



CLOSED CASE SUMMARY

ISSUED DATE: JULY 23, 2018

CASE NUMBER: 2018OPA-0198

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 17. Officers will Disengage When Pursuit is Terminated	Not Sustained (Management Action)
# 3	13.031 - Vehicle Eluding/Pursuits 18. Officers Will Not Reinitiate Pursuits That Have Been Terminated	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Lawful and Proper)

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 (Unfounded)
# 2	13.031 - Vehicle Eluding/Pursuits 17. Officers will Disengage When Pursuit is Terminated	Not Sustained (Unfounded)
# 3	13.031 - Vehicle Eluding/Pursuits 18. Officers Will Not Reinitiate Pursuits That Have Been Terminated	Not Sustained (Unfounded)
# 4	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Unfounded)

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

EXECUTIVE SUMMARY:

The Complainant alleged that when a pursuit was terminated, the Named Employee did not return to normal driving, failed to terminate, and disobeyed the orders of a superior officer in not terminating. It was also alleged that an Unknown Employee stated, after the order to terminate, “I’m still following him.” Based on this statement, it was believed that this Unknown Employee may have inappropriately continued a terminated pursuit.

ADMINISTRATIVE NOTE:



OPA initially recommended that the allegation concerning whether Named Employee #1 (NE#1) properly disengaged once the pursuit had been terminated be Sustained. At the discipline meeting in this matter, NE#1's chain of command agreed. However, at the Loudermill hearing, NE#1 raised compelling arguments that suggested that the policy was unclear. As such, even though OPA still believed that NE#1 acted contrary to policy during this incident, OPA felt that the policy, itself, was the source of the problem. In collaboration with the Department, OPA considered possible fixes to SPD Policy 13.0310-POL-17. OPA and the Department together determined a possible way forward and, accordingly, OPA herein modifies its previous finding from Sustained to a Management Action Recommendation.

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

This case involves a pursuit that Named Employee #1 (NE#1) and other officers engaged in. The facts underlying the pursuit and the question of whether it was a valid pursuit at its inception are dealt with in a separate OPA investigation (*see* 2018OPA-0133). This matter concerns NE#1's role in the pursuit, including: whether he was justified in pursuing when he did; whether he disengaged from the pursuit when it was terminated; and whether he later recommenced the pursuit contrary to a supervisor's termination order.

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.*)

As part of its investigation, OPA interviewed the sergeant who was monitoring the pursuit from the precinct. She stated that the subject was being sought by police. He was being watched while he was in a certain location, but he left that location sooner than expected. He got into his vehicle and disobeyed officers' orders that he stop. The sergeant stated that the subject then fled the scene "nearly striking one of the officers, the Detectives, on scene during his flight." As the detectives at the scene did not have a supervisor at that time, the sergeant stepped in. At the beginning of her involvement in this incident, she did not believe that there was an ongoing pursuit. However, based on her review of radio traffic she believed that the officers were likely pursuing. She reviewed the information concerning the incident, including the intelligence bulletin on the subject, and informed her captain that a pursuit was occurring and conveyed her belief that it was authorized.

At that time, an officer went over the air and asked whether the pursuit was authorized. The sergeant acknowledged that it was. The pursuit proceeded for several minutes until the sergeant made the decision to terminate.

Based on OPA's review of the record, including the In-Car Video (ICV), NE#1 was involved in this pursuit. This is evidenced not only by his driving, but also by the Vehicle Pursuit Blue Team entry that he completed.

In that report, NE#1 wrote that he observed the subject eluding marked patrol vehicles with emergency equipment activated. He wrote that he joined in the pursuit of the subject. The ICV and GPS records established that he



engaged in the pursuit for over 15 minutes, at times driving through red lights, driving in the center lane and over the median, and driving at speeds well in excess of the posted limits. While, as discussed below, I find that he did not properly disengage when the pursuit was terminated, I find that his involvement in the pursuit was consistent with policy given that it was approved by a Department supervisor.

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

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

SPD Policy 13.031-POL-17 requires that officers disengage from a pursuit when the pursuit is terminated by a supervisor. The policy defines disengaging as, while continuing to record Department video: returning to a normal traffic pattern; obeying all traffic laws; and deactivating the vehicle's emergency equipment. (SPD Policy 13.031-POL-17.)

Approximately 13 minutes into the pursuit (see NE#1 ICV, at 1:48:22), the sergeant issued the order to terminate over the radio. This order was repeated by Radio. After this order was issued, NE#1 did not deactivate his emergency equipment. He further did not return to a normal traffic pattern and begin obeying all traffic laws. Instead, he continued driving faster than the speed limit (once reaching 99 miles per hour), driving in the center lane, and driving through red lights and into intersections occupied by other vehicles.

At his OPA interview, NE#1 stated that, when the order to terminate was given by the sergeant, he believed that he was "already out of the pursuit." He rationalized that he had no visual of the subject at that time and he estimated that he was approximately four to five miles away. He stated that he had gone from pursuing officer to responding K-9 officer. NE#1 contended that he believed the subject could have crashed and bailed out of the car somewhere and he was looking for him. He stated that he continued to do so.

When asked about his high speeds and driving outside of normal traffic patterns and contrary to traffic laws, NE#1 stated that he was engaging in emergency vehicle operations to get to a crime scene or "impending" crime scene – namely, the subject's potentially crashed vehicle.

NE#1 stated that he discussed this issue with a lieutenant, who acknowledged that the policy was ambiguous in this regard. He stated that the lieutenant did not criticize him, but that the lieutenant did suggest that next time this occurred NE#1 disengage, including deactivating his emergency equipment, and then reengage shortly thereafter to ensure compliance with the policy.

The lieutenant recalled discussing this incident with NE#1 and, specifically, the need for NE#1 to disengage when pursuits were terminated. He did not recall ever giving NE#1 the advice to disengage and then reengage. In response to OPA's questioning, the lieutenant stated that, while he believed that NE#1's failure to disengage was technically outside of policy, he believed that this portion of the policy was "not well defined."



I agree with the lieutenant that NE#1 violated policy in this regard. In the initial DCM for this case, I disagreed, however, that the policy was ambiguous. I noted that the policy clearly states that, once an order to terminate a pursuit is given, officers must disengage. There is no exception in this policy for K-9 officers or, for that matter, officers assigned to any other specialty unit. There is also no language permitting an officer to, as NE#1 did here, continue driving in the exact same manner but couch that driving as emergency vehicle operations instead of a pursuit. I further noted my concern that NE#1's reading of the policy would allow officers to self-select when they were engaged in a pursuit and would, as such, make the policy unworkably subjective and impossible to enforce.

The above being said, NE#1 made compelling arguments concerning his interpretation of the policy at his Loudermill hearing. Moreover, at that hearing, OPA and the chain of command engaged in a robust back and forth concerning whether this policy needed to be modified. Afterwards, OPA further considered this matter and engaged in a subsequent conversation with the Chief of Police in which OPA conclusively decided that a policy change was warranted under the circumstances. OPA then met with the Assistant Chief of the Compliance Bureau and the Captain of the Audit, Research, and Policy Section to discuss what changes, if any, made sense. The parties reached consensus on the framework of a potential fix at that meeting, which is discussed below. The parties further agreed that the Department would work to capture these concepts in policy.

It is OPA's perspective that the disciplinary system works at its best when issues are identified and then rectified. Moreover, where an officer's conduct is due to a potentially ambiguous policy, OPA believes that, rather than disciplining the officer or simply letting the problem continue to exist without addressing it, the better course of action is to fix the policy. This is what OPA has tried to do below. Moreover, OPA has sought to do this with the partnership and collaboration of the Department, which OPA always appreciates. As such, and for the reasons set forth herein, OPA amends its finding on this allegation from Sustained to a Management Action Recommendation.

- **Management Action Recommendation:** The Department should modify SPD Policy 13.031-POL-17 to clarify what steps officers are expected to take when transitioning from a vehicle pursuit to emergency vehicle operations. As previously discussed with the Department, SPD may want to consider establishing a requirement that the officer issue an oral advisement over the radio of the intent to transition to emergency vehicle operations to allow a Department supervisor to approve that decision given that the pursuit had been terminated and the officer would be otherwise expected to formally disengage. OPA leaves the specific language of this provision to the Department's discretion but is willing to collaborate on drafting this policy to the extent that would be helpful for the Department.

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

Named Employee #1 - Allegation #3

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

As discussed above, I find that NE#1 did not timely terminate his pursuit in this case. Once he did terminate and disengage, however, he did not recommence the vehicle pursuit. As such, I find that NE#1 acted consistent with the policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegations #4

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

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

Technically, when NE#1 did not disengage after the pursuit was terminated, he violated a direct order from a supervisor. As indicated above, I disagree with his contention that he had already terminated the pursuit and was instead engaging in emergency vehicle operations at this point. That being said, I do not believe that NE#1 had malicious intent when he did not engage. Instead, I believe that he simply misunderstands – in some respects problematically so – the policies surrounding pursuits and their applicability to him. This is established by his conduct in this case and the content of his OPA interview, as well as the fact that this is NE#1’s sixth OPA investigation involving vehicle pursuits. Notably, the Sustained finding issued in this case is NE#1’s second in these cases (the sixth case is currently being investigated and no recommended findings have been issued).

What this clearly suggests to me is that NE#1 needs more training and guidance in this area. As such, instead of a Sustained finding, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning vehicle pursuits generally and, specifically, when he must terminate pursuits, how he must do so, and the difference between pursuits and emergency driving. He should review the revised pursuit policy and his chain of command should ensure that he has a working understanding of its elements. This retraining should be conducted by the Training Unit. NE#1 should additionally be reminded by his chain of command that, as a K-9 officer, he is not exempted from the requirements of the pursuit policy. The policy equally applies to him and he must abide by orders, whether from a direct supervisor or a patrol supervisor, to terminate a pursuit. This counseling and retraining 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 Articulate Justification that the Public Safety Need to Stop the Eluding Vehicle Outweighs the Inherent Risk of Pursuit Driving

During its intake investigation, it appeared from the review of ICV that an Unknown Employee may have stated “I’m still following him” after the order to terminate was given. If this was the case, this employee would have been engaging in an unjustified pursuit, would have failed to terminate a pursuit, and would have disregarded a direct order from a supervisor.

Based on further investigation, including the review of ICV and radio transmissions, OPA determined that such a statement was not made. I note that, at one point, NE#1 asked Guardian One whether it was still following the subject. It is possible that this statement was misheard and that these allegations were, thus, mistakenly classified.

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



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

Named Employee #2 - Allegation #2

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

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

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

Named Employee #2 - Allegation #3

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

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

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

Named Employee #2 - Allegations #4

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

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

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