



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 7, 2019

CASE NUMBER: 2018OPA-0735

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Sustained

Imposed Discipline

Suspension without Pay – 30 days

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:

It was alleged that the Named Employee was dishonest to OPA during his interview in a prior investigation.

STATEMENT OF FACTS:

The Complainant was previously investigated by OPA in case number 2018OPA-0144. In that case, it was alleged that NE#1 was unprofessional, retaliated against a community member, and potentially engaged in biased policing.

Background Facts

In summary, NE#1 on-viewed a vehicle that had expired tabs and he arranged for it to be towed. The woman who owned the car and her boyfriend (who is referred to here as the “Subject”) came out of their residence and interacted with NE#1. Both the owner and the Subject were upset about the tow and both criticized NE#1. At one point, the Subject called NE#1 a “ho” and the owner called him a “bitch.” When NE#1 was leaving the scene, he rolled down his window and stated to both the owner and the Subject: “I’ll see you guys, goodnight.” He further stated to the Subject, “I’ll see you for sure.”

Nearly three hours later, at approximately 0915 hours, NE#1 logged himself to a premise at Auto Zone. His Body Worn Video (BWV) was activated at this time. The BWV showed NE#1 walk to the rear passenger side of his car and take a rolling chair from his backseat. He rolled the chair to the front of the business where he knew the Subject worked and sat down. Shortly thereafter, an individual asked NE#1 what he was doing and whether he was “posted” there now. NE#1 responded: “for now, I got a little disrespected earlier today, so I’m going to hang out.” Approximately five minutes later, another patrol unit pulled in front of the store. In response to the other officer’s greeting, NE#1 stated: “I’m just cold kicking it.” He further stated: “just doing some community oriented policing stuff.” NE#1 asked the other officer if he knew why NE#1 was there and the other officer said that he did. NE#1 remarked, apparently about the subject: “this guy’s freaking out...” The officers discussed how there were less people than usual in the vicinity of the store. NE#1 stated: “I was hoping more people would be out here.”



A community member who NE#1 appeared to know walked by NE#1 while walking his dog. They began to discuss why NE#1 was there and NE#1 told him: "I got called a ho and a bitch, I think I'm going to hang around here until I get an apology." NE#1 told the individual that the person who insulted him was "one of the guys who's usually around here."

Another patrol unit drove up and NE#1 spoke with that officer. The officer asked NE#1, who was this officer's sergeant, what he was doing. NE#1 responded: "I'm just hanging, I don't know if I told yah, I got a little disrespected earlier today, I think I deserve an apology. Do you know that broke down purple crown vic?" NE#1 continued: "that's not his car, that's his girlfriend's ex-boyfriends who is currently in jail. You would think he would have enough pride not to be driving around his girlfriend's ex-man's car. I think I'm owed an apology."

Approximately 23 minutes after he first sat down, NE#1 was approached by another community member, who was the individual who initiated 2018OPA-0144 (he is referred to herein as the "Complainant"). The Complainant stated to NE#1: "I've just heard the story of what you're doing out here, I just wanted to tell you, I think it's harassment is what you're doing." NE#1 responded "ok." In response to a request from the Complainant, NE#1 provided his badge number and the spelling of his last name. The Complainant told NE#1: "I just think it's a bad representation." NE#1 responded: "hanging out with the public." The Complainant stated: "No man, they know why you're here." When NE#1 asked who "they" were, the Complainant said: "you think you're owed an apology for a person whose vehicle got towed...it's just bad form in general." NE#1 again stated that he did not know who "they" referred to and the Complainant responded: "It's from one of the customers inside the store, they're fully aware of why you're here." NE#1 said "ok," and the Complainant walked away.

Around eight minutes after his interaction with the Complainant, NE#1 began wheeling his chair back to his patrol vehicle. He interacted with an individual sitting in a car who asked him what was going on and NE#1 said that someone was calling him names earlier. Another individual responded: "that's a sign of being pissed off, you brought an office chair out." NE#1 said: "I'm just hanging out."

At nearly that same time, an older African-American male walked out of the Auto Zone store. He discussed NE#1's behavior and counseled him about unnecessarily escalating the interaction with the subject. He provided NE#1 with guidance on how to avoid conflict and communicate with the subject. The male told NE#1 that the behavior that NE#1 was currently engaging in was the wrong thing to do and that it would be better to wait and let the situation settle down. NE#1 thanked the male for his advice, shook his hand, and walked back to his vehicle. He then drove from the scene and de-activated his BWV. All in all, NE#1 was seated in front of the store while on duty for more than 30 minutes.

As discussed above, the Complainant filed an OPA complaint. OPA initiated its investigation and, as part of that case, OPA interviewed NE#1.

NE#1's First OPA Interview

NE#1 told OPA that he stationed himself in front of the business on the date in question in order to keep his eyes on a historically high-crime location. He stated that he will "spend a lot of time there" and "try to interact with people in the plaza." He indicated that he knew the subject was a "mobile mechanic" at the business and was there often. The subject was the individual who NE#1 felt "disrespected" him. He recalled the earlier incident and that the subject got



upset with him and that the subject and his girlfriend were calling NE#1 “names” and “just belittling me and cussing and swearing at me for the action that I was taking, towing the car.”

NE#1 stated that he went to the area surrounding the business often to be “seen” and to let people know that there is a “police presence.” However, he acknowledged that pulling out a chair and sitting in front of the business was not something that he would normally do and that he did so because he wanted to be visible. Because he was planning on staying there for over 30 minutes, he wanted to be “comfortable and approachable.” He told OPA that he was not there to contact the subject to obtain an apology and that he had “no intention of initiating contact” with him. He then told OPA that, had the subject shown up at the business, he would have revisited the earlier towing with him. NE#1 did not opine as to how his behavior could have made the subject feel.

NE#1 acknowledged that his conduct could have possibly been perceived as trying to belittle or demean the subject. However, he stated that he felt like he does a “very good job building bridges with the community – the local community there, at that exact location.” He said that he was not at that location to retaliate against the subject. NE#1 denied engaging in biased policing and stated that it was insulting, in part, because he is in a “mixed race marriage.” He stated that he would have acted the same way regardless of where this incident occurred.

OPA’s Recommended Findings and Discipline Imposed by the Chief

OPA recommended that the allegations concerning professionalism and retaliation be Sustained against NE#1. The Chain of Command agreed. NE#1 initially waived his appearance at a Loudermill hearing and, instead, submitted a written statement. As a result of that Loudermill hearing, the Chief of Police agreed with OPA’s recommended Sustained findings. The Chief also decided, in addition to imposing a suspension, to demote NE#1 from his probationary employment as a sergeant and to revert his rank to officer. Given this proposed action, NE#1 was offered another opportunity to attend a Loudermill hearing. This time he was present and brought several documents, including a memo from him to his Lieutenant detailing his efforts at community policing in the vicinity of where this incident occurred. This memo was dated May 13, 2018, which was more than three months after this incident occurred. The Chief’s disciplinary decision remained largely unchanged and NE#1 was demoted.

OPA’s Subsequent Investigation

During its review of 2018OPA-0144, OPA determined that NE#1 made a number of statements that suggested possible dishonesty on his part. Most notably, OPA believed that NE#1 may have been dishonest when stated that he went to the business to engage in community policing efforts rather than in order to seek an apology from the Subject, and that, when he went to the business, he was not looking for the Subject specifically. As such, OPA initiated this case.

As part of this investigation, OPA interviewed NE#1 two additional times. In a related case, OPA also interviewed four other officers who came to the scene when NE#1 was there and observed his behavior. None of these officers intervened to prevent NE#1 from engaging in misconduct or reported that misconduct. OPA also obtained Mobile Data Terminal (MDT) messages between NE#1 and two of the witness officers, which suggested that, prior to arriving at the scene, NE#1 informed them of his plans and coordinated for the witness officers to be there. Lastly, OPA conducted further analysis of the memo detailing NE#1’s other community policing activities at the location. This evidence is discussed in turn below.



NE#1's Second OPA Interview

NE#1 told OPA that he often engaged in community policing at the location in question. He noted that he did so the day prior to the incident (on February 9, 2018). In response to questioning from OPA, he stated that, prior to the incident, he would go to that location several times per week. He told OPA that he did not always log to a premise and, at times, would just drive through. NE#1 said that he would sometimes activate his BWV, but this would be in order to capture conversations with community members. He stated that he immediately activated his BWV in this case because there were "some people nearby."

NE#1 recounted that he informed two of the witness officers that he was going to be at that location. He stated that he did so to allow them to back him if necessary. He stated that this was not uncommon when he went to higher crime locations. He also recalled speaking with them in-person. He indicated that he spoke to two other officers and remembered that those officers drove through the parking lot near where he was seated.

NE#1 reiterated his prior assertion from his interview in 2018OPA-0144 that he went to the business to engage in community policing. He stated that, even had he not interacted with the Subject earlier that day, the probability that he still would have gone there was "in the high nineties percentage."

NE#1 also reiterated his prior assertion from his earlier interview that he would not have interacted with the Subject even if he had seen the Subject at the business.

NE#1's Third OPA Interview

At NE#1's third OPA interview, he was asked why he stated on BWV that he hoped that more people would have been in the vicinity of the business. NE#1 responded as follows: "I like people to see me out there. I – I like the local community to see that the police are there and know that we're often there, it's just more people for me to interact with. If they want to come over [and] ask questions, just chit chat, BS a little bit."

NE#1 stated that he told one of the witness officers who came to the scene about his earlier interaction with the Subject and the fact that there was a "likelihood" that he could see this individual there. He believed that he did the same with two other witnesses who were in another patrol vehicle and who also came to the scene. He confirmed that they preplanned that these officers would drive through the parking lot when he was seated in front of the business. He again stated his belief that his conduct was consistent with community policing. He specifically said: "I don't believe that I could be any more out in the community than sitting in a public parking lot, where a lot of criminal activity happens, and I have a lot of great – good, positive interactions with people in this – this same location."

NE#1 was asked about his conversation with the first community member that he interacted with and his statement that he was at the business because had been "disrespected" earlier and was owed an "apology" and that he was seeking this apology from the Subject, who he knew was commonly in the vicinity of the business. NE#1 believed that this community member knew the Subject. He also stated that this was simply a friendly conversation.

NE#1 was then asked about his interaction with two other witness officers. He also told those officers that he was in the location because he had been disrespected and was seeking an apology. He stated that he was "just reiterating



to them one of the – the reasons that [he was] at that location and hanging out.” When asked how this was consistent with community policing, NE#1 responded: “Well, I wasn’t dealing with the – the community at that point.”

OPA Interviews of Witness Employees

As of the date of this DCM, OPA had interviewed three of the four witness employees to this incident. Witness Officer #1 (WO#1) was one of the first two officers that came to the scene. He told OPA that he did not remember much of this incident. WO#1 could not recall if NE#1 told him anything about his earlier interaction with the Subject or his reason for being at the business. WO#1 confirmed, however, that it was a highly unusual occurrence for an officer to bring a chair to a business and sit there in order to engage in community policing.

Witness Officer #2 (WO#2) was one of the two officers who were in the second patrol vehicle that came to the scene. WO#2 stated that, while officers performed community oriented policing in that location, it usually consisted of driving through the lot for five minutes, not sitting there for nearly forty minutes. He noted that this was unusual behavior. WO#2 reviewed the MDT messages sent to his vehicle by NE#1. WO#2 stated that, from the messages, he construed NE#1’s reason for going to the business to be to obtain an apology from the Subject. He believed that NE#1 wanted him and Witness Officer #3 (WO#3) nearby to back him up. WO#2 stated that, at first, he thought NE#1 was joking. He did not believe that what NE#1 did was appropriate. WO#2 further stated that, if he had realized what NE#1 was actually doing in the parking lot, he would have reported NE#1’s conduct to a supervisor.

WO#3, who was with WO#2 at the time, also stated that normal community oriented policing in that location meant driving through the parking lot and spending three to seven minutes there. WO#3 confirmed that it was unusual to stay in that location (or, for that matter, at any premise) for nearly forty minutes. WO#3 interpreted NE#1’s MDT messages to be saying that NE#1 was going to the business for the express reason of interacting with and obtaining an apology from the Subject. WO#3 believed that NE#1 wanted them there because he was not going to be “dissuaded over a little smack talking.” WO#3 stated that, at the time of the incident, he understood NE#1’s reason for being at the parking lot to be to seek an apology from the Subject who had disrespected him earlier. WO#3 confirmed that he believed that NE#1’s acts constituted misconduct.

MDT Messages

NE#1 exchanged multiple MDT messages with WO#2 and WO#3. The pertinent messages are referenced below:

NE#1 – 6:35 a.m.: “2 questions for you guys...Have you seen the movie Colors/if not, that’s your homework.”

WO#2/WO#3 – 6:38 a.m.: “COLORS!!!”

NE#1 – 7:15 a.m.: “Owner came out and he was none too happy. He called me a lotta names/what time u guys going for bikes? I gotta make an appearance at 23/Jackson when that crew is down there cuz this guy was talking lotta smack and I will not be dissuaded.”

WO#2/WO#3 – 7:15 a.m.: “Whenever you’re ready! We will change out at around 1030.”



NE#1 – 7:16 a.m.: “ok, probably around 9. Just need somebody nearby cuz I aint gonna make it look like we are deterred by a lil smack talking.”

WO#2/WO#3 – 7:16 a.m.: “Pac Man!!!!”

NE#1 – 9:16 a.m.: “I’m pulling into Plaza.”

WO#2/WO#3 – 9:16 a.m.: “We are in position.”

Notably, the movie *Colors*, referenced by both NE#1 and the witness officers, concerns a young police officer dealing with gang activity in Los Angeles. The officer, who is nicknamed “Pac Man,” aggressively and violently interacts with gang members and is, accordingly, notorious throughout the neighborhood.

Memo to Lieutenant and Prior Premise Checks

As discussed above, NE#1 provided a memo during his Loudermill hearing, dated May 13, that was previously submitted by NE#1 to his then Lieutenant. The memo was drafted approximately three months after the incident. In the memo, NE#1 detailed that he believed that emphasis patrols should be used in the vicinity of the business and, for that matter, in virtually the exact location where NE#1 was situated during this incident. NE#1 suggested four officer crews. NE#1 stated that these emphasis patrols were needed due to increased “loitering” in the area, complaints regarding ongoing criminal activity, and the need to make it a “more pleasant place for the local shoppers and good citizens.”

OPA analyzed NE#1’s previous law enforcement activities at this location. OPA determined that, prior to February 9, 2018 (the day before the incident), NE#1 had never logged to a premise there. There were no premise checks by NE#1 in March or April, two in May, and six in June. The eight premise checks in May and June were conducted after NE#1 submitted the memo to his then Lieutenant. NE#1 activated BWV for only one of those premise check. The BWV captured him driving around the parking lot and lasted for just over seven minutes.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires that Department employees be truthful and complete in all communication. Based on the totality of the evidence, and even when applying a heightened burden of proof, OPA concludes that NE#1 was dishonest during his prior interview in two main respects: first, when he stated that he went to the business and parking lot in order to engage in community policing; and, second, when he stated that he did not go to that location with the intent of contacting the Subject.

The evidence supporting a Sustained finding here includes the following: NE#1’s statement to the Subject at the time he towed the vehicle; NE#1’s statements to the witness officers; NE#1’s statements to community members while at the location; the MDT messages sent and received by NE#1; the interviews of the witness officers; and prior



community policing activities by NE#1 and the lack of similarity of those activities to his actions in this case. This evidence is discussed in turn below.

Prior to going to the business and parking lot, NE#1 told the Subject: "I'll see you for sure." This, when coupled with NE#1's later actions, clearly evinced that NE#1's motivation for going to the location was to contact the Subject, not to engage in community policing.

This motive was further established by NE#1's conversations with the officers at the scene, which included: asking the first officers to arrive whether they knew why he was there and, when they stated that they did, informing them that the Subject was "freaking" out inside of the business; and telling the next officers who arrived that he had been disrespected earlier and was waiting for an apology, while also referencing the Subject. The motive was similarly established by NE#1's conversations with community members. He made the following statements: "I got a little disrespected earlier today, so I'm going to hang out"; and "I got called a ho and a bitch, I think I'm going to hang around here until I get an apology...[from] one of the guys who's usually around here." One community member stated to NE#1, who was sitting in his office chair at that time, "that's a sign of being pissed off, you brought an office chair out." NE#1 did not try to dissuade the community member of that belief or explain that he was engaging in community policing. Instead, he said: "I'm just hanging out." Moreover, when the Complainant confronted NE#1 about his conduct and told him that he was engaging in "harassment" and that his behavior was a "bad representation," NE#1 again responded that he was "hanging out with the public." When the Complainant told NE#1 that "they know why you're here," NE#1 pretended not to know who "they" was referring to. The Complainant then said: "you think you're owed an apology for a person whose vehicle got towed...it's just bad form in general." When the Complainant told NE#1 that "they" referred to "customers inside the store" who were "fully aware" why NE#1 was sitting at that location, NE#1 simply responded "ok." Notably, NE#1 did not deny that he was there simply to harass and retaliate against the Subject or explain that he was there to engage in community policing.

The above evidence of his motive is further buttressed by the MDT messages between NE#1 and the witness officers, as well as the oral conversations that occurred between them. The MDT messages confirmed NE#1's plan to go to the location to obtain an apology and that he enlisted WO#2 and WO#3 in that plan. The MDT messages expressly indicated that NE#1 was going to the location because he had been insulted earlier and felt disrespected. The messages further reflected that the purpose of that activity was to obtain an apology from the Subject, who NE#1 expected would be at the location with his "crew." If NE#1 did not intend to contact the Subject, as he told OPA, then it made no sense that he coordinated backup to be at that location. If he was simply engaging in community policing, which he described as interacting with the community and building bridges, it is unclear why he needed four backing officers. It suggests instead that he believed it was possible that he would interact with the Subject, that this interaction had the potential to become physical, and that, if it did, he needed other officers to provide support. The reference to Colors is also significant. It is not a coincidence that NE#1 cited to this movie, in which the Pac Man character regularly aggressively approached those who committed crimes or disrespected him. It appears that NE#1 viewed himself as Pac Man in this situation – seeking retribution against someone that, in his opinion, had treated him poorly.

Perhaps the most substantial evidence against NE#1 is the testimony of the witness officers. By telling them to come to the scene to support him, he placed them in a position where all four officers observed misconduct, but none did anything about it. As a result, they were all later named in an OPA investigation for violating the Department's professionalism policy and failing to report misconduct. The three witness officers who OPA interviewed all stated



that it was highly unusual for an officer to engage in community policing by either remaining in a location for close to 40 minutes or by bringing an office chair to that location and sitting in that chair. They stated that it was more normal to drive through the location and remain for approximately five minutes. Both WO#2 and WO#3 recognized that NE#1's behavior violated policy. Moreover, both WO#2 and WO#3 stated that they understood NE#1's reason for being at the location to be to obtain an apology from the Subject, not to engage in community policing.

Lastly, the records of NE#1's activity at the location both prior to and after the incident undermines his argument that he was there for community policing and not to contact the Subject. Notably, NE#1 did not log to a premise at that location at any point prior to the day before the incident and only did so eight times thereafter. On just one of those occasions did NE#1 activate his BWV and, on that date, NE#1 was in that location for just over seven minutes and drove through the location without stopping. Notably, NE#1 did not sit at the location or engage with any community members. This was consistent with the witness officers' description of the characteristics of normal community policing in that area. OPA further notes that the latter eight premise checks occurred after NE#1 submitted the memo to his then Lieutenant. That memo was concerned with cracking down on crime by using emphasis patrols, not community policing and "building bridges."

The above evidence establishes as false NE#1's claims that he was at the location for community policing and that he did not intend to contact the Subject. When NE#1 made these knowing and material false statements at his OPA interview, he engaged in dishonesty and violated Department policy. Indeed, at the time of the first investigation, NE#1 had the opportunity to accept responsibility for his lapse of judgment and to tell the truth. This case would have still resulted in a Sustained finding and disciplinary consequences; however, he would not be in the situation that he is in now. Ultimately, however, this approach was NE#1's choice. He further chose to repeatedly reiterate the false statements at his Loudermill hearing and during this OPA investigation.

At the end of the day, the legitimacy of a police department depends largely on the conduct of its officers. When an officer is dishonest, it serves to undermine all of the other meaningful work done on a day-to-day basis by all other officers. NE#1's dishonesty here is unacceptable and cannot, in OPA's opinion, be tolerated by the Department. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**