



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 21, 2018

CASE NUMBER: 2018OPA-0133

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	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Inconclusive)
# 3	13.031 - Vehicle Eluding/Pursuits 12. Marked Police Vehicles Take Priority in Pursuits	Not Sustained (Lawful and Proper)
# 4	13.031 - Vehicle Eluding/Pursuits 16. The Primary Officer or a Supervisor May Terminate a Pursuit	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Inconclusive)
# 2	13.031 - Vehicle Eluding/Pursuits 16. The Primary Officer or a Supervisor May Terminate a Pursuit	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 a pursuit that was not justified under Department policy. It was further alleged that Named Employee #1 failed to let a marked vehicle take the lead position in the pursuit in violation of SPD Policy. Lastly, it was alleged that both Named Employees may have failed to properly inform communications of the facts and circumstances of the pursuit, as well as that they may not have disengaged from the pursuit when it was terminated by a supervisor.



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

This case involves a vehicle pursuit engaged in by the Named Employees, as well as by other officers. The investigation of the actions of those other officers was evaluated in the context of 2018OPA-0198. In that case, an officer involved in the pursuit received a recommended sustained finding concerning his failure to cease his emergency vehicle operations when the pursuit was terminated by a supervisor. With regard to whether the pursuit was justified, I found that the officer acted consistent with policy. I noted that, at the time of that officer's involvement in the pursuit, it had been authorized by a supervisor. The supervisor told OPA that she made the decision to authorize the pursuit after reviewing the available information concerning the incident, including the intelligence bulletin on the subject, and due to her belief that the subject had fled the scene in his vehicle "nearly striking one of the officers, the Detectives, on scene during his flight." In that prior case, OPA did not determine whether the conduct underlying the pursuit – the subject purportedly "nearly striking" an officer with his vehicle – actually occurred and, if it did, whether that supported the officers' actions and decision-making. That is one of the issues that is evaluated here.

On the date in question, Named Employee #1 (NE#1) was the driver of an unmarked Toyota Camry, which was equipped with emergency lights and siren. Named Employee #2 (NE#2) was the passenger in the vehicle. The Named Employees were stationed in the near vicinity of the subject's car. The officers had probable cause to arrest the subject for numerous offenses, including burglary, possession of a stolen vehicle, eluding, and reckless driving. The officers were waiting for the subject to exit a building and walk towards his vehicle, where they then planned to take him into custody.

The Named Employees observed an individual leave the building. They believed that this could be the subject, but were unsure. NE#1 moved his vehicle and performed a U-turn to reposition himself. At that point, he saw that there was a patrol vehicle facing the subject's car and an officer was standing behind the door and was pointing his firearm towards the car. NE#1 observed the subject's car begin moving towards him. He parked his unmarked vehicle next to a curbside parked car and got outside in order to give orders to the subject to stop. NE#1 reported that he believed that the subject was going to stop given that the road was largely blocked by parked vehicles.

NE#1 recounted, however, that the subject accelerated towards him. His door was open at that time and, due to his fear that he could be imminently harmed, NE#1 quickly began to close it. NE#1 reported that, at this time, the subject's car hit the edge of NE#1's vehicle's driver's side door, causing minor damage. The subject then drove from the scene. In his report, NE#1 documented that he then began to pursue the subject's car. While NE#1 recognized that the conduct that the subject was initially sought for would not have, in and of itself, justified the pursuit, NE#1 believed that the pursuit was appropriate and consistent with policy because the subject struck his vehicle and, in NE#1's opinion, tried to commit an assault on an officer.

NE#1 continued the pursuit through City streets and onto Interstate 5. At that point, given the subject's dangerous driving, "medium" traffic, and the risk NE#1 perceived to the public if he continued to engage in emergency vehicle operation, he deactivated his emergency equipment and followed the subject's car "from a distance." He



maintained his view of the subject and followed him off the highway. NE#1 re-activated his emergency equipment at that time and re-engaged in the pursuit. NE#1 reported that he lost sight of the subject's car based on heavy traffic but then reacquired a visual of him. At that time, the subject drove on the sidewalk to avoid traffic, sideswiped several parked cars, and continued to drive dangerously. NE#1 again lost sight of the subject. NE#1 tried to reacquire a visual but, before he could do so, the pursuit was terminated by a supervisor. Once the pursuit had been terminated, NE#1 disengaged.

SPD Policy 13.031-POL-4 sets forth when a pursuit is inappropriate. Specifically, the policy states that officers may not pursue solely for one or more of following offenses: traffic violations and civil infractions; or misdemeanors and gross misdemeanors. (SPD Policy 13.031-POL-4.) This section of the policy further directs that, to engage in and continue a pursuit, officers must be able to justify "that the public safety need to stop the eluding vehicle outweighs the inherent risk of pursuit driving." (*Id.*)

At his OPA interview, NE#1 recognized that, in order for this pursuit to have been justified, the subject needed to be suspected of committing a crime other than burglary, eluding, or possession of a stolen vehicle. Here, NE#1 believed that the crime supporting the pursuit was when the subject attempted to assault NE#1 and NE#2 by driving directly towards them with his vehicle and making contact with the officers' car.

At his OPA interview, NE#1 contended that, when the subject's vehicle drove towards him, it hit the side of his door, causing it to slam shut. From OPA's review of the video, this did not occur. Moreover, this recounting of the incident was inconsistent with NE#1's Blue Team Vehicle Pursuit entry, which he completed shortly after the incident occurred. At a follow-up OPA interview, NE#1 indicated that he might have misstated the specifics of what occurred – most notably, whether the contact with his door caused it to slam shut – however, he maintained that the subject's vehicle did hit the driver's side door of his unmarked car, causing a mark. OPA obtained photographs of the unmarked vehicle. While there does not appear to be damage consistent with the subject vehicle slamming into the unmarked vehicle's door, the pictures do capture some minor marks. These marks could be consistent with some contact between the subject vehicle and the unmarked vehicle.

Ultimately, whether or not the subject vehicle made significant contact with the unmarked vehicle or, for that matter, whether it actually slammed the officers' car door shut is largely academic. What matters here is whether NE#1 and NE#2 reasonably believed at that time that the subject was attempting to assault them with his vehicle. Based on the available evidence, including the Department video, I cannot say that this belief was unreasonable. Stated differently, I believe that a reasonable officer in NE#1's and NE#2's place could have believed that they had been subjected to an attempted vehicular assault. Accordingly, I believe that, under these circumstances, the pursuit was justified and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

SPD Policy 13.031-POL-7 requires that officers notify communications of pursuits. This includes providing information concerning: the reason for the pursuit; the location; direction of travel; roadway conditions and weather; speed of the officers' vehicle; traffic conditions; and speed and operation of the subject's vehicle.



Here, both NE#1 and NE#2 provided information over the radio concerning the reason for the pursuit, the location, and direction of travel. They did not expressly indicate at their OPA interviews whether they provided information concerning the weather and road conditions, the traffic conditions, their speed, or the speed and vehicle operations of the subject. Moreover, the TAC channel, over which they were providing the majority of this information, was not recorded. If the officers failed to provide complete information to communications, this would be in technical violation of policy. However, OPA cannot conclusively determine whether this was the case. As such, I recommend that this allegation be Not Sustained – Inconclusive as against both Named Employees.

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

Named Employee #1 - Allegation #3

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

SPD Policy 13.031-POL-12 requires that marked police vehicles take the priority in pursuits. The policy directs that, while unmarked vehicles may initiate pursuits, marked vehicles should take the primary position as soon as possible. (SPD Policy 13.031-POL-12.)

In this case, after they perceived the subject vehicle attempt to strike their unmarked vehicle, NE#1 and NE#2 lost sight of him. They began driving towards the subject's home and, while doing so, again came into contact with the subject. They followed the subject onto Boeing Access Road and after onto Interstate 5. While on Interstate 5, NE#1 called for a marked unit to take the primary position. At the time the marked vehicle began to move into position, however, the subject exited the highway. The marked vehicle remained on the highway and NE#1 and NE#2 exited after the subject. Shortly thereafter, a supervisor terminated the pursuit and NE#1 and NE#2 disengaged.

Based on the above, I find that the Named Employees substantially complied with this policy. They appropriately requested a marked vehicle to take lead and only retook the primary position when the subject vehicle exited off the highway and the marked vehicle continued driving north. 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 #4

13.031 - Vehicle Eluding/Pursuits 16. The Primary Officer or a Supervisor May Terminate a Pursuit

NE#1 and NE#2 pursued the subject vehicle through City streets and onto Interstate 5. While on the highway, NE#1 temporarily deactivated the unmarked vehicle's emergency equipment. Once he followed the subject off of the highway, NE#1 re-activated the vehicle's emergency equipment at that time and re-engaged in the pursuit. NE#1 reported that he lost sight of the subject's car based on heavy traffic but then reacquired a visual of him. NE#1 again lost sight of the subject. NE#1 tried to reacquire a visual but, before he could do so, the pursuit was terminated by a supervisor. Once the pursuit was terminated, NE#1 disengaged.

SPD Policy 13.031-POL-16 states that a supervisor may terminate a pursuit. When a pursuit is terminated, the involved officers are required to disengage from the pursuit. As discussed above, when the pursuit was terminated in this case, NE#1 properly disengaged. Notably, at his OPA interview, NE#2 did not recall that the pursuit was



terminated by a supervisor. While this is incorrect, it is immaterial to my decision. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #2 - Allegation #1

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

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

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

Named Employee #2 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 16. The Primary Officer or a Supervisor May Terminate a Pursuit

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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