



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 20, 2019

CASE NUMBER: 2018OPA-0980

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	13.030 - Emergency Vehicle Operations 3. Officers Shall Modify Their Emergency Response When Appropriate	Not Sustained (Lawful and Proper)
# 2	13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Training Referral)
# 3	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:**

The Named Employee was alleged to have violated Department policy when he engaged in extended emergency driving and then later got into a preventable accident. NE#1 was also alleged to have failed to record Body Worn Video, as required by policy.

### **ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***13.030 - Emergency Vehicle Operations 3. Officers Shall Modify Their Emergency Response When Appropriate***

On the date in question, Named Employee #1 (NE#1) was responding to a carjacking in which it was believed that there was a disabled adult inside of the vehicle. NE#1 began emergency driving in response to this incident. He did so for approximately six minutes. Around ten minutes later, there was an update over the radio of the suspect vehicle’s location. The vehicle was reported to be within the confines of the South Precinct. NE#1 then recommenced emergency driving from his location to where the vehicle was reported traveling. Approximately 11 minutes later, he stopped emergency driving. As discussed more fully below, NE#1 was subsequently involved in an accident with a community member while merging across Interstate 5. He was not engaging in emergency vehicle operations at that time.

SPD Policy 13.030-POL-3 states that “officers shall modify their emergency response when appropriate.” The policy instructs that officers will modify or terminate their emergency driving in two scenarios: first, when directed to do so by a supervisor; and, second, “when the totality of the circumstances indicates that the risk of continuing the emergency driving outweighs the need.” (SPD Policy 13.030-POL-3.)

This allegation was classified for investigation against NE#1 due to his engaging in emergency vehicle operations for



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approximately 11 minutes.

During his OPA interview, NE#1 explained that he did so because he was trying to get to a “containment position.” He stated that the suspect vehicle was heading towards the south of the City and that he was trying to get in the best position to locate and apprehend the suspect. When asked why, given his distance from the location he was driving to, he did not just go over the radio to ask for another closer unit to go there, he stated that it was a very active call and he did not want to go over the radio unless he had to. He believed that the need to continue emergency vehicle operations was high given the facts of this case and asserted that he acted within policy when he did so.

While OPA believes that the better course of action would have been to request a closer unit to respond, NE#1 did not violate this policy during this incident. This is the case even though NE#1’s emergency driving was prolonged. OPA agrees with NE#1 that the crime at issue was serious and that the need for emergency driving outweighed the risk. Moreover, from OPA’s review of the video, there did not appear to be any significant risk caused by NE#1’s emergency vehicle operations during this 11-minute period.

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**

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

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

After he concluded his emergency vehicle operations, NE#1 remained in the vicinity of Interstate 5. He eventually reentered the highway. At one point, NE#1 merged across several lanes of traffic towards a Washington State Patrol (WSP) cutout. When doing so, he crossed over the HOV lane in order to perform a U-turn. He was then struck by a pickup truck that was traveling in that lane. The impact caused NE#1’s vehicle to flip over and land on its side. Fortunately, the accident did not result in injuries to either NE#1 or the occupant of the other vehicle. NE#1 self-reported the accident and an investigation ensued.

The investigation was conducted by WSP. The investigation reached the following conclusion:

Ultimately, had the patrol vehicle yielded the right of way to the F150 by not making a U-turn in front of it, this collision would not have occurred. It is possible that [NE#1’s] point of possible perception of the F150 was obstructed by the construction of the roadway and barriers as he began the U-turn. However, there was no roadway evidence observed that indicated where [NE#1] was when he began his U-turn or at what point he perceived the F150.



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Based on OPA's review of WSP's investigation and the In-Car Video (ICV) of this incident, OPA finds that NE#1 was clearly at fault and that he failed to comply with this policy when he did not ensure the safe operation of his vehicle. It is incredibly fortunate that neither NE#1 nor the other driver were seriously injured. This accident could have been significantly worse and could easily have resulted in fatalities.

It is OPA's understanding that the Collision Review Board (CRB), the SPD entity tasked with evaluating officer-involved collisions, will also review and make a determination on this case. Under Department policy, the CRB can require that NE#1 receive additional training, as well as recommended that he receive discipline for his actions. Given this, OPA believes that it is the role of the CRB, not OPA, to impose a Sustained finding and to recommend discipline if it deems it appropriate under the circumstances of this case. Accordingly, OPA defers to the CRB in this regard.

That being said, OPA has significant concerns regarding NE#1's driving during this incident and his involvement in this accident, which was preventable. As such, OPA issues NE#1 the below Training Referral.

- **Training Referral:** NE#1 should receive re-training concerning the elements of this policy. He should also receive a refresher course on emergency vehicle operations from the Department's Training Unit. NE#1 should further be counseled by his chain of command concerning his driving during this incident and his involvement in a preventable accident. His chain of command should ensure that he understands the seriousness of this incident and that it could have resulted in multiple fatalities. 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**

#### ***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-1(5)(b) sets forth the categories of activity that must be recorded.

NE#1 did not activate his Body Worn Video (BWV) during this incident. He told OPA that his normal practice was to do so and that he did not realize that he had no BWV until he received notice of the allegation as part of this OPA investigation. NE#1 told OPA that he did not document the absence of BWV because he did not know that he had failed to record.

Under the circumstances of this case, I find that NE#1 did not intentionally fail to record BWV. This is established by his statement to OPA and the fact that he recorded the entirety of his law enforcement activity on ICV. Had NE#1 intended to not record video, he logically would have also not recorded ICV. Accordingly, I recommend that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1 should be counseled concerning his failure to activate his BWV during this incident. He should be reminded of the obligation to do so and should be instructed to more closely comply with this policy moving forward. This counseling and any associated retraining should be documented and this



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documentation should be maintained in an appropriate database.

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