



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 23, 2018

CASE NUMBER: 2018OPA-0195

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Oral Reprimand

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 Complainant alleged that the Named Employee was unprofessional when he used profanity towards her while he was directing traffic.

STATEMENT OF FACTS:

This matter came to OPA’s attention based on an emailed complaint from the Complainant. In that complaint, the Complainant stated that she was driving in the vicinity of a vehicle collision that was blocking the intersection of 23rd Avenue and Jackson Street. She stated that, when she approached the intersection, she intended to turn right and she did not initially see an officer, later identified as Named Employee #1 (NE#1), walk into her lane of travel. She stated that she stopped short of NE#1 and that he approached her window, which she had lowered. She told OPA that she tried to explain to NE#1 what had happened and to apologize to him; however, he appeared angry and did not engage with her. Instead, he used an expletive towards her, stating: “Jesus fucking Christ lady.” She stated that NE#1 then walked away.

OPA initiated this investigation. OPA interviewed the Complainant, who reiterated her allegations. She stated her belief that NE#1, and particularly his language, was “unprofessional” and “demeaning.” She noted that, at the time, her six-year-old son was in the back of the car and that he should not have been required to hear NE#1’s profanity, especially given that NE#1 was a uniformed police officer at the time. She told OPA that, instead of listening to her explanation and apology, NE#1 “lashed out” at her. She stated that she hoped that NE#1 would handle similar situations more “calmly and respectfully” in the future and that he should “be careful with the words he uses.” Lastly, the Complainant opined that NE#1’s actions might have been motivated by the fact that she was an Asian-American female and that he could have been “stereotyping” her.

Based on the Complainant’s allegations, OPA reviewed NE#1’s Body Worn Video (BWV) and In-Car Video (ICV) from the date in question. Both captured NE#1’s interaction with the Complainant. The Department video reflected that



NE#1 then began to walk into a lane of travel to stop the vehicles driving towards him. At the time, NE#1 was in uniform, was wearing a yellow reflective vest, and was waving a flashlight back and forth. The Complainant's vehicle approached NE#1 at a steady, but not visibly fast, rate of speed, and she did not seem to slow down until she was virtually right in front of him. NE#1 appeared to move away from the vehicle (his exact movement is unclear from my review of the video given its angle). He appeared to make contact with the vehicle using his hands on the hood and again when he neared the window (there were audible noises). The video then reflected that the Complainant stated: "I didn't see anything, I'm sorry." NE#1 responded: "Jesus fucking Christ lady." He then walked away from her window.

The Department video indicated that NE#1 remained standing in front of the Complainant's vehicle for just over a minute before he left her lane of travel to move to another lane. The Complainant's vehicle remained stopped at the intersection for approximately two and a half minutes. During this time, NE#1 did not have any further conversation with NE#1, did not apologize for using profanity towards her, and did not provide any explanation as to why he reacted as he did. The video further captured that NE#1 raised his voice at another motorist who was apparently confused as to what the officers were directing him to do at the intersection (see NE#1's BWV at 11:42-11:55).

As part of its investigation, OPA also interviewed NE#1. During his interview, NE#1 discussed his responsibilities on the date in question. He further discussed some of the dangers of directing traffic, particularly in the evening and during the rain. After watching his BWV, NE#1 stated that he recalled his interaction with the Complainant. He described that she was driving "fairly quickly down a wet street" and that he was "shining [his] flashlight at her with the flashing beam, in a sort of cross manner to try to get her to stop while wearing a reflective vest." He stated that "she didn't slow down, she continued, and [he] jumped, because [he] believed [he] was about to be struck by a car, to get out of the way." He acknowledged that, "in a moment of fear and frustration," he "made a poor word choice." He stated, however, that "at no point did [he] intend to make her feel bad or hurt her in any way."

NE#1 was asked whether he was angry at the time he made the statement. He responded: "I don't think anger was my overriding emotion, but I don't recall my exact emotional state." In response to OPA's question concerning why he did not explain his statement to the Complainant at the scene, he told OPA that: "It's possible, that could have happened, but [he] also had a responsibility to keep traffic moving through the intersection, and [he] didn't feel like it would be appropriate to detain her for anything at that point...simply in order to issue an apology." When OPA raised the fact that the Complainant was already stopped at the intersection at that time and remained there for approximately two and a half minutes, NE#1 stated that he did not remember that.

While NE#1 opined that he was not unprofessional during this incident, he told OPA that the assigned investigator would have to ask the Complainant to determine whether his conduct undermined public trust in himself and the Department.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal



characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

As discussed above, the Complainant contended that NE#1’s actions could have been motivated by her status as an Asian-American female and because NE#1 was “stereotyping” her. NE#1 denied that his actions or statement were motivated by bias and, instead, asserted that he reacted as he did in this instance due to the Complainant’s driving and his concern that he could be struck by her vehicle.

While I find that NE#1’s statement to the Complainant was unprofessional, I see no evidence suggesting that he engaged in biased policing. When applying a preponderance of the evidence standard, I find that his actions were, instead, motivated by the risk he perceived to his safety and his frustration stemming from the incident. I think it likely that NE#1 would have reacted the same way to any driver, regardless of that driver’s race or gender. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

SPD Policy 5.001-POL-9 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-9.) Lastly, the policy directs that: “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.*)

Applying a preponderance of the evidence standard, I find that NE#1’s use of profanity in this instance was unprofessional and violated Department policy. This conclusion is, in my opinion, supported by multiple factors. First, NE#1’s use of profanity was not instinctual or an excited utterance. He made this statement several seconds after the Complainant stopped her vehicle, as well as after she had already apologized to him. Second, at the time the profanity was used, the Complainant was clearly frazzled and apologetic. This was not a scenario in which she behaved aggressively or argumentatively towards NE#1. She also had her six-year-old child with her in the vehicle at the time, which makes NE#1’s use of that language even more problematic in my opinion. Third, even though the profanity was not “directed as an insult,” I believe that it was derogatory, contemptuous, and disrespectful language directed towards the Complainant. Fourth, and last, even though NE#1 remained standing in front of the Complainant’s vehicle for over a minute and she remained stopped at the intersection for approximately two and a half minutes, NE#1 made no effort to further speak with the Complainant to explain why he said what he said or to otherwise mitigate the situation. Had he done so, this complaint would almost certainly have never been filed.

While I do not doubt that NE#1 was concerned for his safety and while directing traffic can be dangerous, he could have expressed his concern and his frustration with the Complainant in a more constructive manner. Given that she clearly felt sorry for her driving, I imagine that she would have been very receptive to such a conversation, even if critical. Instead, NE#1 engaged in a negative interaction with the Complainant and took no steps at that time or after the fact to rectify that. Ultimately, this behavior is inconsistent with policy and with what OPA’s believes are the expectations of the community. For these reasons, I recommend that this allegation be Sustained.



Seattle
Office of Police
Accountability

CLOSE CASE SUMMARY

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Recommended Finding: **Sustained**