



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 9, 2019

CASE NUMBER: 2018OPA-0747

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	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 (Lawful and Proper)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)
# 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 (Unfounded)
# 4	13.031 - Vehicle Eluding/Pursuits 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry	Not Sustained (Unfounded)
# 5	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
# 6	13.031 - Vehicle Eluding/Pursuits 3. Officers in Pursuits Will Activate Emergency Lights and Shall Use Their Sirens as Necessary to Warn Others of the Emergency Nature of the Situation	Not Sustained (Training Referral)
# 7	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Unfounded)

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 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry	Not Sustained (Unfounded)
# 3	13.031 - Vehicle Eluding/Pursuits 3. Officers in Pursuits Will Activate Emergency Lights and Shall Use Their Sirens as Necessary to Warn Others of the Emergency Nature of the Situation	Not Sustained (Training Referral)
# 4	13.031 - Vehicle Eluding/Pursuits 7. Officers Must Notify Communications of Pursuits	Not Sustained (Unfounded)



Named Employee #3

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 (Unfounded)
# 2	13.031 - Vehicle Eluding/Pursuits 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry	Not Sustained (Unfounded)
# 3	13.031 - Vehicle Eluding/Pursuits 17. Officers will Disengage When Pursuit is Terminated	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:

It was alleged that the Named Employees may have engaged in an out of policy pursuit. It was also alleged that Named Employee may have conducted an improper *Terry* stop, failed to properly document that detention, and did not record In-Car Video.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

As discussed more fully below, at different times, the Named Employees followed a car driven by the Subject. The car's license plates were stolen and the car, itself, was later determined to be stolen. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) followed the car for a period of time but lost sight of it. The car was ultimately tracked down and its occupants detained by Named Employee #3 (NE#3) and the student officer that she was supervising.

NE#1 arrived at the location where the Subject's car was stopped. He observed other officers, including NE#2 and NE#3, at that location. He observed another female who he believed could be a second suspect. He ordered her down to the ground. At that point, NE#3 told him that this other suspect was not involved. NE#1 told the woman to leave the scene if she was not involved.

At his OPA interview, NE#1 acknowledged that, even if momentarily, he effectuated a *Terry* stop of the woman. He explained to OPA that he felt the woman was a suspect and he simply took charge of detaining her. NE#1 stated that she was in the wrong place at the wrong time.

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.



Ultimately, the woman who NE#1 detained was not engaging in criminal activity. However, under the circumstances he was faced with at that moment, NE#1 believed that she was one of the suspects. He reached this conclusion based on the fact that she was standing in the near vicinity of the Subject and next to the stopped car. Even though his belief was determined to be misplaced, I find that a reasonable officer in NE#1's place presented with the same facts and under the same immediacy to make a decision would have acted similarly. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that officers document all *Terry* stops using a *Terry* Template. Within the *Terry* Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

NE#1 did not complete a *Terry* Template documenting the detention of the woman. He acknowledged that he effectuated a *Terry* stop and, as such, that this paperwork was required. He told OPA that he assumed that the numerous other officers who were writing reports would document what had occurred.

As NE#1 detained the woman, he was personally responsible for completing a *Terry* Template. When he did not do so, he violated policy. That being said, I recommend that NE#1 receive a Training Referral rather than a Sustained finding for two main reasons. First, NE#1 accepted responsibility for his actions and acknowledged that he violated policy. Second, it is a minor policy violation that OPA believes is better addressed by training and counseling. Third, the *Terry* stop was extremely short in duration and, while NE#1 was responsible for recording his actions, it was not unreasonable to believe that one of the officers who detained the Subject would fully document the incident.

- **Training Referral:** NE#1 should be retrained as to the requirement that he complete a *Terry* Template and should be counseled that he is mandated to do so whenever he effectuates a detention. NE#1 should be reminded 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 #1 - 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

NE#1 stated that the sole offense that the Subject was suspected of was possessing stolen license plates. He recognized that he would have been precluded from pursuing under those circumstances. He told OPA, however, that he was not engaged in a pursuit at any point during this incident.

NE#1 explained that he was driving when the Subject car passed him, traveling in the opposite direction. He believed the car to be suspicious and he turned around to follow it in order, based on his account, to read its license plate. He



stated that the Subject car began speeding up and he attempted to get behind it. He stated that the car then drove through two stop signs. At that point, he went over radio and stated that he was following the car at a distance but was not in a pursuit. He observed the car drive through another stop sign and then he lost sight of it. Shortly thereafter, he reported seeing a car with no lights on backing out of a dead end. NE#1 identified this as the Subject car and obtained the license plate number. He provided that information over the radio and learned that the plates were stolen. However, before he could block the car's way, it drove away and NE#1 again lost sight of it.

Approximately one minute later, the location of the car was reported by other officers. NE#1 drove to that location, found the stopped car, and learned that the Subject had fled. The Subject was ultimately tracked down and arrested. The female passenger was ultimately determined to be an endangered missing person who was uninvolved in any criminal activity. The car was also determined to be stolen.

SPD Policy 13.031-POL-1 defines a pursuit as "when an officer, in an effort to keep pace with and/or immediately stop or apprehend an eluding driver, drives in a manner that is outside of normal traffic restrictions." The policy explains that eluding exists when: "an officer operating an authorized police vehicle issues by hand, voice, emergency lights or siren a visual and/or audible signal to the driver of a vehicle to stop and, after a reasonable time to yield in response to the officer's signal, the driver" increases speed, takes evasive action, and/or refuses to stop. SPD Policy 13.031-POL-4 instructs that officers will not engage in a pursuit unless the "public safety need to stop the vehicle outweighs the inherent risk of pursuit driving." The policy states that a pursuit may not occur solely to apprehend a driver who had committed one or more of the following: traffic violations; civil citations; misdemeanors; gross misdemeanors; property crimes; and the act of eluding alone.

NE#1 denied that he engaged in a pursuit at any time. He stated that, instead, he was following the car in order to obtain its license plate. GPS and In-Car Video (ICV) indicated that NE#1 drove at speeds higher than the posted speed limit. Moreover, he drove through stop signs without stopping. As such, he operated his patrol vehicle outside of normal traffic patterns. ICV further showed that he did not attempt to effectuate a traffic stop of the Subject's car, did not activate his emergency equipment, and did not keep pace with the car. As such, even though he was functionally following the Subject's car while driving outside of normal traffic patterns, he was technically not in a pursuit as contemplated by SPD policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #4

13.031 - Vehicle Eluding/Pursuits 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry

SPD Policy 13.031-POL-19 requires all officers involved in a pursuit to complete a Blue Team Vehicle Pursuit Entry. As discussed above, I find that, when applying Department policy, NE#1 was technically not in a pursuit and, accordingly, he was not required to complete this documentation. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #5



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

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(1)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; and arrests and seizures.

Immediately prior to first seeing the Subject's car, NE#1 was recording both ICV and Body Worn Video (BWV) for another call. However, when he began to follow the Subject's car, NE#1 did not record ICV. He asserted that he did not believe that it was necessary as he was just following and attempting to reacquire the Subject's car to read its license plate. He did, however, record Body Worn Video (BWV) for a portion of the incident.

I disagree with NE#1 and believe he was compelled to record ICV during this incident. As such, the failure to do so was technically contrary to policy. That being said, under the circumstances of this case, I believe that a Training Referral is the more appropriate result. First, while OPA believes that recording was required by policy, I understand NE#1's rationale for why he did not think that this was the case during this incident. Second, he did record BWV and, thus, captured a substantial portion of his law enforcement activity.

- **Training Referral:** NE#1 should be reminded of the elements of SPD Policy 16.090-POL-1(5) and should be specifically retrained on when he is required to record video. For example, he should be reminded that ICV must be activated when engaging in Terry stops and traffic stops, both of which were foreseeable results of NE#1's actions in this case. NE#1 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 #1 - Allegation #6

13.031 - Vehicle Eluding/Pursuits 3. Officers in Pursuits Will Activate Emergency Lights and Shall Use Their Sirens as Necessary to Warn Others of the Emergency Nature of the Situation

SPD Policy 13.031-POL-3 requires that officers involved in pursuits activate their emergency lights and use their sirens as needed to warn others of the emergency nature of the situation. As with the above allegations, I find that this allegation is inapplicable to NE#1's conduct as he was technically not involved in a pursuit.

However, I note that NE#1 was, at times, engaging in emergency driving and he failed to use his lights or sirens at any point, even when driving through stop signs without stopping at speeds well higher than the posted limits. NE#1 should have, at least, turned his emergency equipment on momentarily when passing through those intersections. While not, in and of itself, a violation of policy, OPA finds that a Training Referral is warranted.

- **Training Referral:** NE#1 should be counseled concerning his failure to use his patrol vehicle's emergency equipment when driving through stop signs in excess of the posted speed limit. NE#1 should be reminded to clear intersections and use his emergency equipment to notify community members of his driving and to



ensure their safety. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegations #7

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

SPD Policy 13.031-POL-7 states that officers must notify communications of pursuits and provide continuous updates. The policy specifies the information that must be provided. (See SPD Policy 13.031-POL-7.)

Again, as discussed in the context of the above allegations, NE#1 was technically not in a pursuit as contemplated by SPD policy. As such, this policy is inapplicable to his conduct. He did, however, provide specific updates to radio, including stating that he was not involved in a pursuit.

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

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

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

NE#2 followed NE#1 and the Subject car for a period of time. He characterized himself as a backing officer who was supporting NE#1.

NE#2, like NE#1, stated that he was not involved in a pursuit. For the same reasons as discussed above (see Named Employee #1, Allegation #3), I agree and find that this policy is inapplicable to NE#2's conduct during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry

As NE#2 was not technically in a pursuit, he was not required to complete a Blue Team Vehicle Pursuit Entry. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3



13.031 - Vehicle Eluding/Pursuits 3. Officers in Pursuits Will Activate Emergency Lights and Shall Use Their Sirens as Necessary to Warn Others of the Emergency Nature of the Situation

NE#2, like NE#1, drove at speeds above the posted limits while following NE#1 and the Subject car. He also drove through stop signs without stopping and without activating his patrol vehicle's emergency equipment. While I do not find that this constituted a violation of policy, I believe that it warrants a Training Referral.

- **Training Referral:** NE#2 should be counseled concerning his failure to use his patrol vehicle's emergency equipment when driving through stop signs in excess of the posted speed limit. NE#2 should be reminded to clear intersections and use his emergency equipment to notify community members of his driving and to ensure their safety. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #4

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

Again, as NE#2 was not involved in a pursuit, this policy is inapplicable to his conduct in this case. As such, I recommend that it be Not Sustained – Unfounded.

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

Named Employee #3 - 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

Similar to NE#1 and NE#2, NE#3 denied that she and the student officer that she was supervising engaged in a pursuit. She stated that she was trying to locate the Subject car and that she did so, in part, by driving at speeds higher than the posted speed limits and passing through stop signs without stopping. She indicated, however, that she never attempted to effectuate the stop of the Subject car and was not trying to keep pace with it.

Based on OPA's review of the video, NE#3 is correct that, under a technical reading of the policy, she was not engaged in a pursuit during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

13.031 - Vehicle Eluding/Pursuits 19. All Driver Officers Involved in a Pursuit will Complete a Blue Team Vehicle Pursuit Entry

As I find that NE#3 was not involved in a pursuit, I similarly find that she was not required to generate a Blue Team Vehicle Pursuit Entry. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.



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

Named Employee #3 - Allegation #3

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

SPD Policy 13.031-POL-17 instructs that officers who are involved in a pursuit will disengage when the pursuit is terminated.

During the incident, radio advised that no pursuit was authorized. Shortly thereafter, NE#3 told the student officer to “catch up” but also not to pursue. As discussed above, NE#3 contended that she was never involved in a pursuit and I believe that she is correct. As such, I do not find that she violated this policy when she ordered the student officer to “catch up” to the Subject’s car.

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

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