



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 2, 2018

CASE NUMBER: 2017OPA-1125

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Sustained

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Inconclusive)

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:

OPA received two complaints regarding Named Employee #1 driving a patrol vehicle in an unsafe manner down a sidewalk in potential violation of policy. During its intake investigation, OPA identified that Named Employee #2, who was the passenger in the vehicle, failed to report misconduct as required by policy.

ADMINISTRATIVE NOTE:

At the discipline meeting in this matter, the chain of command disagreed with my original recommendation to sustain the allegation against Named Employee #2 that he failed to report misconduct. This was the case, even though the chain of command ultimately agreed that Named Employee #1’s driving during this incident was in violation of policy. After further consideration, I agree and reverse my finding. I now recommend that this allegation be Not Sustained – Inconclusive.

This DCM was amended for a second time after later conversations with NE#1’s chain of command and due to OPA’s belief that the DCM should be consistent with its and the chain of command’s concerted recommended findings reached at the discipline meeting and memorialized in the DAR.



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

On the date in question, the Named Employees responded to an assault call. While driving to the scene in their patrol vehicle, a “fast back” was requested, meaning that the involved officers called for other officers to quickly come and assist them. In response, Named Employee #1 (NE#1), who was driving the vehicle, began to engage in emergency vehicle operations. Named Employee #2 (NE#2) was the passenger.

As they neared the scene, an officer came over the radio and stated: “under control, one in custody, start sending fire.” The dispatcher repeated that there was “one in custody, under control”; however, NE#1 continued to engage in emergency vehicle operations for nearly another minute. Moreover, as he approached the scene, he began driving his vehicle on the sidewalk. When he did so, he pulled in front of a pedestrian that was walking on the sidewalk behind his vehicle. I believe this to have been one of the Complainants based on this individual’s description of NE#1’s driving and where he was situated at the time. NE#1’s GPS recorded that his patrol vehicle was, at least at one point, traveling on the sidewalk at speeds up to 20 miles per hour.

This matter came to OPA’s attention when two civilian Complainants independently reported the Named Employees’ conduct and complained that NE#1 was driving recklessly and dangerously. The first Complainant reported that the Named Employees drove on the sidewalk in front of his building at a high rate of speed with their lights and sirens flashing. He stated: “Had I been 6 steps further in my trip to the car I would have stepped out directly in front of him/her and there is no way they could have stopped.” He concluded by saying that the Named Employees’ response was “absurd” and that there was no “imminent threat” at the time. The second Complainant recounted observing: a “Police car speeding down the sidewalk to chase a homeless women [sic]” and said that the Named Employees “could have killed anyone walking out the door of my place of business.” She told OPA that: “It is one of the most ill advised and reckless things I have ever seen.”

At his OPA interview, NE#1 asserted that, even after the two broadcasts indicating that the situation was under control, he was still concerned of what he described as imminent threats to fellow officers and civilians. He opined that the officer who indicated that the situation was under control sounded distressed and that it did not sound like the scene was actually under control. He told OPA that he believed that it was a tense, uncertain, and fast-evolving situation and that he thought driving down the sidewalk was the best and most reasonable option at the time. NE#1 asserted that this was the case even though he recognized that he also could have driven in the center or southbound lane of the adjacent north/south street.

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 states that: “The preservation of life is the highest priority.” (SPD Policy 13.030-POL-2).

I find that when NE#1 drove on the sidewalk at 20 miles per hour after being informed that the situation was under control and that the suspect was in custody, the risk of driving in an emergency fashion was outweighed by the potential harm to community members. As discussed above, NE#1 had other alternatives available to him at the time and, as articulated by both of the Complainants, there was a real possibility that he could have struck a community member exiting one of the stores on that block. That being said, NE#1’s chain of command asserted at



the discipline meeting in this matter their belief that NE#1 was acting in good faith during this incident. They further informed OPA that he is a hard-working, well-intentioned, and dedicated employee. I see no evidence suggesting the contrary on any of these points and, from everything OPA has learned, NE#1 is a good officer; however, the fact remains that, when applying a preponderance of the evidence standard and under the circumstance of this case, I conclude that he acted contrary to the express requirements of this policy. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 requires that SPD employees who learn of possible misconduct report that misconduct. Minor misconduct must be reported to a supervisor, while serious misconduct must be referred to both a supervisor and OPA. SPD Policy 5.002-POL-5 defines minor and serious misconduct.

As indicated above, I agree with the Complainants that NE#1's driving and decision-making in this case were reckless, dangerous, and outside of policy. While I personally believe that this should have been evident to NE#2, it was not. Based on NE#2's OPA interview, I do not find that this was the result of bad faith. Instead, I find it more attributable to the fact that NE#2 was an inexperienced officer caught up in the heat of the moment who simply may not have realized that NE#1's actions were outside of policy.

Ultimately, under the circumstances of this case, I cannot conclusively make a determination as to whether NE#1 violated this policy by failing to report NE#1's driving to a supervisor or OPA. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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