # 6            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the  | Not Sustained (Lawful and Proper) |



|     |   |                                   |
|-----|---|-----------------------------------|
|     | Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics        |                                   |
| # 7 | 8.200 - Using Force 1. Use of Force: When Authorized  | Not Sustained (Lawful and Proper) |
| # 8 | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests | Not Sustained (Training Referral) |

**Named Employee #5**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests   | Not Sustained (Training Referral) |
| # 2            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |
| # 3            | 13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy                              | Not Sustained (Lawful and Proper) |
| # 4            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.                                      | Not Sustained (Lawful and Proper) |
| # 5            | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics | Not Sustained (Lawful and Proper) |
| # 6            | 8.200 - Using Force 1. Use of Force: When Authorized  | Not Sustained (Lawful and Proper) |
| # 7            | 13.031 - Vehicle Eluding/Pursuits 12. Marked Police Vehicles Take Priority in Pursuits  | Not Sustained (Lawful and Proper) |
| # 8            | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests   | Allegation Removed                |

**Named Employee #6**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer   | Not Sustained (Unfounded)         |
| # 2            | 8.200 - Using Force 1. Use of Force: When Authorized  | Sustained                         |
| # 3            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |
| # 4            | 13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk  | Not Sustained (Lawful and Proper) |
| # 5            | 13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy                              | Not Sustained (Training Referral) |



|     |   |                                   |
|-----|---|-----------------------------------|
| # 6 | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.                                      | Sustained                         |
| # 7 | 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics | Sustained                         |
| # 8 | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests   | Not Sustained (Training Referral) |

**Imposed Discipline**

|                     |
|---------------------|
| 15 day - Suspension |
|---------------------|

**Named Employee #7**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity                        | Not Sustained (Training Referral) |
| # 2            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer     | Not Sustained (Unfounded)         |
| # 3            | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests | Not Sustained (Training Referral) |

**Named Employee #8**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Pretext)  | Allegation Removed                |
| # 2            | 5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication  | Not Sustained (Unfounded)         |
| # 3            | 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 (Unfounded)         |
| # 4            | 6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes [...]  | Not Sustained (Training Referral) |
| # 5            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |
| # 6            | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests   | Not Sustained (Lawful and Proper) |

**Named Employee #9**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of | Not Sustained (Lawful and Proper) |



## CLOSE CASE SUMMARY

OPA CASE NUMBER: 2018OPA-0238

|     |  |                                   |
|-----|--|-----------------------------------|
|     | Pursuit Driving  |                                   |
| # 2 | 13.030 - Emergency Vehicle Operations 13.030 - POL 2 Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk | Not Sustained (Lawful and Proper) |
| # 3 | 13.030 - Emergency Vehicle Operations 13.030 - POL 5 Officers Are Responsible for the Safe Operation of Their Police Vehicle           | Not Sustained (Lawful and Proper) |
| # 4 | 13.031-Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits   | Not Sustained (Training Referral) |

**Named Employee #10**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 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 (Training Referral) |

**Named Employee #11**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Unfounded) |

**Named Employee #12**

| Allegation(s): |  | Director's Findings               |
|----------------|--|-----------------------------------|
| # 1            | 8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force            | Sustained                         |
| # 2            | 8.200 - Using Force 1. Use of Force: When Authorized   | Not Sustained (Lawful and Proper) |
| # 3            | 13.031 - Vehicle Eluding/Pursuits 9. Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies | Not Sustained (Training Referral) |
| # 4            | 13.031 - Vehicle Eluding/Pursuits 17. Officers will Disengage When Pursuit is Terminated                                       | Not Sustained (Training Referral) |
| # 5            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer                                  | Not Sustained (Unfounded)         |
| # 6            | 15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests                              | Not Sustained (Training Referral) |

**Imposed Discipline**

|                   |
|-------------------|
| Written Reprimand |
|-------------------|

**Named Employee #13**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity                    | Not Sustained (Training Referral) |
| # 2            | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Unfounded)         |



## CLOSE CASE SUMMARY

OPA CASE NUMBER: 2018OPA-0238

|     |  |                                   |
|-----|--|-----------------------------------|
| # 3 | 13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits | Not Sustained (Training Referral) |
|-----|--|-----------------------------------|

**Named Employee #14**

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Pretext)  | Allegation Removed                |
| # 2            | 5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication  | Not Sustained (Unfounded)         |
| # 3            | 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 (Unfounded)         |
| # 4            | 6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes [...]  | Not Sustained (Training Referral) |
| # 5            | 13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving | Not Sustained (Lawful and Proper) |

**Named Employee #15**

| Allegation(s): |  | Director's Findings               |
|----------------|--|-----------------------------------|
| # 1            | 13.030 - Emergency Vehicle Operations 13.030 - POL 2 Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk | Not Sustained (Lawful and Proper) |
| # 2            | 13.030 - Emergency Vehicle Operations 13.030 - POL 5 Officers Are Responsible for the Safe Operation of Their Police Vehicle           | Not Sustained (Lawful and Proper) |
| # 3            | 13.031 - VEHICLE ELUDING/PURSUIITS 9. Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies        | Not Sustained (Training Referral) |

***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:**

It was alleged that multiple Named Employees engaged in an out of policy pursuit, failed to terminate the pursuit when ordered to do so, and used out of policy force in the form of PIT maneuvers. It was further alleged that several of the Named Employees engaged in dishonesty, failed to write felony statements, and failed to activate Department video as required by policy.

**ADMINISTRATIVE NOTE:**



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OPA's investigation into this case involved a number of Named Employees, all of whom, except for NE#1, are members of the Seattle Police Officers' Guild (SPOG). Based on the unavailability of one of the SPOG Named Employees during parts of the pendency of this investigation, OPA sought and received a 30-day extension of the 180-day period. NE#1 is represented by the Seattle Police Management Association (SPMA). OPA made the same request to SPMA and it was denied by the SPMA President. Based on a review of the SPMA collective bargaining agreement, OPA believes that its request for an extension was supported by the facts of this case and that the denial of the request by SPMA was unwarranted and unreasonable. Ultimately, however, OPA made the decision to submit one DCM for all Named Employees using the extended 180-day deadline.

At the discipline meeting in this matter, there was general agreement concerning OPA's findings, including the Sustained findings against Named Employee #6. The chain of command further agreed that Allegation #1 should be Sustained against Named Employee #12; however, there was disagreement concerning whether Allegation #4 should also be Sustained. OPA initially recommended that this allegation be Sustained based on Named Employee #12's failure to return to the City when Communications stated that all SPD units were ordered to do so, as well as based on the fact that Named Employee #12 failed to get pre-authorization to engage in a pursuit with other law enforcement agencies outside of the City. In reaching this recommended finding, OPA distinguished between the role of SWAT officers, who were tasked with providing aid to law enforcement agencies all over King County, and Robbery Unit detectives, who OPA viewed as having a much more limited mission and scope. NE#12's chain of command recognized that he should have sought pre-authorization before leaving the City and engaging in the pursuit; however, they contended that the mission and scope of Robbery Unit detectives did expand outside of the City and that it was not unreasonable for NE#12 to have traveled south of Seattle to try to locate an individual who he believed to be the suspect in one of his cases. The chain of command also noted that while Communications ordered all SPD units to return to the City, this was more restrictive than the order issued by the Patrol Lieutenant and was likely issued in error and, at the very least, was confusing. OPA recognized that the chain of command made valid points. OPA and the chain of command agreed that, instead of a Sustained finding being issued, retraining would be provided to all employees of the Robbery Unit and any other follow-up units with a County-wide scope concerning the requirement to seek pre-authorization before leaving the City to engage in a pursuit and/or to assist outside law enforcement agencies in a pursuit.

**STATEMENT OF FACTS:**

This case stems from a vehicle pursuit that involved multiple officers assigned to both Patrol and SWAT. In summary, it was alleged by the then Assistant Chief for Special Operations that the pursuit continued after it had been terminated and, as such, that it was contrary to policy. It was also alleged that SWAT officers and a K-9 officer used PIT maneuvers that may not have been consistent with policy. Based on these allegations of misconduct and pursuant to a request from the chain of command, the Department's Force Investigation Team (FIT) assumed investigatory control of the incident and ultimately made an OPA referral. Other allegations concerning reporting, honesty, and Department video were added and this investigation followed.

This DCM analyzes numerous allegations of policy violations against 15 Named Employees. In doing so, OPA sets forth the facts germane to those allegations. For an overview of the incident, including an analysis of the significant amount of Department video and radio traffic, please refer to OPA's Case Summary. Also instructive is the FIT Force Investigation Report, which provides a concise yet detailed overview of what occurred in this case.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires that Department employees be truthful and complete in all communication. The allegation against NE#1 was that he engaged in dishonesty when he failed to convey complete and accurate information to the then Assistant Chief of the Special Operations Bureau during phone calls at the time of the pursuit, as well as that he was dishonest when he claimed that the Assistant Chief did not order him to terminate the pursuit.

**Assistant Chief's FIT Interviews**

During his first FIT interview, the Assistant Chief said that he spoke to NE#1 on the phone and that NE#1 informed him that SWAT officers were engaged in a pursuit. This notification occurred approximately 20 to 25 minutes prior to the conclusion of the pursuit. The Assistant Chief was following the pursuit on the SWAT tactical frequency and, after his call with NE#1, he observed a live video of the pursuit on the news. The Assistant Chief stated that he did not have any concerns about the pursuit until he saw the news feed. At that point, he observed that unmarked SWAT vehicles appeared to be lead in the pursuit and he saw the vehicles pass a school bus. The Assistant Chief told FIT that he was worried that a child could be killed. The Assistant Chief explained that, prior to this phone call, he did not know that the pursuit had been terminated by a Patrol supervisor. Moreover, he stated that NE#1 did not convey this information to him during their phone call. He also stated that NE#1 did not convey to him that a Patrol Lieutenant expressed a lack of confidence that the vehicle being pursued was actually the correct vehicle. He asserted that, had he known these facts, it would have affected his decision to allow the pursuit at the outset.

The Assistant Chief stated that he then called NE#1 and told him to terminate the pursuit. The Assistant Chief recounted that NE#1 responded "copy that" and then the phone call ended. The Assistant Chief stated that the pursuit continued for around another five minutes until it ended after a K-9 officer, NE#6, performed a PIT maneuver. The Assistant Chief recalled that NE#1 referenced the SWAT personnel being the only people trained to perform a PIT maneuver. He also heard over the radio that SWAT personnel were requesting permission to use a PIT maneuver and that NE#1 granted that permission. When asked whether he believed that NE#1 complied with his order to terminate, the Assistant Chief stated that he did not know whether NE#1 had time to do so or if he had the same situational awareness as the Assistant Chief. The Assistant Chief confirmed, however, that he never heard NE#1 broadcast over the radio that the pursuit was terminated. The Assistant Chief further confirmed that his order to terminate was clear and was "non-negotiable."

In a second interview with FIT, the Assistant Chief stated that NE#1 told him that the Subject being pursued had been positively identified as the perpetrator. Again, he confirmed that NE#1 did not relay the articulated confusion by the Patrol supervisor (which was ultimately correct) that they were pursuing the wrong individual. The Assistant Chief stated that had he known about this confusion and the fact that the pursuit had previously been terminated, he likely would have also terminated it.

**NE#1's FIT Interview**





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NE#1 received a call from NE#3. NE# stated that there was a pursuit involving Patrol units and he asked NE#1 for permission to leave Seattle to assist if necessary. NE#1 began following the incident on the radio. NE#1 understood that South Precinct Patrol units had disengaged and the pursuit was now being conducted by units from outside law enforcement agencies in South King County. NE#1 called the Assistant Chief to apprise him of what was happening. NE#1 told him that SWAT was not engaged at that time but was moving into a support role. NE#1 received another call from NE#3, during which NE#3 stated that the Subject had hit a pedestrian and other vehicles. NE#3 asked for permission to PIT if necessary. NE#1 stated that, based on the fact that the Subject was involved in a shooting, was fleeing officers, and had hit a pedestrian and vehicles, he justified PIT maneuvers if appropriate.

NE#1 spoke to the Assistant Chief who wanted an update and was concerned with dangerous driving. NE#1 stated that he did not know much at that time, that radio had been unclear, and that there did not appear to be a unified command over the pursuit.

NE#1 told FIT that SWAT was not involved in the pursuit until right before SWAT units used PIT maneuvers in the cul-de-sac. NE#1 explained that, prior to this, the SWAT units were operating in a support role and traveling to the general vicinity of the Subject vehicle.

NE#1 stated that NE#3 relayed that there was radio traffic indicating that a South Precinct Patrol supervisor had terminated the pursuit, but that NE#3 had some confusion as to the current status of the pursuit given that other units were still involved.

Ultimately, NE#1 contended that he made the most informed decision he could with the information that was available to him. He denied deliberately providing incomplete or misleading information to the Assistant Chief or, for that matter, disobeying any direct orders.

#### **NE#1's OPA Interview**

NE#1 stated that he received a call from NE#3, who asked him whether he was following the ongoing pursuit. NE#1 stated that he was not and began monitoring radio traffic. NE#3 stated that an order to terminate had been given by the Patrol Lieutenant, but that other vehicles were still pursuing. NE#1 stated that NE#3 was unclear why the pursuit had been terminated and believed that they were following the correct Subject. NE#3 further expressed that the Subject was believed to be a felony warrant suspect and had been acting in a dangerous manner. NE#3 believed that it was important to have PIT trained SWAT personnel in the vicinity and was seeking clarity concerning what to do. NE#1 ultimately provided authorization to engage in the pursuit and to use PIT maneuvers if appropriate.

NE#1 then called the Assistant Chief. He stated that anytime SWAT engaged in operations outside of Seattle, he was required to screen this with the Assistant Chief. NE#1 informed the Assistant Chief that they had little details but that SWAT was involved in a pursuit of a shooting suspect and was moving into South King County. When asked whether he conveyed to the Assistant Chief the fact that the pursuit had been previously terminated by another supervisor, NE#1 responded: "I don't remember, but I would suspect [I] would [have], it was an important part of the screening at that time." NE#1 asked the Assistant Chief to listen to the appropriate radio station and said that he would keep him updated. The Assistant Chief thanked NE#1 and the call ended.



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NE#1 stated that he again spoke to NE#3 and obtained more information. After that, he called the Assistant Chief back in order to discuss the appropriateness of SWAT's involvement in the pursuit. NE#1 recalled that the Assistant Chief was watching video of the pursuit and discussed that the vehicles had passed a school bus or a school zone while driving "wildly." NE#1 told the Assistant Chief that he did not think what he was seeing were SPD units. They continued to talk about what was going on. NE#1 recalled that he "said something along the lines of, well then, maybe it's appropriate for me to pull my guys back." He told the Assistant Chief that he was going to call NE#3 again and determine what was happening. At the time he did so, however, the PIT maneuvers at the cul-de-sac had already occurred, the second PIT on the highway had happened, and the pursuit was ending.

When asked by OPA whether he was ever ordered by the Assistant Chief to terminate the pursuit, he stated: "And, let me be absolutely clear on this point, no Commander at any point during this entire incident ever gave me an order of any kind. And, I'm emphatic about that." He explained that he had ongoing discussions with the Assistant Chief, but that there was no direct order.

NE#1 explained that he had incomplete information at the time of his conversations with the Assistant Chief and that he was still in the process of fact gathering. He stated that, due to this fact, he provided incomplete information to the Assistant Chief; however, this was not done intentionally or to mislead the Assistant Chief, but was simply a function of the fast-evolving circumstances of the incident.

### **Analysis**

There are two main questions here. First, did the Assistant Chief tell NE#1 that the pursuit was to be terminated. Second, did NE#1 intentionally provide incomplete and misleading information to the Assistant Chief in order to allow SWAT to participate in the pursuit.

With regard to the first question, the Assistant Chief stated that he gave an order to terminate. NE#1, to the contrary, unequivocally stated that no such order was given and that they instead had a conversation and discussed several possible courses of action. Their conversation was not recorded and, as such, I cannot determine whether NE#1 or the Assistant Chief is telling the truth.

With regard to the second question, NE#1 stated that he provided as much information as he had to the Assistant Chief and that he did not intentionally provide incomplete and misleading information. There are disputes of fact here as well. The Assistant Chief stated that NE#1 did not disclose that the Patrol Lieutenant had previously terminated the pursuit. NE#1 did not recall this conversation with specificity, but stated that this was information that he would likely have provided. The Assistant Chief also stated that NE#1 did not inform him that the Patrol Lieutenant believed that they were possibly pursuing the wrong person; however, NE#1 stated that he was not aware of this based on the information he had received from NE#3.

Ultimately, these disputes of fact prevent me from reaching a conclusive finding on this allegation. If the Assistant Chief ordered NE#1 to terminate the pursuit, NE#1's denials of this fact would constitute dishonesty. Moreover, if NE#1 deliberately provided incomplete and misleading information, this could also constitute dishonesty. However, this simply cannot be proved one way or the other. As such, I recommend that this allegation be Not Sustained – Inconclusive.



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

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

SPD Policy 5.001-POL-15 requires that Department employees obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination.

The Assistant Chief asserted that he gave NE#1 a direct order to terminate the pursuit. Had the Assistant Chief done so and NE#1's failed to terminate SWAT's involvement in the pursuit, this would have constituted insubordination and would have violated of this policy. However, as with Allegation #1, I cannot prove whether this order was given as NE#1's denies that it occurred and because the conversation between NE#1 and the Assistant Chief was not recorded.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #3**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

NE#1 confirmed at his OPA interview that, on the date in question, he was driving a vehicle that was not equipped with In-Car Video (ICV). He further stated that, as the SWAT Commander, he was not required to use Body Worn Video (BWV) and, at least at the time of the incident, was not equipped with that technology.

Given that NE#1 did not use either technology on the date in question and, at that time, appeared to be permitted to not do so, he did not violate this policy by failing to record. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegations #4**

***13.031 - Vehicle Eluding/Pursuits 9. Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies***

SPD Policy 13.031-POL-9 states that a Department supervisor must approve pursuits leaving the City and where SPD units assist in pursuits by other law enforcement agencies.

Here, NE#1, a Department supervisor, approved SWAT units leaving City limits to provide support to other law enforcement agencies involved in a pursuit. As the incident developed, he also authorized the SWAT units to actually engage in the pursuit.



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This policy does not require that decision to have been reasonable or justified, that question is discussed below in the context of Allegations #3 and #7. All that it required is that a supervisor provided approval. As NE#1 did so, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #5**

***13.031 - Vehicle Eluding/Pursuits 10. The Controlling Supervisor is Responsible for the Pursuit***

SPD Policy 13.031-POL-10 states that the controlling supervisor is responsible for the pursuit. The policy explains that: “The controlling supervisor’s responsibility extends only to the question of whether the pursuit is within policy.” (SPD Policy 13.031-POL-10.) It states that the supervisor must confer with the primary units in order to gather sufficient information to make the determination as to whether the pursuit is justified. (*Id.*)

Here, NE#1 spoke to NE#3 multiple times to determine information concerning the reason for the pursuit and what was occurring in real-time. He also continuously monitored radio traffic and tried to communicate with other supervisors who he believed were controlling the pursuit. These latter conversations were not fruitful.

Based on the information available to him at the time, I find that NE#1 acted consistent with policy when he justified the pursuit. As he explained, he was operating with imperfect and incomplete information during a fast-moving and exigent situation. I find that NE#1’s decision-making was reasonable and warranted by the facts and circumstances of this case.

As discussed more fully below, I ultimately find that the PIT maneuver utilized by NE#6 violated Department policy. This PIT maneuver was utilized after NE#1 had given general authorization for such force. NE#1 explained that he explicitly gave that authorization to SWAT units and, most notably, to NE#2. NE#6 asserted, however, that he believed that NE#1 was giving him permission to so act. For the purpose of this policy, however, this question is largely immaterial. The policy directs that the supervisor is only responsible for whether the pursuit was in policy, not for whether the force used by officers engaged in that pursuit was also within policy. The onus for those decisions falls on the officers who made the force decisions.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #6**

***13.031 - Vehicle Eluding/Pursuits 18. Officers Will Not Reinitiate Pursuits That Have Been Terminated***

SPD Policy 13.031-POL-18 states that officers will not reinitiate pursuits that have been terminated. However, the policy provides two exceptions from this general rule: first, when the officer has an articulable basis to believe that a new violent crime has been committed; and, second, where a supervisor reauthorizes the pursuit. (SPD Policy 13.031-POL-18.)



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Even though the initial pursuit was terminated by the Patrol Lieutenant, it was reauthorized by NE#1 based on the information provided to him by NE#3. Whether this decision was reasonable and appropriate is discussed in the context of Allegations #3 and #7. As NE#1 was a supervisor and as NE#1 reauthorized the pursuit, the requirements of this policy were complied with. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegations #7**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

NE#1 made the decision to authorize the pursuit based on the information provided by NE#3 over two phone conversations. It is unclear exactly what was discussed between them; however, it is evident that NE#3 informed NE#1 that the pursuit had been previously terminated by the Patrol Lieutenant and that he provided at least some information concerning the confusion as to whether the Subject was actually the felony suspect.

Where a terminated pursuit is re-initiated, it would be advisable to speak with the supervisor who previously terminated the pursuit. However, this, at times, may not be feasible. For example, where there is “an on-going dynamic scene,” where there is no access to the other supervisor, or where the re-initiating supervisor does not know who the terminating supervisor was. NE#1 stated that he made several requests for Patrol units from the South Precinct to call him, but no one did. He further stated that he asked the involved South Precinct Patrol units to come to the scene, but was later informed that an Assistant Chief ordered them not to do so.

NE#1 stated that he was called by NE#3 to screen the pursuit, but that NE#3, as a supervisor, could have unilaterally decided to approve the pursuit and to approve SWAT units leaving City limits.

NE#1 stated that he was aware that there was a K-9 unit, NE#6, involved in the pursuit and that he ordered this unit to back off and to let SWAT take lead. However, NE#1 explained that NE#6 appeared to misunderstand what he was saying and, instead, used a PIT maneuver on the Subject’s vehicle.

NE#1 explained that he went over the radio to determine who the incident commander was. He stated that he could hear a lot of excited officers but could not isolate the commander. Someone in Tukwila then came over the radio and said that he was in command. NE#1 informed that individual, whose name he did not learn, that SWAT units were in the vicinity and could assist if needed. The incident commander then dropped off and NE#1 could not reach him again.

NE#1 contended that, at the time the order was given to terminate, SWAT units were not in the pursuit. They were driving southbound in order to provide support if needed. He stated that, based on the information he knew at the



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time and considering the confusion and fast-evolving nature of the incident, he made the best decisions that he could when he authorized the pursuit and the usage of PIT maneuvers if appropriate.

In hindsight, the decision to authorize SWAT units to engage in the pursuit and to PIT the Subject was ill-advised. It was later determined that the Subject was not the shooting suspect and that the pursuit was based on multiple miscommunications, incomplete information, and inconsistent supervision from outside law enforcement agencies. However, in reaching my recommended findings, I am prohibited in engaging in such a hindsight analysis. Instead, I must judge NE#1's decision-making based on the information he knew at the time of the incident. Accordingly, and applying this standard, I find that NE#1 did not abuse his discretion when he authorized the pursuit and the usage of PIT maneuvers. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegations #1**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

NE#2, NE#3, NE#4, NE#7, and NE#13, who were assigned to SWAT, all failed to record Department video during the entirety or portions of their involvement in this incident.

SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded, which includes: arrests and seizures; and "vehicle eluding/pursuits." Given the above, I find that these Named Employees, as well as the other Named Employees involved in this incident, were required to activate and record both ICV and BWV.

NE#2 did not record the entirety of his actions on ICV. He stated that he was unfamiliar with the technology and had just been trained on it. He further did not record BWV at all, also stating that he was also unfamiliar with its usage. NE#2 denied intentionally failing to record.

NE#3 activated and deactivated his ICV twice during this incident. In the first instance, he turned off his ICV when he was trying to determine, based on his conversation with NE#1, whether SWAT units would continue south of the City to provide support to outside law enforcement agencies. He stated that he thought he turned on his ICV again when he reactivated his emergency lights and sirens. However, this did not actually occur. NE#3 also intended that he intentionally did not record this incident. However, as a function of his actions, crucial evidentiary matters in this case – most notably the conversation between NE#3 and NE#1 – was not recorded.

NE#4 stated that he was driving a car equipped with ICV. He told OPA that he logged into the COBAN system earlier that day and, when he got into his vehicle, he thought that the ICV would activate when he turned on his emergency lights and sirens. It did not and, as a result, no video was recorded by NE#4. He, like the other officers, denied intentionally failing to record.

During his OPA interview, NE#7 stated that he did not record due to exigent circumstances. He explained that he quickly jumped into a vehicle without logging into the COBAN system and without his wireless microphone. He denied intentionally failing to record.



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Lastly, NE#13, who was in the vehicle with NE#3, acknowledged that they twice started and deactivated their system and that they failed to record the totality of their involvement in this incident. He explained that, on the first time they deactivated, they did so because they were waiting for further direction from NE#1. He stated that, on the second occasion, they were lost. He admitted failing to realize that they did not then again reactivate their ICV system. NE#13 told OPA that he did not intentionally fail to record.

It is concerning that five SWAT unit members failed to record Department video in this case. They were involved in a significant incident that was later subjected to intense scrutiny both inside and outside of the Department. This failure to record caused an evidentiary gap and served to create questions and confusion where none needed to exist. These Named Employees all had explanations for their conduct, ranging from forgetting to do so to technological failures to the purported existence of exigent circumstances; however, I found these explanations to be largely unconvincing.

As a matter of current practice, where an officer fails to record Department video, OPA has been recommending a Not Sustained finding when the failure is demonstrably unintentional and where the officer later self-reports and documents the reason for not recording. Based on my review of the record, there is insufficient evidence to establish that any of the Named Employees intentionally failed to record. Moreover, while none of them created actual documentation providing the explanation for why they failed to record, they discussed their failures to do so and the reasons for those failures at their FIT interviews, which were conducted almost immediately after the incident. Accordingly, I consider this to constitute self-reporting and documenting. For these reasons, I recommend that these Named Employees receive Training Referrals rather than Sustained findings. However, I caution all of them that SWAT is not and will not be treated differently than any other unit of the Department for the purposes of evaluating compliance with this policy. SWAT no longer has any exemption from this policy and should ensure compliance with its terms moving forward. Future unexplained and undocumented failures will likely result in recommended Sustained findings.

- **Training Referral:** NE#2, NE#3, NE#4, NE#7, and NE#13 should all be retrained concerning the elements of SPD Policies 16.090-POL-5 and 16.090-POL7. They should be instructed that they are required to record Department video, reminded that SWAT no longer has any exemption from recording, and directed that future failures to do so may result in recommended Sustained findings. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

## **Named Employee #2 - Allegation #2**

### ***8.200 - Using Force 1. Use of Force: When Authorized***

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the Subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is



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reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

There were three main applications of force used in this case. First, NE#2, NE#3, NE#4, NE#5, and NE#6 used PIT maneuvers on the Subject vehicle in the cul-de-sac. Second, NE#6 used a PIT maneuver to later strike the Subject vehicle while driving on a highway. Third, and last, NE#12 pointed a firearm at the Subject at the conclusion of the stop and after the Subject’s vehicle was immobilized.

The PIT maneuvers are discussed in the context of SPD Policies 8.300-POL-7(4) and 8.300-POL-7(5). As NE#2, NE#3, NE#4, and NE#5 did not use any other force, I recommend that this allegation be Not Sustained – Lawful and Proper as against them. NE#6’s and NE#12’s force applications are addressed separately.

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

### **Named Employee #2 - Allegation #3**

#### ***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

SPD Policy 5.001-POL-15 requires that Department employees obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination.

This allegation was classified against NE#2, NE#3, NE#6, NE#7, NE#11, NE#12, and NE#13. In summary, the issue here is whether these Named Employees engaged in insubordination when they failed to return to Seattle city limits when the Patrol Lieutenant terminated the pursuit. At that time, the Patrol Lieutenant ordered all “South Precinct units” to return to Seattle. Communications repeated and also expanded this order, stating that *all* SPD units were to return to Seattle.

These Named Employees collectively offered two main argument for why they did not violate this policy when they failed to comply with the orders from the Patrol Lieutenant and Communications. First, they stated that, at the time of the orders, they were not in a pursuit and, accordingly, there were no actions to terminate. Second, they asserted that they were assigned to SWAT, not South Precinct or Patrol, and, for this reason, they viewed orders as being inapplicable to them.

With regard to the first justification, I agree that these Named Employees were not in an active pursuit at the time of the orders to terminate. None of them had eyes on the Subject vehicle and, in fact, were not even close to the Subject vehicle. While they were traveling to the vicinity of where the pursuit was and, when they arrived, were likely to engage in the pursuit, they were not actually doing so then.

With regard to the second justification, the Named Employees are right that they are not South Precinct officers and, as such, the explicit language Patrol Lieutenant’s order did not reference them or, for that matter, apply to them. There was, however, another dispatch from Communications that directed all units to return to the City. These Named Employees explained that they found the various radio transmissions confusing, Specifically, they asserted that it was not necessarily clear who was being directed to return to Seattle (all units versus just South Precinct units), why they were being directed to do so, whether the Subject vehicle was actually the vehicle they were looking for, and whether the Subject had struck a pedestrian and other vehicles while fleeing. These Named





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Employees also identified the role and expectation of SWAT as compared to that of Patrol. They explained that one aspect of SWAT's duties is to provide support for law enforcement agencies throughout King County in these exact types of situations. These Named Employees stated that this was direction they had received through their chain of command. Moreover, several two of these Named Employees were supervisors with the ability to reinstate the pursuit, even after the orders to terminate. I find these arguments to be reasonable. This is the case even though several SWAT unit members did return to Seattle after the orders to terminate were issued.

Ultimately, I find that these Named Employees acted in good faith and consistent with their unique responsibilities as SWAT officers when they continued to provide support after the termination orders were issued. For these reasons and as I find that they did not deliberately disobey an intentional order from a superior officer, I recommend that this allegation be Not Sustained – Unfounded as against all of these Named Employees.

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

**Named Employee #2 - Allegations #4**

***13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

SPD Policy 13.031-POL-13 states that "intentional vehicle-to-vehicle contacts are prohibited as pursuit-ending tactics except as justified under the use of force policy." The policy explains that such contacts, including PIT maneuvers, "are uses of force that officers may use only when consistent with Manual Section 8.300 and must be reported under 8.400." (SPD Policy 13.031-POL-13.) Lastly, the policy directs that: "Only personnel who have been trained in the PIT may engage in this technique." (*Id.*)

This policy provides the overall framework for when PIT maneuvers are appropriate and refers to SPD Policy 8.300. Accordingly, whether the PIT maneuvers engaged in by NE#2, NE#3, NE#4, and NE#5 while in the cul-de-sac were appropriate is addressed in the context of that policy, not here. I deem this allegation to be subsumed in SPD Policy 8.300 and, as I find that these initial PIT maneuvers were consistent with that policy, I also recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #5**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.***

SPD Policy 8.300-POL-7(4) instructs that officers will only use vehicle-related force tactics, such as PIT maneuvers, when they are objectively reasonable.

As discussed above, NE#2, NE#3, NE#4, and NE#5 all used PIT maneuvers on the Subject's vehicle while in the cul-de-sac. These Named Employees asserted that this force was appropriate under the circumstances. They collectively explained that, at the time they used the PIT maneuvers, outside law enforcement agencies had already attempted to stop the Subject with spike strips and were unsuccessful. As discussed above, the offices believed that the Subject was a violent felon who was potentially armed and dangerous. They further believed that he had struck other



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vehicles and a pedestrian during an extended pursuit. These Named Employees stated that the cul-de-sac was an advantageous place to attempt to end the pursuit. There were limited avenues of ingress and egress, there was no traffic, there were no pedestrians in the vicinity, and all of the vehicles were moving at slow speeds. These Named Employees made controlled contact with the Subject's vehicle in an attempt to pin him and prevent him from continuing to elude. This was ultimately unsuccessful and the Subject was able to flee from the cul-de-sac.

From my review of the record, including the video evidence, I find that this force was reasonable, necessary, and proportional under the circumstances. With regard to reasonableness, I apply a reasonable officer standard. Accordingly, I evaluate what a reasonable officer in these Named Employees' place and possessing the information that they had at the time would have done. The Subject had engaged in an ongoing and dangerous pursuit. The Subject had struck other vehicles and a pedestrian. The Subject was further believed to be armed and dangerous and a felony suspect. Given this, it was reasonable to use force to take the Subject into custody.

Moreover, the force was necessary to effectuate the officers' goal of ending the pursuit, arresting the Subject, and eliminating the future threat to officers and the public. In addition, I find that the officers did not believe that there was any reasonable alternative to this force. Notably, spike strips had already been used without success and the Subject showed no inclination of ceasing the pursuit.

Lastly, I find that the force was proportional to the threat facing the officers. Again, the Subject had led multiple law enforcement agencies on a long and dangerous pursuit. They believed that he was a threat of harm based both on his driving and on the fact that he was thought to be a felony suspect who was armed and dangerous. Moreover, at the time, the officers reasonably believed that he had struck vehicles and a pedestrian. The force was purposed to prevent any further harm from occurring and was proportional in that respect.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, NE#4, and NE#5.

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

**Named Employee #2 - Allegation #6**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics***

SPD Policy 8.400-POL-7(5) directs that "officers shall consider secondary risks to the Subject and third parties when determining whether to deploy vehicle-related force tactics." The policy specifically identifies the dangers presented by a "spun-out vehicle and loose tires on the road."

With regard to the PIT maneuvers utilized by NE#2, NE#3, NE#4, and NE#5, I find that they considered the risks to the Subject and third parties. Notably, they used the maneuvers while in a cul-de-sac that had limited avenues of ingress and egress, no traffic, and no pedestrians in the vicinity. Moreover, the maneuvers, themselves, were tactically sound, targeted to immobilize the Subject's vehicle, and effectuated at slow speeds. All of this added to the mitigation of possible harm.



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Given the above, I find that these Named Employees acted consistent with this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegations #7**

***8.200 - Using Force 1. Use of Force: When Authorized***

This allegation appears to have been errantly classified twice against NE#2. As it is duplicative, I recommend that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegations #8**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

SPD Policy 13.031-POL-4 states that “officers will not pursue without articulable justification that the public safety need to stop the eluding vehicle outweighs the inherent risk of pursuit driving. The policy indicates that “[t]he circumstances justifying the decision to pursue an eluding vehicle must be articulable at the time the officer initiates the pursuit. (SPD Policy 13.031-POL-4.) Lastly, the policy explains when a pursuit is not justified, including where the crime is one or a combination of the following: traffic violations/civil infractions; misdemeanors/gross misdemeanors; property crimes; and the act of eluding alone. (*Id.*)

This allegation was classified for investigation against NE#2, NE#3, NE#4, NE#5, NE#6, NE#8, NE#9, and NE#14. These were all of the Named Employees who drove police vehicles during the pursuit. For the purposes of clarity, the SWAT and SWAT-affiliated officers (NE#2, NE#3, NE#4, NE#5, and NE#6) are discussed together here and NE#8, NE#9, and NE#14, who were Patrol officers involved at the inception of the pursuit, are discussed separately.

NE#2, NE#3, NE#4, NE#5, and NE#6 contended that they commenced their involvement in the pursuit when they first observed the Subject vehicle in the vicinity of Federal Way and followed it into the cul-de-sac. At that point, they drove outside of normal traffic patterns in an attempt to stop the eluding Subject. Prior to that time, these officers stated that they did not have eyes on the Subject vehicle and that they were driving – some using emergency vehicles operations – to be in a place to provide assistance to other law enforcement agencies.

The distinction between pursuing and emergency driving in the context of SWAT operations is often a close one and an issue on which OPA has previously articulated confusion and concern. While not necessarily the case here, it seems that, at times, SWAT and SWAT-affiliated K-9 personnel operate outside of the policy restrictions placed on all other officers. This appears to be reinforced by their chain of command and, generally, by the Department. When I read Department policy, however, I see no textual support for the broad authority and discretion that SWAT has historically exercised nor an exemption for those individuals from the broader policy. That being said, I cannot definitively state this is not something Department leadership supports. I think this is an area that could use some additional clarity.



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With regard to this case, however, at the time these Named Employees engaged in their portion of the pursuit, they believed that the Subject was involved in a prior shooting, was potentially armed and dangerous, had led numerous officers on a long and very risky pursuit, and had struck a pedestrian and other vehicles. Ultimately, it was determined that the Subject was not actually the suspect in the shooting and that he was not armed and dangerous. Moreover, the uncertainty concerning the Subject's actual involvement in the shooting and whether the Subject vehicle was, in fact, the vehicle that was sought was communicated over the radio. That being said, I do not believe that it was unreasonable for the Named Employees to have thought that the pursuit was justified at the time they became involved. While questions had been raised by the Patrol Lieutenant, the Subject was not conclusively ruled out as the suspect. Moreover, the suspect's driving and overall behavior arguably provided a further justification to continue with the pursuit.

Even if the above was not true and the Subject had been conclusively ruled out as being the suspect by the Patrol Lieutenant, NE#1, who was these Named Employees' supervisor, authorized their involvement in the pursuit. Accordingly, they were justified when they so engaged.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, NE#4, NE#5, and NE#6.

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

**Named Employee #3 - Allegations #1**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained and I refer to the above Training Referral. (See *id.*)

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

**Named Employee #3 - Allegation #2**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #3**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

For the same reasons as stated above (see Named Employee #2, Allegation #8), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



**Named Employee #3 - Allegations #4**

***13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

For the same reasons as stated above (see Named Employee #2, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #5**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.***

For the same reasons as stated above (see Named Employee #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #6**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics***

For the same reasons as stated above (see Named Employee #2, Allegation #6), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #7**

***8.200 - Using Force 1. Use of Force: When Authorized***

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

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

**Named Employee #3 - Allegation #8**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communication. This allegation was classified against NE#3 based on the possibility that he did not convey true, accurate, and/or complete information to NE#1 when requested guidance on whether SWAT units were authorized to engage in the pursuit.



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NE#3 confirmed that there were two phone calls between him and NE#1. NE#3 stated that he told NE#1 that the pursuit had been terminated by the Patrol Lieutenant. NE#3 stated that he did not believe that he gave NE#1 the reason for why the Patrol Lieutenant terminated the pursuit. He did tell NE#1 that they “may have launched a shooting Suspect into another jurisdiction, and that Guardian One was still following this guy.” NE#3 recounted that he thought he told NE#1 that the Patrol Lieutenant ordered all South Precinct units to return to Seattle. NE#3 denied providing misleading information to NE#1 during either of the phone calls. It is unclear from the record whether or not NE#3 conveyed to NE#1 that the Patrol Lieutenant had indicated serious concern that the Subject was not the felony suspect.

Ultimately, applying the heightened burden of proof necessary to establish this allegation, I find that the available evidence does not prove dishonesty. There is insufficient information in the record to establish that NE#3 deliberately conveyed partial or inaccurate information in order to secure the authorization of the pursuit. Moreover, it is unclear what NE#3’s motive would have been to do so. For these reasons, and based on the totality of the circumstances, I recommend that this allegation be Not Sustained – Unfounded.

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

#### **Named Employee #3 - Allegations #9**

##### ***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

NE#3, NE#4, NE#5, NE#6, NE#7, and NE#12 were all involved in the felony arrest of the Subject. However, they all acknowledged that they failed to complete officer statements relating to the felony arrest at the time of the incident. These officers all confirmed that they did generate force statements, Vehicle Pursuit Blue Team entries, and were interviewed contemporaneously by FIT. SPD Policy 15.180-POL-9 requires officers to complete statements for felony arrests. Notably, there is no exception in the policy for felony arrests that involve Type II or III force or for cases that are later investigated by FIT. (See SPD Policy 15.180-POL-9.)

While I find that felony statements were required and that, by not writing these statements, these officers technically violated policy, I recommend a Training Referral rather than a Sustained finding. I reach this finding for two main reasons. First, the aftermath of the incident and the resulting FIT investigation was chaotic, with numerous witnesses. Many of the Named Employees were awake for over 20 hours and shortly thereafter responded to new calls for service. Second, these officers all generated up to two witness statements and engaged in detailed FIT interviews. Thus, the substance of the felony arrest statement was certainly conveyed. That being said, I counsel these officers to ensure that such statements are completed in the future.

- **Training Referral:** NE#3, NE#4, NE#5, NE#6, NE#7, and NE#12 should all receive retraining concerning SPD Policy 15.180-POL-9. This can be effectuated by their supervisor reminding them of their requirement to complete the required statement after every felony arrest. These officers should be counseled concerning their failure to do so here and should be encouraged to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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



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**Named Employee #4 - Allegations #1**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained and I refer to the above Training Referral. (See *id.*)

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

**Named Employee #4 - Allegation #2**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegation #3**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

For the same reasons as stated above (see Named Employee #2, Allegation #8), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegations #4**

***13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

For the same reasons as stated above (see Named Employee #2, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegation #5**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.***

For the same reasons as stated above (see Named Employee #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #4 - Allegation #6**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics***

For the same reasons as stated above (see Named Employee #2, Allegation #6), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegations #7**

***8.200 - Using Force 1. Use of Force: When Authorized***

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

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

**Named Employee #4 - Allegations #8**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

For the same reasons as stated above (see Named Employee #3, Allegation #9), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See *Id.*)

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

**Named Employee #5 – Allegation #1**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

For the same reasons as stated above (see Named Employee #3, Allegation #9), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See *Id.*)

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

**Named Employee #5 – Allegation #2**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

For the same reasons as stated above (see Named Employee #2, Allegation #8), I recommend that this allegation be Not Sustained – Lawful and Proper.

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





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**Named Employee #5 – Allegation #3**

***13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

For the same reasons as stated above (see Named Employee #2, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 - Allegations #4**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.***

For the same reasons as stated above (see Named Employee #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 - Allegation #5**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics***

For the same reasons as stated above (see Named Employee #2, Allegation #6), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 - Allegation #6**

***8.200 - Using Force 1. Use of Force: When Authorized***

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

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

**Named Employee #5 - Allegations #7**

***13.031 - Vehicle Eluding/Pursuits 12. Marked Police Vehicles Take Priority in Pursuits***

SPD Policy 13.031-POL-12 directs that “marked police vehicles take priority in pursuits.” The policy explains that, while unmarked police vehicles can initiate pursuits, “marked police vehicles will assume the primary positions as soon as possible.”

Prior to the PIT maneuvers being utilized in the cul-de-sac, several SWAT vehicles began pursuing the Subject. At that time, NE#5, who was driving an unmarked vehicle, was primary in the pursuit. The remainder of the vehicles



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then involved in the pursuit were also unmarked, except for that driven by NE#6. NE#5 relayed that, just seconds after this portion of the pursuit began (approximately 20 seconds from a review of the video), the PIT maneuvers were used. As such, under the circumstances, it was not feasible at that time for a marked vehicle to assume the primary position. When the Subject was able to drive away, NE#6 became the primary officer.

Given the above, I find that NE#5 substantially complied with this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 - Allegations #8**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

This allegation appears to have been errantly classified twice against NE#5. As it is duplicative, I recommend that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #6 – Allegation #1**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #6 – Allegation #2**

***8.200 - Using Force 1. Use of Force: When Authorized***

As discussed more fully below, NE#6 used two applications of force in the form of two PIT maneuvers. While I find that the first maneuver was consistent with policy, I find that the second was not reasonable, necessary, and proportional and violated both this policy and SPD Policies 13.031-POL-7, 8.300-POL-7(4), and 8.300-POL-7(5). Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #6 – Allegation #3**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

For the same reasons as stated above (see Named Employee #2, Allegation #8), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



**Named Employee #6 - Allegations #4**

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

SPD 13.030-POL-2 directs that “officers may drive in an emergency response only when the need outweighs the risk. NE#6 asserted that, in this case, the need to apprehend the Subject was greater than the risk of emergency driving. NE#6 explained that he believed that he was pursuing a Subject who had been previously involved in a shooting, who had been fleeing for an extended period of time, and who had just struck other officers’ vehicles in the cul-de-sac. NE#6 also referenced that the Subject was suspected of hitting other vehicles and a pedestrian. NE#6 contended that the Subject was a “guy that needs to be caught.”

As discussed above, based on the information known to NE#6 at the time – even if ultimately proven to be at least partially inaccurate, his determination that the need to engage in emergency driving outweighed the potential risk of harm was reasonable.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #6 - Allegation #5**

***13.031 - Vehicle Eluding/Pursuits 13. Intentional Vehicle-to-Vehicle Contacts Are Prohibited as Pursuit-Ending Tactics Except as Justified Under the Use of Force Policy***

As explained below, I find that NE#6 violated Department policy when he used a PIT maneuver on the Subject at the conclusion of the pursuit. Based on this conduct, I recommend that Allegations #2, #6, and #7 be Sustained against him. Given this, I find it unnecessary to also recommend that this allegation be Sustained as it is duplicative of these other policies. Instead, I recommend that NE#6 receive the below Training Referral.

- **Training Referral:** NE#6 should receive retraining on SPD Policies 13.031-POL-13, 8.300-POL-7(4), and 8.300-POL-7(5). Moreover, he should be required to receive training from the Training Unit both on pursuits and emergency vehicle operations, generally, as well as concerning vehicle force tactics, including PIT maneuvers. Until this training has been effectuated and until NE#6’s chain of command is convinced that he can use such tactics consistent with policy, NE#6 should be prohibited from doing so. NE#6 should receive this training yearly as would any other SWAT officer. Further, NE#6’s chain of command should ensure that *all* K-9 officers receive such yearly training to the extent they are expected and permitted to use such tactics. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database. Moreover, NE#6’s chain of command should provide an update to OPA as to the status of this training for NE#6, as well as for the other K-9 officers.

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



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**Named Employee #6 - Allegation #6**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable. See Section 8.000.***

NE#6 utilized PIT maneuvers on two separate occasions. First, he did so with multiple other officers while in the cul-de-sac. Second, he did so while the lead officer in the concluding portion of the pursuit when he was driving behind the Subject on a four-lane highway.

With regard to the first PIT maneuver, I find that it was consistent with policy. In reaching this conclusion, I apply the same reasoning as with NE#2, NE#3, NE#4, and NE#5. Under the circumstances of this case, this maneuver was reasonable, necessary, and proportional.

I reach a different determination, however, with regard to the second PIT maneuver and find that it violated Department policy.

In explaining why he used this force, NE#6 stated his belief that he had been authorized to do so by NE#1. However, NE#1 did not actually provide him with such authorization. Indeed, NE#1 did the opposite. He told NE#2 to PIT the Subject at that time and told NE#6 to fall back. NE#6 did not do so and engaged in the maneuver. Even if NE#6 was legitimately confused as whether he had justification to use the maneuver and even if it was consistent with policy, the PIT still needed to be reasonable, necessary, and proportional. Here, it was not.

***Reasonableness Factor***

At a starting point, I find that the force was not reasonable. Most notably, I find that this force and the action taken by NE#6 were inconsistent with training and best practices. He effectuated the PIT maneuver at speeds well over those trained. Moreover, at the time he used the maneuver, there were a number of community members driving on both sides of the highway and it was raining. This was not an appropriate circumstance in which to use this high-risk and potentially dangerous maneuver. In addition, as discussed below, it placed NE#6, the Subject, other officers, and a host of community members at risk of harm. That risk was unacceptable and inconsistent with the training and expectations of the Department.

***Necessary Factor***

I further find that the force was not necessary under the circumstances. Instead of using a PIT maneuver at high speeds and in a location with heavy traffic, he could have continued to pursue the vehicle until he was in a more appropriate tactical position. It may have been entirely permissible under other circumstances to later PIT the vehicle, but not at the time it was done by NE#6. At that time, he was driving too fast and the risk of catastrophic harm to both the Subject and nearby community members was simply too high. Ultimately, I find that there were more effective alternatives available to NE#6 that he failed to take advantage of.

***Proportionality Factor***

Lastly, and most significantly in my opinion, the force ultimately applied and the risk that flowed from that force was not proportional. In evaluating this factor, the force used must have been commensurate with the risk of harm



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facing NE#6 and/or others. While the Subject certainly posed a risk of harm to the officers, himself, and community members from his driving and the prolonged pursuit, that paled in comparison to the risk of harm that the PIT maneuver placed the Subject and other community members in. Indeed, NE#1's PIT maneuver caused the Subject's vehicle to be propelled into an oncoming lane of traffic at high speeds. The Subject struck another vehicle, which could have caused serious injury if not death to that community member. It further could have caused harm to numerous other motorists who were completely innocent and should not have been subjected to such danger. While thankfully no one was injured or killed during this incident and as a result of NE#6's choice to use force, that result easily could have been different.

Ultimately, vehicle related force maneuvers are governed by strict policies. Where officers deviate from these policies, it can result in serious consequences, both intended and unintended. NE#6's decision-making in this case, even if he was operating with the best of intentions, subjected himself, other officers, the Subject, and community members to an unacceptable risk of harm. As such, it was inconsistent with this policy, as well as inconsistent with the requirement that force be reasonable, necessary, and proportional. For these reasons, I find that the second PIT maneuver was outside of policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #6 - Allegation #7**

***8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 5. Officers Shall Consider Secondary Risks to the Subject and Third Parties When Determining Whether to Deploy Vehicle-Related Force Tactics***

Based on my review of the record, I also find that, when he used the second PIT maneuver, NE#6 failed to properly and reasonably consider the risk of harm to the Subject and to third parties.

When he used the maneuver, NE#6 was driving well in excess of the speed appropriate for using a PIT maneuver, there was traffic in all lanes of the four-lane highway, and it was raining.

During his OPA interview, NE#6 stated that he considered the risk of harm to the Subject and nearby community members. He provided the following explanation:

Because there was very—in my estimation, there was very little chance for anybody else to be hurt. This was a very clear space for this to be stopped. It was clear that the guy was not going to be stopped. Had he made it up to West Valley Highway or 167 when the traffic was much heavier, there was a much higher likelihood that he could have injured more people.

He further told OPA:

Again, just what we spoke about. I thought about the potential injuries to the Suspect. I thought about the potential injuries to citizen vehicles that were around us, and frankly, I thought even more about the potential risk to the unsubstantiated number of potential victims that he was coming up to, had he gotten back on the freeway, where traffic was



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ridiculously thick. I mean, you can consider rush hour on 167 on a wet day, it's gridlock traffic.

The evidence in the record established that, when he used the maneuver, NE#6 was driving well in excess of the speed appropriate and trained for PIT, there was traffic in all lanes of the four-lane highway, and it was raining. Even though he stated that he evaluated the risks of harm to the Subject and community members, I find that his actual actions contradicted that assertion. Ultimately, the second PIT maneuver put numerous individuals at a significant and unacceptable risk of harm and, as a result, this was a violation of this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #6 - Allegations #8**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

At his OPA interview, NE#6 indicated that he completed multiple statements concerning this incident. While it was unclear from his interview whether he believed that he completed a felony statement, OPA could not locate that statement during its investigation.

That being said, for the same reasons as stated above (*see* Named Employee #3, Allegation #9), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*See Id.*)

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

**Named Employee #7 – Allegation #1**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

For the same reasons as stated above (*see* Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained and I refer to the above Training Referral. (*See id.*)

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

**Named Employee #7 – Allegation #2**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (*see* Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #7 – Allegation #3**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

For the same reasons as stated above (see Named Employee #3, Allegation #9), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See *Id.*)

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

**Named Employee #8 – Allegation #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Pretext)***

Allegation #1 is duplicative of Allegation #4. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #8 – Allegation #2**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

This allegation was classified against NE#8 and NE#14 based on the content of their reports. In those reports, they wrote that they were “unsure” whether the Subject struck other vehicles at the outset of the pursuit. This appeared to be inaccurate when compared to their statements that were captured on Department video. At that time, NE#8 and NE#14 discussed that the Subject had not hit any cars and had only struck cones.

At his OPA interview, NE#8 stated that, regardless of what was initially discussed, he and NE#14 were ultimately unsure of what had occurred. He stated that there appeared to be a number of stopped cars and it was possible that one of them had been hit. Accordingly, this was what he documented in his report. NE#14 stated the same at his OPA interview.

From my review of the record, I find insufficient evidence to determine that NE#8 and NE#14 were dishonest in this respect. At most, their reporting was incomplete and arguably inaccurate. However, with regard to this allegation, and when applying the heightened burden of proof required, I recommend that it be Not Sustained – Unfounded as against both officers.

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

**Named Employee #8 – Allegation #3**

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

After their involvement in the pursuit ended, NE#8 and NE#14 returned to where they had initially observed the Subject. They drove up to the other individual who they had previously seen loading and unloading objects from a vehicle with the Subject. Prior to that occurring, Department video captured NE#14 saying: “Let’s go back over to that trailer at least to snag that other guy.” The officers parked their car and they approached this individual. They stood on either side of him and began to question him. The officers asked the individual about what he had been



doing with the Subject earlier, the Subject's identity, and why the Subject would have fled from the police. The individual stated that they had been loading and unloading objects into a vehicle, provided his name and the Subject's name (the officers did not demand that he provide either), and stated that he had no idea why the Subject left the scene and ultimately fled from the police. During that conversation, NE#8 stated to the individual: "Sir, you've done nothing wrong, we've got nothing on you."

SPD Policy 6.220-POL-1 governs Terry stops and 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.*)

This allegation was classified against NE#8 and NE#14 based on the belief that their contact with the may have constituted a Terry stop without reasonable suspicion. At their OPA interviews, both officers denied that they effectuated a Terry stop and acknowledged that they did not have reasonable suspicion to detain the individual. They asserted that, instead, they performed a social contact.

Whether this was a social contact depends less on the stated intent of the officers and more on whether a reasonable person in the individual's place would have felt that they were being detained. As such, even though I find NE#14's statement that they should "snag" the individual to be suggestive of the intent to conduct a Terry stop, this statement is ultimately not dispositive. Looking at the totality of the circumstances, including the nature of the conversation and the demeanor of both the officers and the individual, I agree that this appeared to be a social contact rather than a Terry stop. I believe this to be the case even though the officers stood on each side of the individual, suggesting that he was blocked from moving past them. Important to this determination is that the individual did not appear to believe that he was being detained at any point, as well as the fact that the officers instructed him that he was not suspected of any criminality and had done nothing wrong.

Given the above findings and as I find that NE#8 and NE#14 conducted a social contact rather than a Terry stop, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #8 - Allegations #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes [...]***

When NE#8 and NE#14 initially began following the Subject, they had a discussion concerning the anticipated stop. NE#8 stated: "I don't think he's going to stop for us." They then began discussing the trip permit in the back window. NE#14 stated: "it's worth a stop." They discussed the trip permit and whether it justified as stop. They initially





decided that it did not and NE#14 then said: “Just make him nervous then.” They continued to discuss the permit and decided that it was valid. NE#14 offered that they could make a stop based off of the permit anyway and NE#8 stated that they could not. At that point, both officers agreed that the Subject was “very suspicious.” They Subject then drove through a red light and the officers attempted to effectuate the stop.

SPD Policy 6.220-POL-9 precludes the use of a traffic violation to investigate unrelated crimes. The policy defines “pretext” as where an officer stops “a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.” (SPD Policy 6.220-POL-9.) The policy explains that pretext stops are prohibited by law. (*Id.*) It further explains that: “Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.” (*Id.*)

At his OPA interview, NE#8 stated that he did not remember NE#14’s statement about making the Subject nervous. He denied that they were attempting to effectuate a pretext stop and stated that it was not their practice to follow vehicles, make the drivers nervous, and then effectuate traffic stops once a minor violation occurred in order to investigate other suspected criminality.

NE#14 had no convincing explanation for why he made the statement regarding making the Subject nervous. When asked by OPA for his reasoning, he said: “Other than...just that he was...I can’t, I couldn’t say why I said it, other than the fact that we were just behind him and we had nothing else that we were going to be able to act on.” However, he denied engaging in a pretext stop.

Based on a review of the evidence, including the Department video and these officers’ own statements, it appears very possible that this was, in fact, an attempted pretext stop. Indeed, in NE#14’s own words, he appeared to be following the Subject to make him nervous because they did not have a basis to initially effectuate the stop. While I have serious concerns regarding the officers’ statements and intent, the reality is that they never actually effectuated the stop. The Subject, who indisputably drove through a red light, eluded them. Accordingly, I issue NE#8 and NE#14 the below Training Referral rather than recommend that they receive Sustained findings.

- **Training Referral:** NE#8 and NE#14 should receive additional training concerning the elements of SPD Policy 6.220-POL-9. Their chain of command should further discuss this incident with them. This should include watching the video together and discussing the planned stop, as well as reviewing the statements made by the officers. NE#8 and NE#14 should be informed that, even if it was not their intent, the evidence in this case suggests that this was an attempted pretext stop. NE#8 and NE#14 should be counseled to avoid these types of situations in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #8 - Allegation #5**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

NE#8 and NE#14 initially followed the Subject’s vehicle. They observed the Subject make an illegal turn through a red light. They also turned through the red light, putting on their emergency lights when they did so, and



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accelerated to locate the Subject to perform a traffic stop. However, at that time, the Subject had accelerated a significant distance away.

At that time, NE#8 and NE#14 heard radio updates concerning the Subject and the belief that he was a felony shooting suspect. At that point, and based on their discussions captured by Department video, it appeared that the officers believed that the vehicle they had attempted to stop matched the vehicle described in the bulletin. They increased speed and began to engage in a pursuit. NE#14, as the passenger, went over the radio and stated that they were in a pursuit. They lost sight of the Subject, but he later performed a U-turn and travelled back towards them. While doing so, he struck a pole that caused damage to a vehicle. The Subject drove away and NE#8 and NE#14 ended their involvement in the pursuit.

Notably, at around the time their portion of the pursuit ended, NE#8 and NE#14 discussed the bulletin for that suspect and expressed uncertainty that the individual they had tried to stop was the same person.

In evaluating whether the short pursuit engaged in by NE#8 and NE#14 was justified, I evaluate what they knew and believed at the time they engaged in those actions. At that time, both officers knew that the Subject had committed a traffic violation, that he drove at high speeds away from the officers, and that there was a bulletin that supposedly connected the Subject to a felony shooting suspect. As such, they believed that the pursuit was justified given these facts. Moreover, when they joined the pursuit, it was ongoing and there had been no order to terminate. While the officers did later have serious questions as to whether the Subject was the suspect and appeared to conclude that he was not, I do not find their initial decision to participate in the pursuit to be unreasonable or contrary to policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#8 and NE#14.

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

**Named Employee #8 - Allegation #6**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

At his OPA interview, NE#8 told OPA that he began writing a felony statement, but was told by both NE#10 and the Patrol Lieutenant to stop doing so and, instead, to write a suspicious circumstances General Offense Report. Consistent with that direction, he stopped writing the felony statement and began the General Offense Report. Around two days later, he was told to write the felony statement. He then did so.

As NE#8 was told to stop writing the felony statement, he was permitted to act consistent with that direction. When told that he should write the statement, he ensured that this happened. For these reasons, I find that NE#8 acted consistent with policy as, he followed the orders of his supervisors.

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



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**Named Employee #9 – Allegation #1**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

At his OPA interview, NE#9 asserted that he initially attempted to effectuate the stop of the Subject based on a traffic infraction. At around the time that the Subject was clearly eluding, NE#9 became aware that the Subject was believe to be a felony suspect involved in a shooting and that he may be armed and dangerous. Given this information, NE#9 contended that the risk of his emergency driving was outweighed by the need to take the Subject into custody.

Absent the information known to NE#9 concerning the prior shooting and his belief that the Subject was a felony suspect in connection with that incident, his initial pursuit of the Subject would not have been justified. Notably, SPD policy precludes pursuits based on traffic infractions and/or the act of eluding alone, without more. However, at the time he continued in the pursuit, NE#9 received information over the radio indicating that a pursuit was justified. Even if that information was later determined to be inaccurate, his determination that the public safety need to arrest the Subject outweighed the inherent risk of pursuit driving was reasonable. Moreover, as discussed more fully below, I find that he drove in a manner that attempted to limit the dangers of his emergency vehicle operations to pedestrians and other motorists.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #9 – Allegation #2**

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

For the same reasons as stated above (see Named Employee #9, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #9 – Allegation #3**

***13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle***

NE#9 told OPA that he believed that he operated his vehicle in a controlled and safe manner. He stated that he cleared intersections before driving through and avoided accidents. He indicated that he felt that he drove with due regard for the safety of others. He stated that, just several months prior to this incident, he received EVOG training and was certified in emergency vehicle operations. Lastly, NE#9 had his emergency lights and siren activated, which provided an additional safeguard, except for a brief period of time when he turned off his siren to hear the radio.

Based both on NE#9's statements and on my review of the video, I believe that the evidence supports his assertion that he safely operated his vehicle during this incident.



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For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #9 - Allegations #4**

***13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits***

SPD Policy 13.031-POL-7 requires that officers involved in a pursuit provide ongoing notifications to Communications. The policy specifies that: “The primary unit shall immediately advise Communications when initiating a pursuit and shall update relevant detail.” Including among these relevant details are: the reason for the pursuit; the location; the direction; the description of the suspect vehicle and the suspect; the speed; and traffic conditions, such as observations of pedestrians and vehicles. (SPD Policy 13.031-POL-7.) Lastly, the policy instructs that: “After joining the pursuit, the secondary unit shall assume the responsibility for all radio transmissions from the primary unit.” (*Id.*)

Based on a review of the Department video, it appeared that NE#9 was the primary unit that initiated the pursuit. This conclusion is supported by NE#9’s statements, as well as by those given by NE#8 and NE#14. As he was the primary unit, this policy required him to provide, at the very least, notification that a pursuit was under way and the reason/justification for that pursuit. NE#9 did not initially do so. He told OPA that, at the inception of the pursuit, he heard radio transmissions confirming that a pursuit was underway. As such, he felt it unnecessary to also provide that information and the reason/justification. He stated that he was then asked for other details concerning the pursuit, which he provided.

While NE#9 complied with much of this policy, as soon as he was aware that he was engaging in a pursuit and given that he appeared to be the primary unit involved in the pursuit, he should have immediately gone over the radio to provide the information required by this policy. That being said, and given that NE#9 believed that Communications was already aware of this, I do not believe that a Sustained finding is warranted. Instead, I recommend the below Training Referral.

- **Training Referral:** NE#9 should be retrained on the elements of SPD Policy 13.031-POL-7. He should be reminded that, where he is the primary unit, he is required to notify Communications of the information delineated in this policy; most notably, the fact that a pursuit is occurring and the reason/justification for the pursuit. NE#9 should be counseled to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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



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**Named Employee #10 – Allegation #1**

***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 supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

This allegation was classified against NE#10 based on his failure to identify that NE#8 and NE#14 may have engaged in a pretext stop. This misconduct, if it occurred, was serious misconduct that NE#10, as a supervisor, needed to report to OPA.

At his OPA interview, NE#10 stated that he did not believe that NE#8 and NE#14 engaged in any misconduct in this instance. In support of his decision not to refer, NE#10 substantially relied on the fact that the alleged pretext stop was never actually effectuated. However, he still did not identify any issues or concerns even after OPA discussed those officers' statements with him.

I am concerned with NE#10's inability to see any problem with NE#8's and NE#14's statements that were captured on BWV. As discussed more fully in the context of the allegations against those officers, I find that those statements strongly suggested their intent to engage in a pretext stop. However, NE#10 did not identify any concerns, did not counsel or retrain the officers in any respects, and, at least in OPA's opinion, did not conduct a sufficiently critical review of this incident.

That being said, I agree that NE#8 and NE#14 did not actually effectuate the traffic stop. As such, I do not believe that NE#10's failure to refer misconduct to OPA constituted a violation of policy. Accordingly, I recommend that NE#10 receive a Training Referral instead of a Sustained finding.

- **Training Referral:** NE#10 should be retrained as to the elements of SPD Policy 5.002-POL-5 and, specifically, the requirement that he critically review incidents, including searches, seizures, and pursuits, to determine whether there is any evidence of potential misconduct. NE#10 should be counseled concerning his failure to identify or even reference anything concerning the problematic statements made by NE#8 and NE#14. Even if they did not actually complete a pretext stop of the Subject, these statements strongly suggested the intent to do so. The expectation of the Department is that NE#10 will more thoughtfully analyze these types of situations and OPA's hope is that he does so moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #11 – Allegation #1**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.



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

**Named Employee #12 – Allegation #1**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 requires officers to report all uses of force except for de minimis force. The policy defines “intentionally pointing a firearm...at a person” as Type I force.

Here, the video clearly indicated that NE#12 pointed his rifle directly at where the Subject was situated. At his OPA interview, NE#12 stated that he pointed his rifle in the driver’s compartment area, for sure.” However, he asserted that this did not constitute a Type I use of force because he “never actually was able to point at [the Subject] with a clear sight picture and give him commands.”

Even from his own statements, it appears clear that NE#12 intentionally pointed his rifle towards the Subject. Indeed, the Subject told OPA during his interview that this occurred. Accordingly, NE#12 should have reported this force. The failure to do so violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #12 – Allegation #2**

***8.200 - Using Force 1. Use of Force: When Authorized***

With regard to the pointing of the rifle, itself, I find that it was consistent with policy. At that time, NE#12 believed that the Subject was an armed felon. Moreover, the Subject had led officers through a multi-city chase in which he demonstrated that he would take significant risks and cause potential harm and danger to avoid capture. For these reasons, I find that it was reasonable, necessary, and proportional under the circumstances for NE#12 to point his rifle at the Subject prior to the Subject being arrested and secured into custody. I further find that NE#12’s actions in doing so were consistent with his training.

Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #12 – Allegation #3**

***13.031 - Vehicle Eluding/Pursuits 9. Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies***

NE#12 stated that he was monitoring his radio when he heard that officers were engaged in a pursuit. He believed that they were pursuing a suspect from one of his cases. He informed his FBI supervisors that he was leaving and drove to where he believed the vehicles were traveling. He told OPA that he was not involved in the pursuit; however, he engaged in emergency driving and traveled outside of the City limits.



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He stated that he spoke to his Sergeant prior to beginning driving. His Sergeant asked him whether he was going to go out in the field given that the other officers were chasing his suspect and NE#12 stated that he was. There is no indication from NE#12's statement that his Sergeant gave him explicit permission to do so and to leave the City.

NE#12 told OPA that he spoke to his Lieutenant after the fact and the Lieutenant told him that he was authorized to try to locate the Subject vehicle and to leave the City to do so. The Lieutenant stated that she was monitoring the pursuit. There is no evidence in the record contradicting NE#12's recounting of this conversation.

Ultimately, as discussed below, I find that NE#12 should have returned to the City once he heard the direction to do so over the radio. NE#12 was not a member of SWAT and, even though he was not assigned to Patrol, his duties and responsibilities as a Robbery Detective were significantly different than those expected from SWAT. Moreover, at the time of the incident, he never received any justification to pursue the Subject at all, let alone permission to do so outside of the City. Indeed, the authorization provided by NE#1 only applied to SWAT and to SWAT-affiliated units, which did not include NE#12.

However, even though I believe that NE#12 violated policy by engaging in this pursuit outside of City limits without prior justification, I do not recommend a Sustained finding on this allegation for two reasons. First, NE#12 presented evidence indicating that his Lieutenant was later aware of the fact that he was in the pursuit and that he left the City, as well as that she indicated that she would have authorized this conduct. Second, I already recommend that Allegation #4 be Sustained and find it unnecessary to reach the same finding here. As such, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#12 should receive additional training on the elements of SPD Policy 13.031-POL-9. He should be instructed that, prior to engaging in a pursuit outside of the City and prior to assisting outside law enforcement agencies in a pursuit, he must receive justification to do so. Here, while he received justification after the fact, there was no evidence of him requesting and obtaining permission prior to the conduct at issue. NE#12 should be counseled to avoid engaging in similar conduct in the future and to more closely comply with the elements of this policy. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #12 - Allegations #4**

***13.031 - Vehicle Eluding/Pursuits 17. Officers will Disengage When Pursuit is Terminated***

SPD Policy 13.031-POL-17 requires officers to disengage when a pursuit is terminated.

NE#12 reported that he was emergency driving to where he believed the officers involved in the pursuit were situated when he heard the order by the Patrol Lieutenant to terminate. While the Patrol Lieutenant specifically referenced South Precinct units, Communications ordered *all* SPD units to return to Seattle. NE#12 did not return to the City. Instead, he continued towards the pursuit. He then heard an order from NE#1 authorizing SWAT units to assist in the pursuit. NE#12 then became involved in the pursuit and ultimate arrest of the Subject.



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As discussed more fully above, NE#12 was required to seek pre-authorization prior to leaving Seattle to assist outside agencies in a pursuit. This is the case regardless of his duties, responsibilities, and authority as a Robbery Unit detective. As he did not have that authorization, he should have disengaged when the pursuit was terminated by the Patrol Lieutenant. That being said, and as agreed between OPA and NE#12's chain of command, OPA recommends that this allegation result in a Training Referral rather than a Sustained finding.

- **Training Referral:** All individuals assigned to the Robbery Unit and any other follow-up unit that has County-wide scope should be reminded that they must receive pre-authorization before engaging in a pursuit outside of the City and prior to assisting outside law enforcement agencies in a pursuit. This retraining should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #12 - Allegation #5**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #12 - Allegation #6**

***15.180 - Primary Investigations 9. Involved Officers Shall Complete Statements for Felony Arrests***

For the same reasons as stated above (see Named Employee #3, Allegation #9), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See *Id.*)

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

**Named Employee #13 – Allegation #1**

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained and I refer to the above Training Referral. (See *id.*)

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

**Named Employee #13 – Allegation #2**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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





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**Named Employee #13 – Allegation #3**

***13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits***

It was alleged that, while NE#13 was the passenger in the secondary unit in a pursuit, he failed to notify communications and provide details concerning the pursuit as required by policy.

At his OPA interview, NE#13 told OPA that he informed Communications that he was the secondary unit in a pursuit. However, it does not appear that he provided any of the other necessary details, including: the reason for the pursuit; the location; the direction; the description of the suspect vehicle and the suspect; the speed; and traffic conditions, such as observations of pedestrians and vehicles. While I find that this was technically in violation of policy, as with NE#9, I recommend that NE#13 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#13 should be retrained on the elements of SPD Policy 13.031-POL-7. He should be reminded that, where he is the passenger in the secondary unit in a pursuit, he is required to notify Communications of the information delineated in this policy. NE#13 should be counseled to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #14 - Allegations #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Pretext)***

Allegation #1 is duplicative of Allegation #4. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #14 - Allegation #2**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

For the same reasons as indicated above (see Named Employee #8, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #14 - Allegation #3**

***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 #8, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #14 - Allegations #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes [...]***

For the same reasons as stated above (see Named Employee #8, Allegation #4), I recommend that this allegation be Not Sustained and refer to the Training Referral above. (See *id.*)

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

**Named Employee #14 - Allegations #5**

***13.031 - Vehicle Eluding/Pursuits 4. Officers Will Not Pursue Without Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving***

For the same reasons as stated above (see Named Employee #8, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #15 – Allegation #1**

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

NE#15 asserted that the need to drive in an emergency response outweighed the risk of such driving. NE#15 explained that the officers believed that they were pursuing a Subject who had been previously involved in a shooting, was potentially armed and dangerous at the time, who was actively evading officers, and who had hit other vehicles and potentially a pedestrian. NE#15 contended that the Subject was driving recklessly and “was showing that he was willing to escalate to get away from the police without due regard for any citizen or anyone else involved.”

Based on the information known to NE#15 at the time – even if ultimately proven to be at least partially inaccurate, his determination that the need to engage in emergency driving outweighed the risk was reasonable. Moreover, as discussed more fully below, I find that he drove in a manner that attempted to limit the inherent dangers of emergency vehicle operations. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #15 – Allegation #2**

***13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle***

NE#15 told OPA that he believed that he operated his vehicle in a controlled and safe manner. He stated that he cleared intersections before driving through and avoided accidents. He indicated that he felt that he drove with due regard for the safety of others. He stated that he was experienced in emergency driving and that he did so around



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two to three times per day. He pointed out that he is EVOC certified and has been so for every year he has been on the Department. He told OPA that he was familiar with the area in which he was driving, which contributed to his ability to ensure the safety of other motorists. Lastly, NE#15 had his emergency lights and siren activated, which provided an additional safeguard.

Based both on NE#15's statements and on my review of the video, I believe that the evidence supports NE#15's assertion that he safely operated his vehicle during this incident. While, at one point, he did make a somewhat dangerous maneuver around a truck, it did not appear to be unduly so. Moreover, as explained by NE#15, he understood the dimensions of his vehicle and felt confident that his calculated maneuver would be successful. It ultimately was. For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #15 – Allegation #3**

***13.031 - VEHICLE ELUDING/PURSUIITS 9. Supervisors Approve Pursuits Leaving the City and Assisting in Pursuits by Other Agencies***

NE#15 stated that, prior to engaging in his part of the pursuit, he heard over the radio that it had been authorized. He drove out of Seattle and proceeded to where the pursuit was occurring. NE#15 did not request or receive explicit authorization to leave the City to engage in a pursuit or to assist an outside law enforcement agency in the pursuit.

While this constituted a technical violation of policy, I distinguish the actions of NE#15 from those of NE#12. NE#15 is a K-9 officer who, similar to SWAT, is expected and permitted to work outside of Seattle and to provide assistance and support to other law enforcement agencies. NE#12, to the contrary, has no such responsibility in the context of tactical operations.

Moreover, K-9 officers often work closely with SWAT and assign in SWAT operations. Accordingly, it was reasonable for NE#15 to believe that his assistance could be needed here.

As such, I do not recommend that this allegation be Sustained against NE#15. However, due to the fact that he should have sought explicit preauthorization for his actions, I issue the following Training Referral.

- **Training Referral:** NE#15 should be retrained concerning the elements of SPD Policy 13.031-POL-9. He should be counseled concerning his failure to comply with the requirements of this policy here and should be reminded that he needs to seek authorization prior to engaging in a pursuit outside of Seattle or when he assists other law enforcement agencies in a pursuit. He should be instructed to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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