



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0399

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
# 2	6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

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 towards him and improperly arrested him.

SUMMARY OF INVESTIGATION:

On July 10, 2020, Named Employee #1 (NE#1) was working at a demonstration in downtown Seattle along with other officers. Body Worn Video (BWV) showed that an individual – who is the Complainant in this case – was driving in the vicinity and holding his middle finger out at officers. The demonstration began to disperse and some individuals who had been part of a “vehicle brigade” moved to the vicinity of the King County Jail. Officers, including NE#1, responded there to issue citations to those drivers.

NE#1 asked some individuals standing by the vehicles if they had “carpool parking permits.” One person responded that she was not parking, to which NE#1 stated: “No, you’re out of the car. You sound silly. Carpool parking only, valid permit only. All day, every day.” NE#1 then gave a double thumbs-up towards a bystander and said “yay.” He further asked another bystander if she was recording her “own violation” and remarked that she would probably edit it out of the video.

NE#1 moved to a silver SUV. He told the driver that she was likely to be cited. The driver said that she was dealing with another officer. She noted that NE#1 should not be “taunting” them. NE#1 responded by saying: “We’re not taunting you; you’re breaking the law.” The driver said that she was not NE#1’s child, to which NE#1 replied: “Thank god.” NE#1 told another bystander that he interacted with at this time that she was “ridiculous.”

At this point, the Complainant walked up near to NE#1. NE#1 told other officers to watch him. The Complainant stated to NE#1, presumably referring to police officers: “You can’t disrespect people that aren’t fucking human.” NE#1 told another officer to move the Complainant back. The Complainant stated NE#1’s name and called him a



“piece of shit.” When the officer tried to move him away, the Complainant stated: “Don’t put your fucking hands on me.”

NE#1 walked up to the Complainant and said: “time to move.” The Complainant turned towards him and NE#1 stated: “Don’t walk up on me.” The Complainant denied that he did so and told NE#1 to go fuck himself. NE#1 told the Complainant to get back onto the sidewalk and the Complainant responded: “I am on the goddamn sidewalk you motherfucker.” The Complainant then stated NE#1’s name and asked if that was who NE#1 was. NE#1 replied: “not that I’m aware of.” NE#1 then walked away.

At that time, the Complainant could be heard speaking to another individual. He said: “...but the problem is, the people that are being calm and are not saying anything are complicit. You got a citation?” NE#1 interjected: “You’re going to get one too.” The Complainant said: “No, you can’t give me one right now.” NE#1 replied: “We can. Your car is parked down the street. We’re going to give you one.” The Complainant stated: “No, you don’t know where I’m parking.” NE#1 told him, referring to his car: “We’ll find it.” The Complainant retorted: “I’m not on public park[ing], so fuck yourself. Hey, right here, go fuck yourself. Go write me a ticket in a fucking private lot, you can’t.” NE#1 indicated: “Don’t worry, we already have your address, you’re fine, you’re going to get a...” The Complainant interjected: “I know you have my address.” NE#1 stated: “You’ll get it in the mail, you’re fine.” NE#1 told the Complainant to “let the adults talk,” and went back to speaking with another driver. This upset the Complainant who began chanting: “piece of shit.”

The Complainant, while recording, complained about NE#1’s conduct to other individuals. As NE#1 walked away, he said, referring to the Complainant: “Such a baby.” The Complainant stated that all police officers were: “lying, racist bastards.” NE#1 remarked: “Oh, is that a bias complaint? I can get a supervisor here if you’d like.” The Complainant asked why he would want other “fucking” cops to respond. NE#1 said: “Why would you. Then stop talking to me.” NE#1 sat in his patrol vehicle. The Complainant stood outside of the driver’s side. NE#1 lowered his window somewhat. At that time, the Complainant could be heard stating, while speaking to his cellphone: “you know we have your address” and “yeah, we have your address.” NE#1 exited his patrol vehicle and placed the Complainant under arrest. NE#1 alter documented that the arrest was for harassment, as NE#1 construed the Complainant statement’s as a threat to come to his home and potentially cause him harm. NE#1 sat the Complainant into the patrol vehicle and seat belted him. While doing so, NE#1 said: “This is a seatbelt, sir. I am putting it on for your safety. Yes, unfortunately that was sarcasm.”

A complaint was later filed with OPA concerning this incident. It was alleged that NE#1 was unprofessional towards the Complainant, as well as that he improperly arrested him. As part of its investigation, OPA reviewed the BWV, the documentation completed by NE#1, and interviewed both the Complainant and NE#1.

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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

From OPA’s review of the video, OPA concludes that NE#1’s demeanor and statements towards the Complainant and others violated the Department’s professionalism policy. NE#1 made a number of comments towards multiple individuals that presented concerns for OPA. However, the following statements were, in OPA’s opinion, particularly problematic:

- Thanking god that a woman he interacted with was not his child.
- Remarking, regarding the Complainant and in the Complainant’s presence: “Such a baby.”
- Making the comment concerning the seatbelt and saying that his concerns for the Complainant’s safety were sarcastic.

In addition, NE#1’s overall demeanor towards both the Complainant and others was sarcastic and argumentative. While the Complainant, in particular, was unpleasant and made a number of profane and insulting statements, NE#1 is held to a higher standard by the Department. Unfortunately, throughout this incident, he repeatedly lowered himself below that high standard and, instead, acted in an improper and unprofessional manner.

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

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

NE#1 arrested the Complainant for harassment. Under RCW 9A.46.020, harassment is established where an individual “knowingly” and “unlawfully” threatens to “cause immediate or future harm to the person threatened or another person” or to “cause physical damage to another person’s property.” The person threatened must be put “in reasonable fear that the threat will be carried out.”

At his OPA interview, NE#1 stated that he arrested the Complainant because he perceived the Complainant to be making a threat. He said that he based his probable cause on the Complainant saying his name earlier, coupled with NE#1 hearing the Complainant saying: “yeah, we’ve got your address.” When asked by OPA, NE#1 acknowledged that the Complainant could have been repeating what NE#1 said earlier about knowing the Complainant’s address. NE#1 further explained that supporting his decision to arrest was the fact that he had previously been subjected to repeated safety threats from another individual who had publicly claimed to know the Complainant’s name and address.



He provided further context on this concern in the general offense report. He wrote:

I then heard him say while staring at me, “yeah, we have your address.” while shaking his head. I took this as a direct threat due to his hostility towards us and directly naming me and saying he has my address. A previous incident occurred out front of the West Precinct on 6/15 and 6/16 where an individual with previous threats against me, was on a megaphone specifically calling me out and chanting my name along with 80-100 protesters. Twitter updates were also made against me and an incident a decade ago.

He further explained:

With the aggressively hostile encounters over the last few days with [the Complainant] and having him directly called me out by my full name and saying he had my address [this] was concerning for my safety as well as my family.

Based on a review of the BWV, OPA does not believe that the Complainant was actually saying that he knew NE#1’s address. Instead, and as even NE#1 acknowledged at his OPA interview, it was more likely that he was simply repeating what NE#1 had said. As such, in reality, the elements of harassment were not met.

However, the operative analysis is whether, based on the information available to him at the time, NE#1 had a sufficient basis to arrest the Complainant. OPA finds that he did. NE#1 noted that what concerned him was that, not only did the Complainant use his last name, but that the Complainant also stated his first name. NE#1 explained that his first name was not listed on his uniform and it was unclear how the Complainant would have known this. NE#1 told OPA that this, coupled with the complainant’s contentious approach towards him, the threats NE#1 had previously received, and hearing the Complainant reference knowing his address caused him to believe that harassment had occurred.

Again, even if incorrect when evaluated with 20/20 hindsight, OPA cannot say that NE#1’s violated the law and policy when, viewing the information available to him and when applying his personal lens to weigh that evidence, he made the decision to arrest the Complainant.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**