



CLOSED CASE SUMMARY

ISSUED DATE: JULY 18, 2018

CASE NUMBER: 2018OPA-0074

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Serial Number: 7673
		Director’s Findings
# 1	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Not Sustained (Lawful and Proper)
# 2	13.030 - Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response	Not Sustained (Management Action)
# 3	13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Lawful and Proper)
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Serial Number: 6827
		Director’s Findings
# 1	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Not Sustained (Lawful and Proper)
# 2	13.030 - Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response	Not Sustained (Management Action)
# 3	13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Serial Number: 7693
		Director’s Findings
# 1	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Not Sustained (Lawful and Proper)
# 2	13.030 - Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response	Not Sustained (Management Action)
# 3	13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Lawful and Proper)
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)

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 by an Anonymous Complainant that the Named Employees, by performing the vehicle takedown without their lights and sirens activated and by almost colliding with several vehicles, violated Department policy. It was further alleged by OPA that Named Employee #1 and Named Employee #3 may have failed to comply with the Department's In-Car Video policy.

STATEMENT OF FACTS:

On the date in question, the Named Employees were involved in the vehicle takedown of a narcotics trafficker. Several unmarked and subdued vehicles waited at an intersection for the subject car to drive by. When it did, all of the vehicles pulled behind, in front, and beside the subject and eventually effectuated a traffic stop. When the vehicles pulled out, they turned right on a red light. The first three vehicles, which included the unmarked SUV driven by Named Employee #3 (NE#3), pulled out into an empty right lane; however, the last two, the van operated by Named Employee #1 (NE#1) and the SUV operated by Named Employee #2 (NE#2) pulled out when there were other cars in right lane and the adjacent lane. While NE#1 and NE#2 were not driving particularly fast, cars needed to move to the left in order to avoid making contact with them. The Named Employees did not have emergency lights and sirens on. NE#3 pulled her vehicle in to the left lane partially blocking traffic in order to box in the subject. Cars needed to then move around her vehicle.

The officers exited their vehicles and approached the subject car. They extracted the subject and his wife from the car and placed them into custody without incident. Firearms and narcotics were recovered from the car.

It was alleged by an Anonymous Complainant that the Named Employees, by performing the vehicle takedown without their lights and sirens activated and by almost colliding with several vehicles, violated Department policy. OPA then initiated this investigation. During its intake investigation, OPA determined that NE#1 and NE#3 either did not record or did not timely record their In-Car Video (ICV) systems. Accordingly, OPA added allegations concerning ICV to this investigation.

As the Complainant was anonymous, OPA was unable to conduct an interview to learn more about the Complainant's objections to the Named Employees' conduct. OPA conducted interviews of all of the Named Employees. OPA also reviewed the Department video of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk

SPD Policy 13.030-POL-2 states that officers may drive in an emergency response only when the need outweighs the risk. An emergency response is defined as: "When an officer operates an authorized police vehicle in a manner that is substantially outside of a normal traffic pattern." (See SPD Policy 13.030-POL-1.) The policy further states that: "The preservation of life is the highest priority." (SPD Policy 13.030-POL-2).



As discussed above, the Anonymous Complainant alleged that the Named Employees, by performing the vehicle takedown without their lights and sirens activated and by almost colliding with several vehicles, violated Department policy.

All of the Named Employees explained that they did not activate their lights and sirens because they did not want to undermine the integrity of the takedown. They expressed the worry that, had they done so, the subject would have determined that he was about to be stopped and may have sped away. That, in turn, could have resulted in a pursuit that would have been substantially more risky and dangerous than the takedown.

From my review of NE#2's ICV, which is the best record of what occurred, none of the Named Employees were driving particularly fast or unsafely. When NE#3 pulled her vehicle into the left lane in order to box in the subject car, she was far ahead of any oncoming traffic. She did not appear to cause any other motorist to be at risk of harm. NE#1 turned with his van directly in front of a sedan. The sedan had to apply its brakes and NE#1 sped forward to assist with the takedown. NE#2 pulled behind that sedan and in front of another car. The other car, who was in NE#2's same lane, also needed to apply its brakes to avoid colliding with NE#2. NE#2 attempted to maneuver between the two cars in front of him in order to get up to where the takedown was occurring. Ultimately, the sedan to NE#2's right pulled to the side and NE#2 drove in front of the cars and parked in the vicinity of the takedown.

As a starting point, while I am not necessarily convinced that the officers even engaged in emergency vehicle operations in this instance – which means driving substantially outside of normal traffic patterns – I find that their driving was consistent with policy. I reach this finding based on my belief, viewing the totality of the record, that such driving was needed to safety and effectively execute the vehicle takedown. This, as the Named Employees explained, acted to prevent a potentially dangerous high-speed pursuit. I find that this need outweighed the risk of harm to the other motorists on the road.

Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

13.030 - Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response

SPD Policy 13.030-POL-4 directs that: "Officers will use audible signals when necessary to warn others of the emergency nature of the situation."

As discussed above, the Named Employees recognized the general obligation to use their lights and sirens when involved in emergency vehicle obligations. However, they stated that they did not do so in this case because of the risk that it could cause the vehicle takedown to fail and could result in the subject car fleeing the scene and an eventual pursuit. I find the Named Employees' explanations both reasonable and convincing. That being said, there is interestingly no exception in this section of the policy for when the use of emergency equipment would undermine vehicle operations, such as a takedown. Notably, the policy directs that emergency equipment be used "when necessary" not "when appropriate."



Accordingly, even though I deem the Named Employees' decision-making here appropriate and reasonable, I recommend the following Management Action Recommendation.

- **Management Action Recommendation:** The Department should consider amending the language of SPD Policy 13.030-POL-4 to allow for an exception to the use of lights and sirens during emergency vehicle operations when it would jeopardize an approved vehicle operation.

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

Named Employee #1 - Allegation #3

13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle

SPD Policy 13.030-POL-5 instructs that officers are responsible for the safe operation of their vehicles. The policy further states that: "Officers are not relieved of the obligation to drive with due regard for the safety of all persons" and that "officers will drive no faster than reasonably necessary to safely arrive at the scene."

For the same reasons as stated above (see Named Employee #1, Allegation #1), I find that the Named Employees driving complied with this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #1 - Allegation #4

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

It was alleged that NE#1 failed to activate his ICV consistent with policy. However, OPA's investigation revealed that the vehicle that he was operating during the incident was not equipped with ICV. I further note that NE#1 properly activated his Body Worn Video (BWV). As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

Named Employee #2 - Allegation #1

13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk

For the same reason 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

13.030 - Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response

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

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

Named Employee #2 - Allegation #3

13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle

For the same reason as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk

For the same reason 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

13.030 - Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response

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

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

Named Employee #3 - Allegation #3

13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle

For the same reason as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegation #4

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

SPD Policy 16.090-POL-5 governs when Department employees must record ICV and Body Worn Video (BWV). It specifically requires that video must be recorded during various officer law enforcement activity, including but not limited to: responses to “dispatched calls, starting before the employee arrives on the call”; “on-view infractions and criminal activity”; and “arrests and seizures.” (SPD Policy 16.090-POL-5.) SPD Policy 16.090-POL-7 states that, when video is not recorded or is untimely recorded, officers must notify a supervisor and document the issue in an appropriate report.

Here, OPA discovered that NE#3 failed to timely activate her ICV. NE#3 acknowledged that she thought her ICV began recording when she turned on her vehicle’s emergency lights; however, she noticed several minutes into the incident that it had not activated. She then activated her ICV. She did not notify a supervisor of this failure or document it in any report.

By not timely activating her ICV, notifying a supervisor of the failure, and documenting it in a report, NE#3 violated Department policy. NE#3 told OPA that her failure to activate ICV was inadvertent. While she recognized that she failed to notify a supervisor, she stated that her sergeant was in the car with her at the time. Aside from her contention that she was not responsible for the General Offense Report, she provided no explanation for why she did not document this issue. While I find that NE#3 acted contrary to policy in this instance, I recommend that she receive a Training Referral instead of a Sustained finding. I base this in part on the fact that NE#3 did properly and timely activate her BWV, but primarily on the fact that this is NE#3’s first violation of this policy. I counsel NE#3 to be careful to follow all of the requirements of this policy moving forward.

- **Training Referral:** NE#3 should be retrained on SPD Policies 16.090-POL-5 and 16.090-POL-7. NE#3 should be reminded to ensure that she timely activates her ICV moving forward. She should also be counseled to report such failures and to document them in an appropriate report. If she does not do so in the future and that failure is not excused, this conduct will likely result in a Sustained finding.

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