



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 26, 2019

CASE NUMBER: 2018OPA-0582

Allegations of Misconduct & Director’s Findings

Named Employee #1

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 Pursuit Driving	Not Sustained (Lawful and Proper)
# 2	13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained (Training Referral)

Named Employee #2

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 Pursuit Driving	Not Sustained (Lawful and Proper)
# 2	13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained (Training Referral)
# 3	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Training Referral)

Named Employee #3

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 Pursuit Driving	Not Sustained (Lawful and Proper)
# 2	13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver	Not Sustained (Training Referral)
# 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 (Management Action)
# 4	8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 1. Only Officers Who are Trained and Certified in the Use of These Tactics are Permitted to Use Them	Not Sustained (Management Action)



# 5	Force – Use 8.300-POL-7 Use of Force – VEHICLE-RELATED FORCE TACTICS 4. Officers Will Use Vehicle-Related Force Tactics Only When Objectively Reasonable.	Not Sustained (Training Referral)
# 6	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Training Referral)
# 7	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)
# 8	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Training Referral)
# 9	13.010 - Collisions Involving Department Vehicles 2. Officers Shall Document All Collisions Involving Department Employees	Not Sustained (Lawful and Proper)
# 10	13.010-TSK-1 Department Employee Involved in a Collision	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director's Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Training Referral)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Lawful and Proper)
# 4	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 #5

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Lawful and Proper)
# 2	13.010 - Collisions Involving Department Vehicles 13.010-TSK-3 Patrol or Traffic Sergeant Investigating an Employee-Involved Collision	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees engaged in an unsafe pursuit in a residential neighborhood, which involved using a roadblock and resulted in a collision. It was further alleged that Named Employee #5 failed to properly investigate the collision.

ADMINISTRATIVE NOTE:



In evaluating this case, OPA used the versions of the applicable policies that were in force at the time of the incident. Those policies have changed in both numbering and content since that time.

STATEMENT OF FACTS:

Named Employee #2 (NE#2) responded to an assault call in North Seattle. A female victim was identified. She was bleeding from her mouth and appeared to have injuries to her lips, tongue and teeth. The victim asserted that she had been assaulted by the Subject. NE#2 obtained a description of both the Subject and the Subject's car. NE#1 provided those descriptions over the radio. NE#1 heard this information and, shortly thereafter, saw a car with a person in the passenger seat that matched the descriptions. NE#1 drove past the car so as not to cause them to flee and broadcasted the car's location. NE#2 then arrived at the scene and attempted to effectuate a traffic stop of the car by turning on his emergency lights and siren. The car quickly accelerated towards NE#2 and appeared, in the officers' perspective, to attempt to ram NE#2's vehicle. NE#2 stated over the radio that the Subject car had just tried to ram him. The Subject car drove westbound and both NE#1 and NE#2 engaged in a pursuit, with NE#2 as the lead vehicle.

As required by policy, NE#1 called out information concerning the nature and progress of the pursuit; however, as later noted by the Precinct Captain in his review, some of that information – most notably, the pursuing officers' speeds – was largely understated and, thus, inaccurate. NE#1 and NE#2 pursued the Subject car for multiple blocks. Named Employee #3 (NE#3) and Named Employee #4 (NE#4), who were together in the same patrol vehicle, were paralleling the pursuit and listening to the updates over the radio. They decided to try to cut the Subject car off. NE#3, who was driving, pulled his vehicle partially across NW 80th Street (at the intersection of 9th Avenue), blocking off much of the road but leaving room for vehicle egress. NE#3 stated that his plan was to cause the Subject car to stop. However, the Subject car did not do so and served around the patrol vehicle almost hitting it. NE#2 also stopped just short of NE#3's and NE#4's patrol vehicle, nearly striking it. NE#1 pulled around and became the lead unit in the pursuit. NE#1 continued to follow the Subject car.

During the pursuit, Named Employee #5 (NE#5) was the primary supervisor. NE#5 monitored the pursuit over the radio. Shortly after the near collisions with NE#3's and NE#4's patrol vehicle, NE#5 terminated the pursuit. Once the pursuit was terminated, all of the involved officers disengaged.

The pursuit lasted for just under five minutes before it was terminated. The pursuit proceeded through residential neighborhoods. The streets in those neighborhoods had cars parked on each side, but there appeared to be few pedestrians in the near vicinity of the pursuit (OPA saw only one captured on Department video). The Subject car drove at high speeds, passing through red lights and intersections without stopping and almost causing several collisions. NE#1 and NE#2 cleared some lights and intersections, but not all. NE#1's speed hovered at around 50 mph. NE#2 drove at similar speeds, though he reached a high speed of 66 mph. NE#3 and NE#4 drove at faster speeds than NE#1 and NE#2, at one point hitting 75 mph while in a residential neighborhood.

The involved officers reported their actions in Blue Team Vehicle Pursuit entries. NE#5 reviewed those reports and found the pursuit to have been within policy. She counseled NE#2 concerning passing a car on the right. NE#5 also identified the use of potential roadblock by NE#3 as problematic. She found this maneuver to have been dangerous and while she thought it was primarily a training issue, she referred the use of the potential roadblock to OPA. The



Watch Lieutenant also found the pursuit to be within policy. The Lieutenant shared NE#5's concerns regarding NE#3's use of his vehicle as a potential roadblock, but stated that he had been informed that if the vehicle did not block the entirety of the road and left room for egress it was technically not a roadblock under policy. The Precinct Captain disagreed with NE#5 and the Lieutenant. He found that the risk of harm caused by both the Subject car and the officers' responsive driving outweighed the need to capture the Subject. The Captain further noted that there were a number of near collisions during the pursuit, including with NE#3's and NE#4's patrol vehicle. He further identified that NE#3's positioning of his vehicle was problematic and risky and approved NE#5's referral of that matter to OPA. Lastly, the Captain identified that the officers' updates concerning the pursuit, and particularly those concerning their speeds, were not entirely accurate. While the Captain had a number of concerns regarding the pursuit, he believed that the officers' conduct warranted additional retraining, not necessarily discipline.

A community member also complained about the pursuit. She asserted her belief that the officers' conduct was extremely dangerous given that they were driving through a residential neighborhood at high speeds.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #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

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 further instructs that: "The 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 provides those scenarios in which a pursuit is not justified.

Based on the totality of the evidence, the pursuit, itself, was justified. The officers were investigating a serious assault of a female victim and had a sufficient basis to believe that the suspect was within the Subject car. Moreover, the officers reasonably perceived that the Subject car attempted to ram NE#2. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, and NE#4.

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

Named Employee #1 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver

SPD Policy 13.031-POL-5 states that officers will cease a pursuit when the risk of pursuit driving outweighs the need to stop the eluding driver.

Ultimately, I agree with the Precinct Captain that the risk of harm caused by the Subject car and the Named Employees' driving to keep pace outweighed the need to stop and arrest the Subject. The Subject car, and the officers following it, drove in excess of 50 mph during the majority of the pursuit and while driving through residential neighborhoods. The Subject car was involved in a number of near collisions that could have been



catastrophic for other innocent motorists. Moreover, and as the Complainant contended, pedestrians and children could have been present in the neighborhoods and, thus, could have been significantly at risk.

The above being said, I also agree with the Captain that the Named Employees' continued pursuit driving when they should have ceased based on the danger to the public does not warrant a Sustained finding. Instead, I recommend that NE#1, NE#2, NE#3, and NE#4 all receive the below Training Referral.

- **Training Referral:** NE#1, NE#2, NE#3, and NE#4 should be retrained as to the elements of SPD Policy 13.031-POL-5. These Named Employees should also be counseled by their chain of command concerning this incident. This counseling should include them being shown the Precinct Captain's analysis of their conduct, as well as the Department video of the pursuit. These Named Employees should be instructed to remain cognizant of the risks at issue when engaging in pursuits and especially those that arise when driving through a residential neighborhood. 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 - Allegations #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

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

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

Named Employee #2 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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

Named Employee #2 - Allegation #3

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

SPD Policy 13.031-POL-7 requires the officers notify communications of pursuits. The policy sets forth the information that must be provided, which includes the: reason for the pursuit; location; direction; description of suspect vehicle and suspect(s); speed; and traffic conditions (pedestrians and vehicles). (SPD Policy 13.031-POL-7.) The policy places the onus for these updates on the primary unit in the pursuit; however, once a secondary unit joins the pursuit, that unit becomes responsible for all further radio updates. (*Id.*)



Here, NE#2 was initially the lead vehicle. At the beginning of the pursuit, he provided updates via radio. However, he did not do so with the level of specificity contemplated by the policy. Moreover, once NE#1 joined the pursuit – which was virtually immediately after it occurred – he rightfully took over communications. I further note, as the Precinct Captain identified, that the speeds of the pursuit were underestimated by the officers. While it is understandable that they could not perfectly estimate the Subject’s car’s speed, they should have been able to provide more accurate information regarding their own rates of travel.

Given the above, I believe that a Training Referral is appropriate.

- **Training Referral:** NE#2 should be counseled by his chain of command that, when involved in a pursuit, he must provide detailed and accurate updates to communications. The failure to do so represents a violation of policy. NE#2 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.

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

Named Employee #3 - Allegations #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

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

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

Named Employee #3 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 5. Officers Will Cease Pursuit When the Risk of Pursuit Driving Outweighs the Need to Stop the Eluding Driver

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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

Named Employee #3 - 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

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 specifically identifies the following as intentional vehicle-to-vehicle contacts: PIT maneuvers; ramming; and roadblocks. (SPD Policy 13.031-POL-13.)



A threshold question here is whether NE#3's positioning of his patrol vehicle to partially block a street constituted a roadblock. During their review of the incident, NE#3's supervisors sought an opinion on this question from the Force Review Unit (FRU). They were informed that a roadblock existed when the vehicle blocked the entirety of the street, not just a portion. While OPA does not doubt and has no issue with this conclusion, OPA notes that this definition is not contained in policy. Moreover, OPA is unaware of whether the Department has explained this distinction in EVOC or other training. In OPA's opinion, this lack of clarity warrants the below Management Action Recommendation.

In addition, even if NE#3 did not use a roadblock here, OPA agrees with NE#3's chain of command that his positioning of his vehicle was ill-advised and dangerous. It nearly resulted in collisions with both the Subject car and NE#2 and NE#1. All could have been resulted in significant injuries, if not death, given the rates of speed and narrowness of the road. These concerns are addressed in the context of Allegation #8, below.

- **Management Action Recommendation:** The Department should define a roadblock in policy. Specifically, the Department should clarify whether a roadblock only exists where the vehicle blocks the entirety of the road or whether, in the alternative, a roadblock is present where the vehicle is blocking the majority of the road. Moreover, the policy should provide additional guidance as to when the use of a roadblock is appropriate.

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

Named Employee #3 - 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.

SPD Policy 8.300-POL-7 concerns vehicle-related force tactics and states that such tactics may only be used when objectively reasonable. The policy discusses three types of vehicle-related force tactics, which include: PIT maneuvers and the use of stop sticks. (SPD Policy 8.300-POL-7.) This policy has since been amended to include reference to ramming. However, neither the old nor the new version of this policy discusses roadblocks. This is the case even though this is a vehicle-related force tactic that officers are apparently trained on and that officers use. As such, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** OPA recommends that SPD modify the new 8.300-POL-6 to include reference to roadblocks and to classify that maneuver as a vehicle-related force tactics that may only be used when objectively reasonable under the totality of the circumstances.

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

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.

I recommend that this allegation be Not Sustained and refer to the below Training Referral. (See Named Employee #3, Allegation #8.)



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

Named Employee #3 - Allegation #6

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded. SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

Both NE#3 and NE#4 failed to timely activate their Body Worn Video (BWV) during the incident. This was the case even though they were indisputably required to do so. Moreover, neither officer satisfied the requirement that they self-report and document the failure to timely activate. The officers acknowledged that this was contrary to policy. NE#3 explained that his failure to timely activate was based, at least in part, on the fact that he was actively emergency driving. NE#4, who was the passenger, said that he simply forgot.

While the failure to timely record video constituted a technical violation of policy, I recommend that NE#3 and NE#4 receive Training Referrals rather than Sustained findings. I base this on the officers' acceptance of responsibility, the exigent nature of this incident, and the fact that they did record the entirety of their law enforcement activities on In-Car Video (ICV).

- **Training Referral:** NE#3 and NE#4 should be retrained as to the requirements of SPD Policies 16.090-POL-1(5) and 16.090-POL-1(7). They should be reminded of the requirement to timely activate BWV and counseled concerning their failure to do so here. They should further be instructed concerning the requirement that they self-report and document the untimely activation. The officers should be informed that, had they done so here, this allegation would have been classified as a Supervisor Action instead of being subject to a full investigation. 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 #3 - Allegations #7

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #3, Allegation #6.)

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

Named Employee #3 - Allegation #8



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

Regardless of whether NE#3 used a roadblock as contemplated by policy, his actions still must have been objectively reasonable to be appropriate under Department policy.

As discussed above, the maneuver utilized by NE#3 was extremely risky. At the time, the Subject car and the pursuing patrol vehicle were driving in excess of 50 mph on narrow residential streets with cars parked on each side. NE#3 positioned his patrol vehicle blocking the majority of the road and leaving only a narrow lane for egress. The Subject car swerved around NE#3’s vehicle, almost striking it. NE#2 pulled sharply to the left, also almost striking NE#3’s vehicle. Had either collided with the vehicle, it could have resulted in substantial, if not deadly, injuries. Even though the Subject was being sought for a serious crime – felony assault, the risk of harm and injury simply does not appear, in OPA’s opinion, to have been proportional under the circumstances.

That being said, OPA does not believe that a Sustained finding is warranted for several reasons. First, there is a lack of clarity within SPD policy as to whether NE#3 used a roadblock and, for that matter, when the use of roadblock is appropriate. Second, NE#3 technically did not actually affirmatively use force – instead, he left his patrol vehicle stationary and in front of oncoming vehicles. Third, I believe that NE#3 genuinely thought that he was doing the right thing by positioning his car in that fashion. Fourth, no actual harm or injury was caused by the maneuver, even if it was close. Accordingly, OPA recommends that NE#3 receive the below Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning pursuit ending vehicle tactics and vehicle-related force tactics. He should specifically receive additional instruction concerning roadblocks and when it is appropriate to use such a maneuver. NE#3 should be counseled concerning his actions in this case. His chain of command should discuss the danger that flowed from the maneuver he used and discuss other courses of action that may have been more appropriate under the circumstances. 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 #3 - Allegation #9

13.010 - Collisions Involving Department Vehicles 2. Officers Shall Document All Collisions Involving Department Employees

SPD Policy 13.010-POL-2 states that officers shall document all collisions involving Department employees. SPD Policy 13.010-TSK-1 sets forth the practicalities of how an officer is to do so.



At his OPA interview, NE#3 explained that he was unclear whether the Subject car actually made contact with his patrol vehicle. He stated that he informed NE#5 of the possibility of such contact and intended to write a report. He was later informed, however, by NE#5 that she and the Lieutenant had reviewed video of the incident and determined that there was no evidence establishing that the collision ever occurred. NE#5 instructed NE#3 that no paperwork was required and, as such, he did not complete a report.

When NE#3 was told by his supervisor that he did not need to write a report, he was entitled to rely on her direction. Given this, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #10

13.010-TSK-1 Department Employee Involved in a Collision

For the same reasons as stated above (see Named Employee #3, Allegation #9), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegations #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #3, Allegation #6.)

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

Named Employee #4 - Allegation #2

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #3, Allegation #6.)

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

Named Employee #4 - Allegation #3

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

Given the confusion with the policy discussed above and the fact that it was unclear whether NE#3's utilized a roadblock, I cannot find that NE#4 violated policy when he failed to identify that NE#3 engaged in potential misconduct. Moreover, even with regard to the reasonableness of the maneuver that NE#3 did use, given the



different evaluations of its appropriateness by the officers' chain of command, NE#4 did not violate policy when he failed to report NE#3's conduct to a supervisor or OPA, as I do not think a reasonable officer in his place would have done so.

For these reasons, 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 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 #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #1

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-3 sets forth the responsibilities of a Sergeant to review an incident, determine whether force occurred, and, if so, to properly classify that force and to ensure that it is throughout reported on. This allegation was classified against NE#5 based on her apparent failure to recognize that NE#3's vehicle tactic constituted a use of force and to ensure that NE#3 generated a use of force report.

NE#5 told OPA that she discussed this matter with her Lieutenant and they determined that, based on advice provided by the FRU, the maneuver used by NE#3 was not a roadblock. Accordingly, they did not think that it constituted a use of force and they made the decision that no report needed to be generated. As indicated above, the policy concerning what constitutes a roadblock is unclear and I do not fault either NE#5 or her Lieutenant for relying on the information provided by FRU.

Moreover, NE#5 was permitted to act consistent with her Lieutenant's direction that no force had been used by NE#3 and no report needed to be generated. As such, she did not violate policy here and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #2

13.010 - Collisions Involving Department Vehicles 13.010-TSK-3 Patrol or Traffic Sergeant Investigating an Employee-Involved Collision

SPD Policy 13.010-TSK-3 sets forth the responsibilities of a Sergeant when investigating an employee-involved collision.



As discussed above, NE#3 initially reported to NE#5 that the Subject car may have struck his vehicle during the incident. NE#5 reviewed the video of the incident with NE#3 and again with her Lieutenant. It was ultimately determined that no contact between the Subject car and the patrol vehicle actually occurred and, as such, no collision investigation was required. The decision not to perform the investigation was ultimately ratified by the Lieutenant.

From OPA's review of the video, it appears that there was not any contact between the Subject car and the patrol vehicle. As such, OPA does not believe that NE#5's decision to not perform collision investigation was unreasonable. Moreover, as this decision was endorsed by the Lieutenant, I cannot find that NE#5 violated policy in this instance. Instead, I recommend that this allegation be Not Sustained – Lawful and Proper.

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