



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0507

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	Not Sustained (Unfounded)
# 2	13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles	Not Sustained (Unfounded)
# 3	5.001 – Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)

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 violated multiple department policies when he pulled the Complainant over outside of Seattle city limits.

SUMMARY OF INVESTIGATION:

The Complainant said that he was driving on Interstate 5 when he observed an SPD vehicle, which he described as a blue Dodge Charger, driving well in excess of the speed limit. The Complainant estimated that the police vehicle was traveling between 100 and 105 mph. The Complainant stated that he was driving around 80 to 85 mph at the time. He was frustrated that the police vehicle was driving that fast without lights and sirens and without any indication that it was responding to an emergency. He began to pace the police vehicle, including accessing the HOV lane several times, and verified that the police vehicle was driving over the speed limit. The Complainant stated that he pulled up next to the police vehicle, took a picture of the vehicle and driver, and threw up his hands like, in the Complainant's words, "what the fuck."

The Complainant said that he was subsequently pulled over by the police vehicle. The driver, Named Employee #1 (NE#1), ordered the Complainant to turn off his car and throw his keys out of the window. NE#1 picked up the keys and knocked on the Complainant's window. The Complainant lowered the window and NE#1 provided him with the keys. NE#1 ordered the Complainant to provide his license. The Complainant was initially reluctant to provide his license as he was outside of Seattle at the time, but he ultimately did so. NE#1 told the Complainant that he would receive several citations in the mail. The Complainant said that NE#1 did not use profanity towards him, but that NE#1 was aggressive during their interaction.



The Complainant videotaped the interaction with NE#1. He also obtained NE#1's name and serial number. The Complainant later spoke with a lieutenant to complain about the incident and NE#1's conduct. He described this conversation as unhelpful. He then filed an OPA complaint and this investigation ensued.

As part of its investigation, OPA reviewed NE#1's Body Worn Video (BWV), In-Car Video (ICV), and the citations that he generated. At the time of this incident, NE#1 was on-duty and in uniform. He reported observing a vehicle in front of him that he believed to be speeding. He accordingly accelerated in an attempt to catch up with that vehicle. NE#1 recognized that, in doing so, he exceeded the posted speed limit. NE#1 documented, and the video indicated, that the Complainant also drove over the speed limit and moved in and out of the HOV lane even though he was alone in his car. The video also indicated that the Complainant drove close to NE#1's bumper at times and drove alongside of NE#1 while gesturing and using his cell phone to take pictures of NE#1.

The BWV indicated that, upon walking up to the Complainant's car, NE#1 handed him his keys back. The Complainant questioned NE#1 concerning why he was speeding, and NE#1 responded that the Complainant did not know what NE#1 was doing at the time. NE#1 asked for the Complainant's license and registration and the Complainant initially refused to provide it citing that he was outside of Seattle at the time. NE#1 told the Complainant that he still needed to provide his license and said that, if the Complainant did not do so, NE#1 would notify the local jurisdiction. They argued about the license for a period of time but the Complainant ultimately provided it to NE#1. NE#1 informed him of the traffic violations he committed and, when the Complainant called this into question, NE#1 told him that all of his actions were recorded on video. The Complainant asked NE#1 to summon a supervisor to the scene. NE#1 told the Complainant that he was not required to do so as he was a supervisor. NE#1 further explained to the Complainant that his ability to issue citations was not limited by Seattle city limits and that he could do so if he viewed a violation within Washington State. NE#1 told the Complainant that he would issue him citations in the mail. NE#1 provided his name and serial number and ended the contact.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant asserted that NE#1 spoke to him in a rude and aggressive fashion during the traffic stop and that NE#1's behavior was, as a general matter, unprofessional.

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)

From OPA's review of the BWV and the ICV, NE#1 was engaging in lawful activities at the time that he observed the Complainant engage in a number of traffic violations. Specifically, NE#1 was attempting to track down a vehicle in front of him that he believed was speeding. This is indisputably within NE#1's responsibilities as a police officer and he was permitted to exceed the speed limit while doing so. The Complainant, on the other hand, had no right to speed, make unsafe lane changes, follow NE#1's vehicle too closely, or use his cell phone while driving. However, the video established that, within minutes, he engaged in all of these activities. Lastly, NE#1 was correct that, as a matter of law, he could still effectuate the stop even though he did so outside of Seattle.



Given the Complainant's conduct, which would have been concerning to any motorist, let alone an officer driving a marked police vehicle, NE#1 had the legal authority to stop the Complainant, to ask him to turn off the car and drop the keys out of the window, to require the production of his identification, and to issue him citations.

Moreover, OPA saw no indication from the video that NE#1 made rude or aggressive statements towards the Complainant. While NE#1 was brusque at times, this did not violate policy. Moreover, while NE#1 asked certain questions repeatedly, including requesting the Complainant's license multiple times, this was due to the Complainant's lack of cooperation and was not unprofessional.

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

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

Named Employee #1 - Allegation #2

13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles

SPD Policy 13.080-POL-11 details those activities that are prohibited during the use of Department vehicles. Included among these are driving aggressively or discourteously and driving in an HOV lane while alone in the vehicle, unless involved in an emergency response. This policy was alleged due to the Complainant's characterization of NE#1's driving during this incident.

From OPA's review the ICV, while NE#1 was driving above the speed limit, he did so in order to carry out his lawful functions – specifically, to track and potentially stop a speeding vehicle in front of him. When he did so, he did not appear to drive his vehicle erratically or in an unsafe manner. He further did not drive his car impermissibly when he moved behind the Complainant in order to pull him over.

While NE#1 did drive in the HOV lane at one point and was alone at the car at the time, he was actively tracking the vehicle in front of him and, as such, this was permissible.

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

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

Named Employee #1 - Allegation #3

5.001 – Standards and Duties 14. Retaliation is Prohibited

SPD Policy 5.001-POL-14 prohibits retaliation by Department employees. (SPD Policy 5.001-POL-14) The Complainant alleged that he was pulled over and issued citations because he called out NE#1's behavior, not due to any lawful reason.

During the ICV, there were recordings of periods of time when NE#1 narrated his observations of the Complainant's driving and that illuminated how he reached the decision to pull the Complainant over. The video was consistent with NE#1's later reporting that he did so based solely on the Complainant's conduct and the multiple traffic violations he observed.



There is no evidence in the record that contradicted this. Stated differently, there is no basis to conclude that NE#1's conduct was informed by or due to a retaliatory motive.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

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

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)

OPA added this allegation to assess whether NE#1 violated policy when he did not call another supervisor to the scene pursuant to the Complainant's request and when he did not immediately report the Complainant's allegations concerning his conduct to a supervisor and/or OPA.

With regard to the first question, while there is an expectation that an officer will call a supervisor to the scene pursuant to a community member's request where feasible, there is no policy that explicitly places such a requirement on a supervisor. Moreover, without fully understanding at this point why no such requirement was included in policy, OPA declines at this juncture to issue a Management Action Recommendation requesting that it be put in place. However, OPA will continue to evaluate this issue to determine whether a recommendation is warranted in the future.

With regard to the second question, even if he was not required to call another supervisor to the scene, NE#1 should have reported the Complainant's allegation in a timelier fashion. OPA's investigation indicated that NE#1 did not complete any documentation concerning this incident until the day after. While the Complainant did not explicitly say that he wanted to make a complaint and though NE#1's provided the Complainant with his name and serial number, he should have gone over the radio and informed his lieutenant of what had occurred. However, given that NE#1 did report within a day, he has not acted contrary to this policy before, and because the Complainant ultimately spoke with two other SPD supervisors about his concerns, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be counseled and retrained concerning the expectation that he more timely report allegations of misconduct in similar situations in the future. This training should be documented, and that documentation retained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**