



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 14, 2018

CASE NUMBER: 2018OPA-0162

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 Articulable Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	8.300-POL-2 Use of Force – CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable	Not Sustained (Lawful and Proper)
# 4	8.300-POL-2 Use of Force – CANINE DEPLOYMENT 7. Canine Deployments	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 6. Screening Sergeant Will Approve Report	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:

It was alleged that Named Employee #1 may have engaged in an out of policy vehicle pursuit. It was further alleged that NE#1 used his K-9 unit to bite the subject in potential violation of policy. In addition, it was alleged that Named



Employee #2 and Named Employee #3 engaged in unprofessional behavior, as well as that Named Employee #3 failed to timely activate his Body Worn Video. Lastly, it was alleged that Named Employee #4 may have failed to complete an arrest screening template.

STATEMENT OF FACTS:

The Complainant initiated this complaint with OPA based on a vehicle pursuit that took place in the Beacon Hill neighborhood of Seattle and ended at the Complainant's neighbor's house. The Complainant stated that there were pedestrians and children in the area that could have been injured during the pursuit. The Complainant's complaint concluded by stating: "There was no need for SPD to drive past our houses at what appeared to be 65 mph. In summary, you got lucky today that there were no pedestrians on our block." OPA commenced its investigation and interviewed the Complainant. The Complainant reiterated her allegations.

During its investigation, OPA reviewed the documentation concerning the pursuit. In doing so, OPA further learned that, in the aftermath of the pursuit, Named Employee #1 (NE#1) released his K-9 from the leash and that the K-9 then bit the subject. As such, OPA also investigated this use of force. OPA further heard several comments made by Named Employee #2 (NE#2) and Named Employee #3 (NE#3) that suggested a possible lack of professionalism. OPA also determined that NE#3 did not timely turn on his Body Worn Video (BWV) and that he further failed to report that failure or to document the reason for not timely activating. Lastly, OPA believed it possible that Named Employee #4 (NE#4) failed to complete an Arrest Screening Report, which potentially violated policy.

ADMINISTRATIVE NOTE:

OPA initially recommended that the professionalism allegations against NE#2 and NE#3 be Sustained. The predominant statements that I believed were unprofessional included when, after the subject alleged that the officers had the K-9 bite him on purpose, NE#3 responded: "you are a fleeing felon, dogs bite those folks." NE#2 followed up on that statement, saying to the subject: "tell your friends."

I found that these statements were unnecessary, gratuitous, and served no legitimate law enforcement purpose. I also concluded that the manner in which the statements were made was, in my mind, taunting in nature. I further noted my concern that multiple officers, including NE#2 and NE#3, were standing around the subject while he was lying on the ground, handcuffed, and in pain. The officers were collectively smiling and joking around, which I believed provided further support for determining that NE#2 and NE#3 had engaged in unprofessional behavior.

At this discipline meeting in this case, NE#2's and NE#3's chains of command contended that the officers' conduct was better addressed by training. They argued against a Sustained finding, asserting that, while the officers' statements and demeanor were less than optimal, they were caught up in the adrenaline of the moment and did not intend to be unprofessional. They further noted that I was, at least in part, basing my recommended Sustained findings on conduct that more officers than NE#2 and NE#3 engaged in.

While these arguments do not necessarily change my overall opinion of NE#2's and NE#3's conduct, I agreed to amend my findings. I found merit in the chain of command's comments concerning the adrenaline of the moment. I also understand the concept that, even though I might find the laughing and joking distasteful under the circumstances, it



can be a mechanism to de-stress after high-intensity events such as this one. Lastly, I agreed that multiple officers, not just NE#2 and NE#3, were joking and laughing while in the subject's presence.

As discussed below, my expectation is that the officers' chains of command will thoughtfully address OPA's concerns in retraining and counseling, as they committed to do at the discipline meeting.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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

SPD Policy 13.031-POL-4 sets forth when SPD officers may engage in vehicle pursuits. It requires that officers be able to provide articulable justification that the public safety need to stop the eluding vehicle outweighs the risk of pursuit driving. (SPD Policy 13.031-POL-4.) The policy instructs that officers may not pursue for one or a combination of the following offenses: "traffic violations/civil infractions" and "misdemeanors/gross misdemeanors." (*Id.*)

There is no dispute here that officers engaged in a pursuit. The issue is whether that pursuit was justified. NE#1 stated that the justification for the pursuit stemmed from when, in his perception, the subject vehicle nearly hit an officer before it fled the scene. At this point, it was an offense for which a pursuit would have been justified. NE#1's chain of command reviewed the pursuit. The sergeant noted that there was an attempted vehicular assault of an officer and, thus, deemed the pursuit in policy. The lieutenant also approved the pursuit based on NE#1's articulated basis. He noted, however, that "if the pursuit continued for more than a few blocks or speeds increased [he] would have expected the pursuit to be terminated due to unnecessary risk." The lieutenant memorialized that NE#1 stated that he understood this.

NE#1's OPA interview was consistent with his Blue Team Vehicle Pursuit entry. He again stated that he believed that the driver was attempting to strike the other officer with his vehicle. As such, he believed the pursuit to be warranted based on that crime. He further reiterated to OPA that he would have terminated the pursuit had the subject vehicle not crashed given the potential risk. However, at the time he pursued, he believed that the need to capture the subject outweighed the risk of harm. This was particularly the case given that he did not see any pedestrians or heavy vehicle traffic in the immediate area.

OPA reviewed both NE#1's In-Car Video (ICV) and the other officer's BWV. From the review of the BWV, it does not appear as if the subject was attempting to strike the other officer with his vehicle. Instead, it appeared as if he was simply trying to flee from the scene. However, from my review of the ICV, I do not find NE#1's perceptions of the subject's actions to be implausible. Given how quickly the incident evolved and given NE#1's vantage point at the time, a reasonable officer could have believed that the subject vehicle was swerving towards and attempting to strike the other officer, even if this is not what actually occurred or what the subject intended. For these reasons, I further find it reasonable that NE#1 believed that the subject had committed an attempted vehicular assault and, for this reason, I conclude that the pursuit was justified.

Even if the pursuit was justified, the public safety need to stop the subject vehicle must have outweighed the risk to the public. Based on my review of the video, I did not observe any pedestrians on the sidewalks. I further did not see



any other moving vehicles on the roadway except for a truck that was driving in the other lane of travel. While there were parked cars on the street and while it was a residential neighborhood, I do not believe that NE#1 drove at excessively high speeds, engaged in any dangerous maneuvers, or otherwise drove in a manner that put community members at risk. I agree with NE#1 and his chain of command that had the subject vehicle not crashed and had NE#1 continued the pursuit, the risk would likely have outweighed the public safety need, but those are not the facts of this case.

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 #2

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

Under SPD Policy 8.200(1) 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.*) Objective reasonableness in the context of K-9 deployments is further explained in SPD Policy 8.300-POL-2(4), which states that officers:

will only allow their canines to physically engage or bite a suspect if there is a reasonable belief or if it is known that the suspect is armed with a weapon or other instrumentality capable of producing death or significant physical injury or otherwise poses an imminent threat of death or serious physical injury to the handler or others or is engaged in active aggression or escaping. In the case of a subject who has been located hiding, handlers will not allow their canine to seize and extract the suspect if a lower level of force could reasonably be expected to control the suspect or allow for the apprehension.

SPD Policy 8.200(1) further explains that 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.*)

As discussed above, after NE#1 had pursued the subject for several blocks, the subject’s vehicle crashed into the carport of a residence. The subject then got out of the vehicle and ran from the officers. NE#1 followed with his K-9, pointed the K-9 towards the subject, and released the K-9. At the time the K-9 was released, the subject had fled around a residence and was heading towards a line of trees. NE#1 stated that he released the K-9 because he was concerned that the subject was going to escape and/or that he would lose sight of the subject and the subject would put himself in place of advantage over the officers. The K-9 bit onto the subject’s jacket and was able to pull him down to the ground. When the subject continued to try to get up and flee, the K-9 bit the subject’s thigh. Officers placed the subject into handcuffs. The K-9 maintained the bite for approximately 30 seconds until the subject was fully secured.



Based on my review of the record, including the Department video, I find that the force was reasonable. I base this finding both on the reasonableness elements set forth in SPD Policy 8.200 – most notably, the crime that the subject was being sought for, the resistance presented by the subject given his multiple attempts to flee, the risk of harm to the officers, and the risk of harm to the community and the subject, himself – and those elements set forth in SPD Policy 8.300-POL-2(4). With regard to this latter policy, I find that the subject was escaping and that the application of a K-9 was a reasonable use of force to prevent that escape. I further find that the force was necessary in that it was a degree of force reasonable to effectuate taking the subject into custody and preventing his escape. I also find that NE#1 rationally believed that there were no reasonable alternatives to that force. Lastly, I find that the force was proportional to the risk of harm presented by the subject. First, in NE#1’s mind, the subject had attempted to assault an officer with his vehicle. Second, the subject had fled in his vehicle and, in doing so, disregarding the safety of those around him. This was exemplified by when he crashed in a community member’s residence. Third, the subject demonstrated his intent to get away from the officers. As such, it was logical to presume that he might physically harm them in order to do so.

For these reasons, I find that NE#1’s force in this instance was consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

8.300-POL-2 Use of Force – CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable

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

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

Named Employee #1 - Allegation #4

8.300-POL-2 Use of Force – CANINE DEPLOYMENT 7. Canine Deployments

SPD Policy 8.300-POL-2(7) concerns K-9 deployments and, specifically, off-leash deployments. The policy states that, for an off-leash deployment to be permissible, one or more of the following must apply: (1) it is a search for an armed felony or an armed misdemeanor suspect; (2) it is a search for a subject wanted for a serious crime, including a crime of violence; or (3) where there is a clear danger of death or serious physical injury to the officer or others.

As discussed above, I find that NE#1 reasonably believed that the subject had committed a serious crime of violence; namely, the attempted vehicular assault of the other officer. As such, an off-leash deployment was warranted based on the facts and circumstances that NE#1 plausibly believed to exist at the time.

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

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



Named Employee #2 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

It was alleged that both NE#2 and NE#3 engaged in unprofessional behavior during a conversation they had with the subject in the aftermath of his arrest.

At that time, NE#2, in response to a statement made by the subject concerning the bite, told him: "you are going to have scars for a while." He further added: "I got bit three months ago, I still got mine." The subject then complained further, alleging that the officers had the dog bite him on purpose and made other unintelligible statements. NE#2 began to respond by stating: "perhaps when we ask you to stop..." NE#3 then interjected: "you are a fleeing felon, dogs bite those folks." NE#2 followed up on that statement, saying to the subject: "tell your friends." The subject responded: "I have no friends, fuck friends." NE#2 repeated: "fuck ok, no friends." NE#3 then stated "PCP, he says." NE#2 replied: "that's a bad drug."

SPD policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.) The policy states that: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy proscribes: "unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

OPA initially recommended Sustained findings for professionalism as against both NE#2 and NE#3. This was based, as a general matter, on OPA's belief that the statements were unnecessary and not associated with any legitimate law enforcement purpose, as well as due to the demeanor and manner of the officers when the statements were made. Lastly, OPA was concerned with the fact that multiple officers, including NE#2 and NE#3, were standing over the Complainant, who was lying on the ground, handcuffed, and in pain, while laughing and joking around. However, for the reasons set forth above in the Administrative Note, I amend my findings in this regard and now issue the following Training Referrals for NE#2 and NE#3.

- **Training Referral:** NE#2 and NE#3 should receive additional training concerning the Department's professionalism policy and the Department's expectations in this regard. The officers' chains of command should discuss this specific incident with them, including going over OPA's initial and amended findings. The chains of command should counsel these officers on how they could have better handled this situation and how their actions could have been and were perceived negatively. NE#2 and NE#3 should be advised to avoid such gratuitous and unnecessary comments in the future, particularly where, as here, they serve a negligible if not non-existent law enforcement purpose. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #3 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #2, Allegation #1), I amend my findings and now recommend a Training Referral. I further refer to the above Training Referral. (*Id.*)

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

Named Employee #3 - Allegation #2

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

SPD Policy 16.090-POL-5 concerns the obligation of Department employees to record Department video. This includes both In-Car Video and Body Worn Video. SPD Policy 16.090-POL-5(b) sets forth those situations in which video must be recorded and includes but is not limited to: “dispatched calls, starting before the employee arrives on the call...”; “on-view infractions and criminal activity”; “arrests and seizures”; and “vehicle eluding/pursuits.” The policy further states that: “if circumstances prevent recording at the start of an event, the employee will record as soon as practical.” (SPD Policy 16.090-POL-5(b).)

Given these above categories, it cannot be disputed that NE#3 was required to record BWV and that he was expected to record the entirety of the incident. At his OPA interview, NE#3 explained that he forgot to turn his camera on when he first exited his patrol vehicle and he did not realize his mistake until he saw that other officers around him had their BWV activated. That he forgot to do so is corroborated by his contemporaneous statement on BWV. He told OPA that, at the time, he had only been equipped with BWV for eight to ten weeks and that it was a new technology. He further contended that the situation at the inception of his response to the incident was exigent.

OPA has put in place a one year grace period for violations of this policy. This was done to allow officers to familiarize themselves with this new technology without having the possibility of disciplinary action weighing on them. OPA believes this to be a matter of fundamental fairness and procedural due process.

NE#3’s failure to activate in this case fell within this grace period. As such, even if I believed that his actions represented a violation of policy, I would not have recommended that this allegation be Sustained. That being said, I note that he completely failed to comply with SPD Policy 16.090-POL-7, which required, where BWV was not timely activated, that he note the untimely recording in an update to the CAD Call Log and provide an explanation for his actions in an appropriate report. He took none of these steps. Had the grace period not been in effect, I would have recommended a Sustained finding on this basis.

Instead, however, I recommend that NE#3 receive a Training Referral.

- **Training Referral:** NE#3 should be retrained as to the elements of SPD Policies 16.090-POL-5 and 16.090-POL-7. He should be counseled concerning his failure to record BWV in this case and his lack of compliance with any of the reporting requirements of SPD Policy 16.090-POL-7. NE#3 should be informed that any future unjustified violations of this policy will likely result in Sustained findings. This retraining and



counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #4 - Allegation #1

6.010 - Arrests 6. Screening Sergeant Will Approve Report

SPD Policy 6.010-POL-6 requires the sergeant who screens an arrest to approve the General Offense Report. The sergeant does so by completing an Arrest Screening Template.

This allegation was initially classified against NE#4 because the Arrest Screening Template could not be located in the Department's Record Management System when this investigation was initiated by OPA. After conducting further investigation, including the interview of NE#4, OPA was able to verify that NE#4 did, in fact, complete this template and, in doing so, fully complied with this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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