



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 4, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0515

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 4	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed

Imposed Discipline

Suspension Without Pay and Disciplinary Transfer
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Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

EXECUTIVE SUMMARY:

It was alleged that the Named Employees all engaged in unprofessional interactions with community members. It was further alleged that Named Employee #2 operated an unmarked SUV in a manner that was contrary to law and SPD policy.

ADMINISTRATIVE NOTE:

The Office of Inspector General for Public Safety (OIG) certified this case for timeliness, but not for objectivity or thoroughness. The OIG’s reasoning is fully set forth in its certification memo. OPA disagrees with the majority of the points raised by the OIG, finds them overly didactic and immaterial to the ultimate findings in this case, and declines to address them further herein.



In addition, as discussed more fully below, OPA initially recommended that Allegation #1 against Named Employee #2 be Sustained, after the discipline meeting in this matter and after additional consideration of the evidence, OPA no longer feels that it can meet its required evidentiary burden. Accordingly, OPA now recommends that this allegation be Not Sustained – Inconclusive.

SUMMARY OF INVESTIGATION:

This case arises out of the protests that occurred in Seattle in the aftermath of George Floyd’s killing by a Minneapolis police officer. The incident in question took place on August 12, 2020. On that evening, the Named Employees were engaged in law enforcement activities within the vicinity of the East Precinct. They were driving around the area in an unmarked dark colored SUV. Named Employee #2 (NE#2) was operating the SUV, Named Employee #1 (NE#1) was the front passenger, and Named Employee #3 (NE#3) was in the rear seat. A fourth officer, who is not a named employee in this case, was also seated in the rear.

During the course of the evening, NE#2 was recorded by a community member operating his vehicle in a manner that appeared to be dangerous. This included driving onto the sidewalk in pursuit of purported suspects. All of the Named Employees were videotaped making comments to community members.

The video was split into two parts: the first, showing NE#2’s operation of the SUV; and the second, showing NE#1, NE#2, and NE#3 interacting with community members. The first part of the video lasted for approximately 10 seconds. It showed the SUV stopped at the northwest corner of East Pine Street and 11th Avenue. The SUV accelerated through the intersection and began to move onto the sidewalk. At that time, the video view moved down and blurred. When the video view rose up again, it showed an individual dressed in all black quickly emerging from some bushes. Someone yelled out: “Fuck you. Damn.” Another person dressed in black could be seen in the bottom of the frame holding his arms up towards the SUV. The SUV could be viewed through the bushes as it drove away. The video indicated that the SUV did not have its emergency lights or siren activated at the time. The video then cut out.

The second part of the video depicted community members speaking with the officers. A community member asked NE#2 if he knew that he almost “hit a bunch of people.” NE#2 asked: “did you see the guy who ran, that I was trying to catch?” The community member queried: “are you the one who called them a bunch of cockroaches?” NE#2 said, “yes, yes,” and then provided his badge number. NE#2 stated that he drove down the sidewalk to “catch a bad guy.” However, when asked whether NE#2 caught the “bad guy,” NE#2 said: “no, he ran like a roach.” NE#2 commented that he “used to love Seattle” but now “it’s pretty fucking dirty.” When asked why he still worked for SPD, NE#2 said: “because they pay me like 200 grand a year to babysit you people. I babysit these knuckleheads every night because they smash up all the businesses.” When asked whether he felt that he put people in danger with his driving, NE#2 asserted: “no, I’m a professional.”

Multiple community members viewed the video and made OPA complaints. OPA’s investigation ensued. After reviewing the video, OPA determined that a criminal referral was warranted based on NE#2’s operation of the SUV. OPA requested that SPD conduct the criminal investigation to determine whether probable cause existed to charge NE#2 with a crime.

The criminal investigation was assigned to SPD’s Traffic Collision Investigation Squad (TCIS). TCIS analyzed the video taken of NE#2’s driving and mapped that to an assessment of the scene. TCIS concluded that NE#2 drove onto the sidewalk on the northeast side of East Pine Street and 11th Avenue. At that time, the patrol vehicle was approximately



halfway onto the 11-foot-wide sidewalk. NE#2 drove down the sidewalk for around 80 feet until pulling back onto the road as he advanced towards a metro bus stop.

TCIS interviewed all three witness officers who were in the SUV, including NE#1 and NE#3. NE#2 did not consent to an interview as part of the criminal investigation. All three witness officers stated that they were attempting to arrest individuals who were shining strobe lights into their vehicle. They stated that they did so pursuant to direction from their Lieutenant to arrest any individuals engaging in criminal activity. The officers said that the individuals were on the sidewalk. They made an apprehension plan and drove towards the individuals. The officers said that they drove onto the sidewalk in order to get as close as possible to the individuals to make the arrests prior to the individuals running away. The officers stated that no one was placed in danger by their actions and the individuals fled.

TCIS attempted to interview some of the community members who initially complained about this incident. However, none of them responded to interview requests.

Given the limitations of the video and the absence of other evidence, TCIS could not conclusively determine how close the SUV came to the individuals and whether it almost struck anyone. TCIS also noted that, due to the camera view and obstructions, the vehicle's exact path on the sidewalk could not be discerned.

After TCIS completed its investigation, it referred the case to the Seattle City Attorney's Office (SCAO). After reviewing the file, the SCAO declined to file charges against NE#2, citing a lack of evidence to prove criminal charges beyond a reasonable doubt. At that point, the case was referred back to OPA for further investigation.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) recorded by the Named Employees and the other officer who was in the SUV. The driving was not captured on BWV; however, the BWV did show several interactions between NE#1 and NE#3 and community members, which OPA believed were potentially unprofessional. Specifically, at one point, NE#1 responded to a community member's unintelligible statement towards the officers by speaking in gibberish. At another point, NE#1 yelled at a community member: "hey buddy, yeah, hey get a job, buddy. You look homeless, bye bye." NE#1 laughed and then shouted: "you coward." NE#3 spoke with a community member who asked him what would happen if the community member ran a search of the SUV's license plate. NE#3 replied that he might get a "rick roll" (a meme that involves clicking a link that takes the viewer to a music video of Rick Astley's 1987 song "Never Gonna Give You Up"). OPA further reviewed the third-party video, the criminal investigation, and interviewed the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)



At his OPA interview, NE#1 acknowledged that his statements were unprofessional. OPA agrees. The mocking of a community member by using gibberish would have been sufficient to find unprofessionalism on NE#1's part. However, his telling a community member to "get a job" and saying the person looked "homeless" where entirely inappropriate, as was calling another community member a "coward."

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. It was alleged that NE#1's driving constituted an assault with a potentially deadly weapon – the SUV, as well as violated laws prohibiting negligent driving under both the SMC and RCW.

After reviewing the criminal investigation, OPA concurs that there is insufficient evidence available to prove assault. Notably, there were no victims identified, no direct witnesses provided statements, and the ten second video did not definitively show whether community members were in the direct path of the SUV and how close the SUV came to them.

Initially, OPA believed that there was sufficient evidence supporting a finding that NE#2 engaged in negligent driving, particularly when applying a preponderance of the evidence standard. However, after further review of the BWV of the witness officers, the legal conclusions reached by the SCAO, and discussions with the chain of command at the discipline meeting at this matter, OPA does not believe that it meet its burden to prove that NE#2 violation. Of all these considerations, the SCAO's stated conclusion is the most determinative. This does not mean that OPA finds that no such violation occurred, as OPA remains very concerned with this incident and believes this question to be an extremely close call.

For these reasons, OPA now recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee 2 - Allegation #2

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." The policy further instructs that: "The preservation of life is the highest priority. Criminal apprehension and the preservation of property are secondary."

NE#2 articulated his belief that the need to arrest the individual utilizing the strobe light outweighed the risk of driving the SUV on the sidewalk. OPA struggles to understand how this could be the case. Notably, reckless endangerment, even if established (NE#2 would need to show that the use of the strobe light caused a risk of death or serious physical injury), constitutes a gross misdemeanor. This was not a felony arrest or an incident where someone was actively



causing violence. However, NE#2 took a significant risk in accelerating and pulling onto the sidewalk. While the Named Employees asserted that no one was in the path of the SUV, at least one person was shown on video moving away from the vicinity of the sidewalk. Moreover, he did so while driving a dark colored SUV and without activating his emergency lights and siren.

While NE#2 may have felt – as he expressed to a community member – that he could capably drive the SUV on the sidewalk because he was a “professional,” OPA finds that his acts were improper and inconsistent with policy. Again, though officers are not prohibited from driving on a city sidewalk while accelerating, such conduct should be reserved for those cases in which the need to apprehend a suspect is so high that the danger of driving in that matter is acceptable. In OPA’s opinion, this was not the case here. Ultimately, OPA finds that NE#2 failed to comply with the core expectation of this policy – to preserve life and safety over apprehending a criminal.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

OPA finds that NE#2 violated the Department’s professionalism policy in two respects. First, his comments captured on video were inappropriate. Calling a fleeing subject a roach, referring to Seattle pejoratively as “fucking dirty,” and telling community members that his job is to “babysit” for “200 grand” is unacceptable. This is particularly the case given NE#2’s role as a supervisor.

Second, his operation of his motor vehicle and the risk he took simply to apprehend individuals using a strobe light were dangerous, ill advised, and, as was shown by the numerous complaints and public concern this incident generated, undermined public trust and confidence in NE#2 and the Department.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #4

8.200 - Using Force 1. Use of Force: When Authorized

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

OPA finds that NE#2’s actions and decision-making – including how problematic each were – are already fully captured by Allegations #s 2 and 3. Accordingly, OPA finds that this allegation is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**



Named Employee #3 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

While unnecessary under the circumstances and juvenile, NE#3's statement was not derogatory or contemptuous and did not contain profanity. Accordingly, OPA declines to find that it was so improper as to have violated SPD's professionalism policy.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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