

On November 26th, 2014, Ofc. Clark was issued written notification identifying him as the subject officer of the above noted investigation.

On January 6, 2015, I received an email from Michael Falcone advising that Ofc. Clark's mobile video recorders "appear to be functional."

On February 19th, 2015, I interviewed Ofc. Michael Porter. His audio-taped statement was subsequently transferred to the case file along with a transcription of the interview.

On January 20th, 2015, I obtained copies of Ofc. Clark's training records from Sgt. Nicole Girardi. I forwarded copies of the lesson plan and proof of attendance for Emergency Vehicle Operation and Control to the case file. I also forwarded copies of the lesson plan and proof of attendance for High Risk and Unknown Vehicle Stops to the case file.

On March 9th, 2015, I interviewed Ofc. Clark. Present during this interview were his Fraternal Order of Police (FOP) representatives, Detective Kelly Shifflett and Eugene Gibbons, Esq. Ofc. Clark was also represented in this interview by his personal attorney, Daniel Aaronson, Esq. Capt. Shawn Fagan was also present during the interview. Ofc. Clark's audio-taped statement was subsequently transferred to the case file along with a transcription of the interview.

SUMMARY OF INVESTIGATION:

On October 16th, 2014 at approximately 2054 hrs., while southbound on Federal Highway, Ofc. Clark observed a white Honda Accord, bearing Florida tag 430-PXI, preparing to turn eastbound on Camino Real. A records check by Ofc. Clark revealed the vehicle was reported stolen out of Palm Beach County on October 13th, 2014. Ofc. Clark advised dispatch of this status at which time dispatch confirmed it was stolen and requested if another unit was available to back-up Ofc. Clark. Ofc. Patterson and his trainee advised they would respond and were coming from approximately "4000 North Fed." Ofc. Shannahan also advised he would be responding from an unspecified location. Ofc. Clark then advised that he would be "10-50 (Traffic Stop) on around 174 East Camino," without waiting for back up. Ofc. Clark's dashboard mounted camera captures the traffic stop and subsequent events at 2015:15 hrs. Officer Clark's body worn microphone did not capture any audio because he failed to wear it.

The suspect vehicle is observed stopped off to the side of the road, partially blocking the right lane of two eastbound lanes. Traffic is continuing to flow eastbound in the left lane of the two eastbound lanes. Ofc. Clark can be seen exiting his vehicle and approaching the suspect vehicle on the driver's side holding his pistol in his right hand. The pistol is pointed in the direction of the suspect's vehicle. As he approaches the stolen vehicle, the suspect activates the hazard lights. The rear seat microphone in Ofc. Clark's vehicle captures him yelling the words "hands" and "up" as he approaches the suspect's vehicle at 2055:22 hrs. Immediately upon reaching the driver's door, at 2055:26 hrs. Ofc. Clark is seen pulling on the handle of the driver's door with his left hand while pointing his pistol in the direction of the driver with his right hand. The door opens briefly and is closed almost immediately as Ofc. Clark strikes the glass of the driver's door with the barrel of his pistol. The vehicle then accelerates away from the stop, in a straight line eastbound, while Ofc. Clark appears to be holding onto the driver's door handle at 2055:28 hrs.

Ofc. Clark is then seen disengaging from the vehicle, taking several steps alongside of the vehicle, as the suspect begins to accelerate away. He then fires one round while running in the direction of the fleeing vehicle at 2055:29 hrs. At 2055:30 hrs., Ofc Clark is seen taking a shooting stance, utilizing two hands and pointing his firearm at the vehicle as it pulls away. At 2055:32 hrs., Ofc. Clark is observed running back to his vehicle while apparently utilizing his radio to advise “he took off eastbound, had a shot fired.”

At 2055:41, Ofc. Clark initiates a pursuit of the vehicle eastbound on Camino Real with his emergency lights activated. At 2056:26 hrs., the suspect vehicle can be seen turning southbound on A1A from Camino Real. Due to the glare from various light sources, the suspect vehicle is not visible on the video after it is observed turning onto A1A. Ofc. Clark pursues the suspect southbound on A1A, towards Deerfield Beach, reaching a top speed of 109.5 mph in a 35 mph zone at 20:57:18 hrs. At 2057:27 hrs., as Ofc. Clark approaches the bend on A1A in Deerfield Beach. Ofc. Clark turns westbound on NE 2nd Street in Deerfield Beach then turns southbound on A1A. At 2057:58 hrs., he turns westbound on Hillsboro Boulevard and continues westbound until he makes a u-turn at 2059:16 hrs. and heads back eastbound on Hillsboro Boulevard. He advised that he had lost “visual” while on A1A, though he did not specify when and the exact time was not captured by Communications. At 2059 hrs., he again advised over his police radio that he had lost contact with the vehicle and was “returning to the city.” While he traveled both eastbound and westbound on Hillsboro Boulevard, he reached speeds in excess of 80 mph, though he did slow down and use appropriate caution while crossing Federal Highway, with his emergency lights and siren activated.

Ofc. Clark then remained in the area of Deerfield Beach searching for the suspect vehicle. At 2104:18 hrs. he arrived at the intersection of SE 21st Avenue and SE 4th Street where fellow officers had located the unoccupied suspect vehicle. This terminated his involvement in pursuing and/or searching for the suspect vehicle.

Prior to going off duty that night, Ofc. Clark authored a supplement to BRPSD case # 2014-013614. In the report, he indicated that after stopping the suspected stolen vehicle, the suspect was “not complying” with his verbal commands. He indicated the suspect’s “left hand was positioned at the approximate two o’clock position on the steering wheel and his right hand quickly darted to the right side of the driver’s seat.” He also indicated that the driver’s actions “led me to believe he was reaching for an object. Based on my training and experience, I believed it to be a weapon.” He then described how he attempted to gain entry to the vehicle, but that the door was locked and he attempted to “break the glass with the butt of my weapon” and that during this action, he could “see the suspect still attempting to “yank” what I believed to be a weapon from the side of the driver seat.” Ofc. Clark went on to explain that the suspect began driving away as “I was still attempting to gain entry and while I was standing next to and in contact with the vehicle, causing me an immediate fear that I would be struck and possibly severely injured (based on his hand positioning on the steering wheel) and by his continued attempts to retrieve an object, possibly a firearm or weapon, from the space between the driver’s seat and center console.” He ended his supplement by stating “Fearing for my safety, I fired my weapon in an attempt to stop the threat.”

It should be noted BRPSD case # 2014-013614 was assigned to Det. Scott Hanley for investigation. His investigation resulted in charges of Grand Theft (motor vehicle) and Fleeing or Attempting to Elude against Mark Simmons (B/M 10/11/1987). He was taken into custody on these charges on October 24th, 2014. At the time of his arrest and after being advised of his Miranda Warnings, he denied being in the vehicle and the City of Boca Raton on the night in question. However, he subsequently pled guilty to the fleeing or attempting to elude charge. As a result of the internal affairs portion of this case, Ofc. Clark was interviewed on March 9th, 2015. He provided an overview of what happened that night. He was then asked specific questions pertaining to his decisions and tactics during the stop, his use of deadly force, his actions while operating his vehicle, why his body worn microphone failed to record anything, and modifications to his issued rifle.

Ofc. Clark explained that he elected to initiate the traffic stop prior to back-up officers arriving as “frankly I thought I had the situation under control” and he felt the back-up officers were too far away. The concept that he could handle the situation and that he believed he had it under control also factored in to his decision to approach the vehicle on foot without back-up. He did indicate there was a level of concern “evident when you’re walking up to a vehicle with your gun drawn that it was definitely at a heightened state of awareness.” When asked if he believed his approach and tactics were consistent with training he received on felony stops he replied “There is a definite deviation from the training.” He also noted that he felt “policy and training is there as a general guideline” and that this is “the first time I’ve been in a situation where someone’s not there right away” and that given the entire situation he made the decision to “try to the best of my abilities to deal with the stolen vehicle and suspect at the time.”

During this interview, Ofc. Clark explained that as he reached the driver’s door, he could see the suspect “with his right hand” “pull up what I know to be the butt stock of a black semi-auto pistol” and it was upon seeing this that “I’m making the determination I’m gonna shoot.” When asked specifically, he advised that the suspect never pointed the firearm at him. When I pointed out that he made no reference to the handgun in his report, he indicated that he utilizes the term weapon and firearm interchangeably. He also advised that the incident was much clearer to him “24, 48 hours after the fact” possibly due to “critical stress whatever you want to call it” and that he believed he would have been able to provide a more detailed report at some point. When asked why he failed to advise responding officers that the individual they were searching for was armed with a firearm, he indicated he “did not think to do it” and that he could not believe what was happening to him. He later indicated he believed he may have mentioned the firearm to someone during the search for the suspect however; neither radio traffic nor any of the police reports substantiate this claim.

Ofc. Clark explained that he made the determination to discharge his weapon at the suspect at the time he saw the suspect pull a firearm clear of the space between the driver’s seat and the center console. He explained that this occurred as he was parallel with the driver’s side door. He could not explain why he did not back up and/or create any distance between himself and the threat upon seeing the firearm. He also believed the vehicle itself to be a threat to him even though it accelerates in a straight line away from him. In fact, the in-car video shows that rather than distance himself from the threat of the firearm and/or vehicle, Ofc. Clark runs alongside the vehicle for at least three steps, then discharges his weapon as the vehicle pulls away from him.

This is substantiated by the trajectory of the bullet, which clearly entered the vehicle via the driver's side rear door window, passed through the back of the driver's headrest, exited the bottom of the headrest and came to rest in the driver's seat.

When asked about the pursuit, Ofc. Clark indicated that he lost sight of the suspect vehicle as it turned eastbound on NE 2nd Street from A1A in Deerfield Beach. This is slightly prior to his assertion on the radio that he lost sight "westbound on Hillsboro". When asked why he twice reached speeds in excess of 80 mph in 35 mph zones on Hillsboro Boulevard after losing sight of the suspect vehicle, he indicated he was "actively looking for a suspect." I also asked Ofc. Clark if he felt his speed, 109 mph, southbound on A1A at approximately 2100 hrs. in a 35 mph zone posed a threat to pedestrian and vehicular traffic in the area. He indicated "absolutely not" given that the traffic was "relatively light." He further asserted, "I'm a hundred percent comfortable in my ability as a driver to not only handle the vehicle but pursue at that speed given...given the conditions...."

In his interview, Ofc. Clark admitted that he was not wearing his body worn microphone and he knew it was a violation of policy.

The night of the shooting, Ofc. Porter, the Department's range master, responded to the scene and took possession of Ofc. Clark's pistol, ammunition and a total of five magazines. On the following day, Ofc. Porter retrieved Ofc. Clark's assigned rifle from the trunk of his marked patrol car. When asked about the additional magazines, Ofc. Clark stated he was only issued three, but believed the former range master (Ofc. Weymeyer) advised him that if you want to carry more magazines you can, but that you had to purchase your own as long as they were the same as the ones purchased by the Department. When asked why he felt the need to carry twice as much ammunition as his fellow officers, he indicated he might encounter a situation in which he needed the extra ammunition and that he would "rather have it and not need it than need it and not have it."

Ofc. Porter, during his statement, also noted ten unauthorized modifications to Ofc. Clark's issued rifle and provided documentation indicating no prior approval for these changes. Ofc. Clark disputed that they were modifications and preferred to call them "customizations." He disputed Ofc. Porter's assertion that they were not approved and indicated that some were done at the range and that Ofc. Porter may have been present for these modifications, but that he (Ofc. Porter) neither remembers nor documented the changes. Ofc. Clark did agree that at least three of the modifications (muzzle device/UTG Rail Covers/Streamlight TLR 2 Weapon Mounted Light with Laser) were made by him, at home, without the approval of Ofc. Porter and that these items were not issued by the Department.

FINDINGS:

Based on the preponderance of evidence, the allegation that Ofc. James Clark used excessive force is *Sustained*. A completed investigation may be labeled “sustained” if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department’s policy is contained in directive number 26.100 (Conduct of Personnel) and is as follows:

26.100 IV. A. 23. a.

The Department forbids any employee to use unnecessary, excessive or brutal force. Any employee who uses excessive force shall be subject to disciplinary action(s).

Additionally, Article 7, Section 1 of the City of Boca Raton’s Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark unjustifiably fired at a moving vehicle is *Sustained*. A completed investigation may be labeled “sustained” if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department’s policy is contained in directive number 01.300 (Response to Resistance) and is as follows:

01.300 IV. C. 1. c.

Officers shall not fire at a moving vehicle or any occupant of a moving vehicle. However, the officer's use of lethal force may be justified if the occupant of a moving vehicle poses an immediate threat with a firearm or fires upon an officer or another, and all other reasonable means to avoid the danger are impractical.

Additionally, Article 7, Section 1 of the City of Boca Raton's Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark failed to employ fundamental officer safety tactics and acted in a manner contrary to his training is ***Sustained***. A completed investigation may be labeled "sustained" if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department's policies are contained in directive number 26.100 (Conduct of Personnel) and is as follows:

26.100 IV. A. 11. b and c

b. Employees shall not engage in misconduct, neglect their duty, or participate in acts that would tend to discredit the Department, although such conduct is not specifically set forth in these rules.

c. Employees shall not engage in any conduct that constitutes neglect of duty or is likely to affect the discipline, good order, or reputation of the Department adversely, including, but not limited to, conduct prohibited by this Directive.

Additionally, Article 7, Section 1 of the City of Boca Raton's Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(4) Has been guilty of conduct unbecoming an employee of the city of Boca Raton.

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark failed to wait for a back-up officer is **Sustained**. A completed investigation may be labeled “sustained” if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department’s policies are contained in directive number 41.100 (Patrol) is as follows:

41.100 IV. B. 4. ii.

Two police units will respond to the following types of calls for service to provide officer safety and protection of the crime scene:

ii. Crimes in Progress

Additionally, Article 7, Section 1 of the City of Boca Raton’s Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark failed to wear his microphone is *Sustained*. A completed investigation may be labeled “sustained” if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department’s policy is contained in directive number 41.01 (Mobile Video Recorders) and is as follows:

41.01 IV. C. 2.

Officers will wear the microphone during their entire shift with the master switch in the “on” position. The microphone will not record until the talk button is pressed. If the master switch is turned off, the officer must re-sync the transmitter and receiver.

Additionally, Article 7, Section 1 of the City of Boca Raton’s Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark failed to terminate the pursuit when the risks to himself or others outweighed the suspect’s danger to the community is *Sustained*. A completed investigation may be labeled “sustained” if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department’s policy is contained in directive number 41.225 (Pursuit Driving) and is as follows:

41.225 IV. B. 7.

The Department expects an officer to terminate his/her involvement in a pursuit whenever the risks to the officer's own safety and/or the safety of others outweigh the danger to the community if the suspect is not apprehended.

Additionally, Article 7, Section 1 of the City of Boca Raton's Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark failed to terminate the pursuit when he lost sight of the suspect's vehicle is *Sustained*. A completed investigation may be labeled "sustained" if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department's policy is contained in directive number 41.225 (Pursuit Driving) and is as follows:

41.225 IV. J. 6.

A pursuit should be terminated if the officer(s) loses sight of the suspect vehicle other than for a momentary period and the supervisor shall be notified immediately.

Additionally, Article 7, Section 1 of the City of Boca Raton's Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

Based on the preponderance of evidence, the allegation that Ofc. James Clark modified his issued rifle without authorization is *Sustained*. A completed investigation may be labeled “sustained” if 1) the facts support the allegation as true, and/or 2) the findings indicate that the employee committed one or more of the alleged acts, and/or 3) the findings indicate that the employee committed a violation other than the original allegation(s).

Boca Raton Police Services Departmental Standards Directives as well as the City of Boca Raton Personnel Rules and Regulations specifically address the actions of Ofc. Clark as mentioned in this investigative report. The Department’s policy is contained in directive number 01.310 (Use of Authorized Firearms and Ammunition) and is as follows:

01.310 IV. A. 2. d.

LEO’s will not alter or modify Department-issued firearms in any manner. Additionally, any alterations or modifications to personally owned firearms that are being utilized for off-duty or on-duty supplemental use must be approved by the rangemaster or assistant rangemaster. Any approved alterations or modifications must be completed by the rangemaster or his/her designee.

Additionally, Article 7, Section 1 of the City of Boca Raton’s Personnel Rules and Regulations states:

Section 1. Grounds for Removal and Other Disciplinary Action. The City Manager or designee may for cause, discipline any employee in the classified service; however, in no instance may an employee be disciplined because of political or religious opinions or affiliations.

The following may be considered grounds for disciplinary action based on the gravity of the offense; however disciplinary action may be taken for causes other than those enumerated:

(8) Has been incompetent, negligent, or inefficient in the performance of assigned duties.

DOCUMENTARY EVIDENCE:

- 1. Employee Conduct Report**
- 2. BRPD Incident Report #2014-013614**
- 3. Crime Scene Photos (4 CDs)**
- 4. In-Car Video from Ofc. Clark’s Vehicle**

- 5. Audio of Radio Transmissions**
- 6. Transcription of Radio Transmissions**
- 7. PDF of route taken by Ofc. Clark during pursuit**
- 8. Audio of Porter's Interview**
- 9. Transcription of Ofc. Porter's Interview**
- 10. List and Photos of Rifle Modifications**
- 11. EVOG and High Risk Traffic Stop Training records for Ofc. Clark**
- 12. Email from Michael Falcone**
- 13. Video from PD**
- 14. Audio of Ofc. Clark's Interview**
- 15. Transcription of Ofc. Clark's Interview**

The contents of this report are true and accurate based on my personal knowledge, information and belief.

I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in 112.532 and 112.533, Florida Statutes.

Captain Matthew Duggan

Date

2014-CC-003