



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 17, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0364

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested.	Not Sustained - Inconclusive
# 2	5.001 Standards and Duties 10. Employees Will Strive to be Professional.	Not Sustained - Inconclusive
# 3	16.230 1. Employees May Use Discretion When Issuing Tickets.	Not Sustained - Inconclusive
# 4	16.090 In-Car and Body-Worn Video 5b. When Employees Record Activity.	Not Sustained - Unfounded
# 5	5.160 - Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities	Not Sustained - Inconclusive
# 6	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Unfounded

***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 speeding in an attempt to overtake him on the highway. The Complainant alleged that the Named Employee pulled him over and subsequently issued citations without the appropriate authority to do so. The Complainant also alleged the Named Employee was unprofessional during the encounter.

#### **SUMMARY OF INVESTIGATION:**

The Complainant alleged that Named Employee #1 (NE#1) engaged in misconduct during a traffic stop of the Complainant. OPA opened an investigation. During the investigation, OPA reviewed the citations issued, SPD timesheets, and video footage provided by the Complainant. OPA also interviewed the Complainant, NE#1, and a witness officer.

The Complainant was interviewed by OPA and stated that he was driving towards his home on 7/22/2021. The Complainant stated he was in the left-hand lane of two laned traffic. The Complainant stated that he saw high beams quickly approach from behind and believed it was a motorcycle. At the time, the Complainant was unaware that it was a motorcycle officer, NE#1. The Complainant said NE#1 got so close to his vehicle that the high beams were almost



blocked by the rear of his vehicle. The Complainant said he applied the brakes slowly, but denied break-checking NE#1, to let NE#1 know that he was too close to him and to signal NE#1 to slow down and have more space in between them. The Complainant stated NE#1 increased his speed and moved to the right lane to pass the Complainant. At the same time, the Complainant said he increased his speed to the speed limit while traveling in the left lane. The Complainant said NE#1 could not pass him in time due to a semi-truck in front of NE#1 and got back behind his vehicle. NE#1 activated his emergency lights and initiated the traffic stop. The Complainant said that was the first time he became aware the motorcycle rider was a police officer. Prior to that, the Complainant thought NE#1 was an aggressive motorcycle rider that wanted to pass him.

NE#1 provided a different version of events. NE#1 stated that he was on his way home from working overtime at a Mariners' game when he observed the Complainant's vehicle in front of him in the left traffic lane. NE#1 stated that his practice was to "pace" the vehicle in front of him. NE#1 stated he paced the Complainant's vehicle from 20-25 feet away, at which point the Complainant was traveling 70mph in a 60mph zone. NE#1 stated that he attempted to pass the Complainant on the right when he noticed that the Complainant was holding something like a device in his hand. NE#1 stated that the Complainant looked at him, then accelerated to prevent NE#1 from passing him. NE#1 stated that, due to another vehicle on the road, he was forced to get back behind the Complainant. NE#1 said he activated his emergency lights, but that the Complainant then accelerated faster. NE#1 stated at this point the Complainant was traveling faster than 80mph. NE#1 said that, after traveling some distance, the Complainant eventually pulled over.

The Complainant provided OPA a cell phone video that captured a portion of the conversation between the Complainant and NE#1.<sup>1</sup> There is no BWV or independent CCTV of the traffic stop. On the cell phone video, NE#1 explained the reason for the stop and asked for the Complainant's driver's license, registration, and proof of insurance. The cell phone video stopped when NE#1 asked for proof of insurance and the Complainant requested identification. The cell phone video is 34 seconds long.

The Complainant also alleged that NE#1 wore his helmet during the contact, appeared sweaty, and slurred his words. The Complainant was unsure as to whether the slurring was attributed to his helmet, that he may have been sweating, whether it was how the NE#1 spoke normally or whether NE#1 was intoxicated.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001 Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested.***

The Complainant alleged that NE#1 failed to identify himself when requested.

SPD Policy 5.001-POL-7 requires that SPD employees engaged in department related activities "provide their name and Department serial number verbally, or in writing if requested." (SPD Policy 5.001-POL-7.)

The short 34 second video clip provided by the Complainant is believed to be of NE#1 re-contacting the Complainant following the initial traffic stop between the Complainant and NE#1. On the clip, NE#1 asked why the Complainant

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<sup>1</sup> OPA recognizes that there is no date stamp or time on this recording provided. NE#1 is not identifiable, visually on this recording but the conversation tracks with the tenants of the complaint made.



sped up when NE#1 attempted to pass him. The Complainant responded by asking why he was being tailgated by NE#1. NE#1 informed the Complainant that he will be receiving a citation in the mail and explained the passing lane to the Complainant. The Complainant began to request NE#1's identification, at which point both NE#1 and the Complainant talked across each other. The video stopped when NE#1 is asked for proof of insurance and when the Complainant requested NE#1's identification.

NE#1 stated in his interview that he identified himself to the complainant twice, stating his name and serial number. In the absence of any additional video or BWV, OPA is unable to determine if NE#1 did in fact identify himself to the Complainant after being requested to do so. The Complainant stated he had a second video but failed to forward it to OPA after being agreeing to do so.

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

Recommended Finding: **Not Sustained - Inconclusive**

**Named Employee #1 - Allegation #2**

***5.001 Standards and Duties 10. Employees Will Strive to be Professional.***

The Complainant alleged that NE#1 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (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.)

The Complainant's allegation that NE#1 was unprofessional appears to stem from NE#1's alleged "tailgating" and other aggressive driving behavior described by the Complainant. The Complainant stated that he received a citation for speeding 30 miles over the speed limit which he called "insane" and failing to stay on the right side even though traffic was moderate, it was two laned and there was a semi-truck in the right lane. The Complainant stated that he was not impeding traffic and believed that the NE#1 did not have an emergency and did not need to go "that fast." The Complainant also stated that he was pulled over in Pierce County, which he alleged was outside NE#1's jurisdiction. Finally, the Complainant stated that he was cited the next day, instead of on the spot, which suggested to the Complainant that NE#1 was not on duty. The Complainant stated that he confirmed this with NE#1's supervisory Sergeant the following day.

NE#1 presented a different version of events and no objective evidence, such as cell phone video or BWV, supports or refutes either version of events. Moreover, State law permitted NE#1 to conduct a traffic stop and cite via the RCW instead of the SMC.

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

Recommended Finding: **Not Sustained - Inconclusive**



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**Named Employee #1 - Allegation #3**

***16.230 1. Employees May Use Discretion When Issuing Tickets.***

The Complainant alleged that NE#1 used unreasonable discretion in issuing the Complainant a ticket.

SPD Policy 16.230-POL(1) states that the department appropriately warns, cites, or arrests, traffic violators to gain compliance with traffic laws and to develop driver awareness of the causes of traffic accidents. Rather than ignore a minor violation, officers may stop the vehicle and call the violation to the driver's attention. Officers have discretion to issue a traffic warning to urge caution and alertness in the operation of the vehicle.

NE#1 issued citations to the Complainant the day after the incident occurred. NE#1 stated that he worked his regular shift from about 5:00 A.M. until about 5:00 P.M. and a Mariner's game from about 5:00 P.M. until about 11:00 P.M. or midnight. The Complainant was cited for RCW 46.61.400 (Speeding 30 MPH over limit) and RCW 46.61.100 (FLD to drive on right side of road).

Video footage, provided by the Complainant, showed NE#1 explaining the initial reason for the traffic stop by asking the Complainant why he sped up when NE#1 attempted to pass him. When interviewed, NE#1 stated that his habit is to pace the vehicle in front of him, and he began to pace the Complainant's vehicle from 20-25 feet away. The NE#1 stated that he paced the vehicle at 70mph. The Complainant stated that the issuance of the tickets for the alleged violation of speeding was "insane." The Complainant stated that he did "brake -check" the NE#1, as a way to indicate that he was too close to him, and to signal the NE#1 to slow down and have more space in between them.

The Complainant stated that he could not change lanes owing to a semi- truck in the right-hand lane. The Complainant stated that traffic was free flowing and moving. In his OPA interview, NE#1 stated that he explained to the Complainant that, "when cars are trying to pass you or you're not in the left, you're not passing anybody, you need to be on the right-hand side." NE#1 stated that the Complainant was belligerent and said he would not answer him when he initially asked why he speed up as he was trying to pass. The footage provided by the Complainant supports NE#1's version of events in this respect. The Complainant also did not deny that he refused to answer NE#1's questions. NE#1 stated that he told the Complainant that "normally, I would tell you what citation you're getting, but because I have to operate under RCW, I want to make sure I write the infraction for the right thing."

Both the Complainant and NE#1 presented a different version of events as to the reasons leading up to the traffic stop. Due to the dispute of fact between the parties and the lack of other evidence, OPA recommends that this allegation be Not Sustained – Inconclusive.

Accordingly, OPA recommends that this allegation be Not Sustained- Inconclusive

Recommended Finding: **Not Sustained - Inconclusive**

**Named Employee #1 - Allegation #4**

***16.090 In-Car and Body-Worn Video 5b. When Employees Record Activity.***

It was alleged that NE#1 may have failed to activate his BWV when required to do so.

SPD Policy 16.090-POL-5 requires that SPD employees record police activity in certain delineated circumstances using both (or either, in some cases) their ICV and Body Worn Video (BWV) systems. Inherent in this requirement is that



there be both video and audio on the recording. Where a recording has no audio or video, the employee has potentially not complied with the policy. This is clear based on a review of SPD Policy 16.090-TSK-1, which instructs officers to, when deploying with BWV or with a vehicle equipped with ICV, to verify “that all indicators show that the ICV microphone and BWV camera are fully charged.”

NE#1 said he identified himself and informed the Complainant and that he was audio and video recording. The Complainant also recalled the NE#1 saying that he was audio and video recording.

However, there was no BWV for this traffic stop. NE#1 speculated that his BWV battery must have died. NE#1 said it is his practice to activate his BWV on all traffic stops and could not recall how charged the battery was in the camera. NE#1 said there is no consistency with how long batteries remained charged, even though they indicate they are fully charged and he recently had to replace one. NE#1 said he was issued two cameras and attempted to rotate them but being so busy, sometimes he does not.

The Complainant confirmed that NE#1 stated he was audio video recording the interaction. As such, OPA finds it unlikely that NE#1 intentionally failed to record the interaction. Instead, OPA finds that, more likely than not, the BWV failed to record owing to battery issues or an inadvertent failure to properly activate it.

As such OPA recommends that this allegation be Not Sustained – unfounded

Recommended Finding: **Not Sustained - Unfounded**

#### **Named Employee #1 - Allegation #5**

##### ***5.160 - Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities***

The Complainant alleged that NE#1 impermissibly told him to turn off his cell phone camera.

SPD Policy recognized that people generally have the right to record police officers engaged in enforcement activities. SPD Policy 5.160-POL. However, the recording person’s conduct must not (1) hinder, delay, or compromise legitimate police actions or rescue efforts; (2) threaten the safety of the officers or members of the public; or (3) attempt to incite others to violence. *Id.* However, these conditions on the conduct do not prohibit conduct that creates a slight inconvenience for an officer, such as minor delay caused by escorting the person to a nearby location. *Id.*

The Complainant stated that when he was pulled over by NE#1, he began recording on his phone. The Complainant stated that when NE#1 approached this vehicle, NE#1 repeatedly told him to turn off his camera. This conversation is not captured on the video clip provided by the Complainant. When interviewed by OPA, NE#1 stated that as he approached the Complainant’s vehicle, he saw that the Complainant had a phone in his hand. NE#1 stated that he said to the Complainant, “Well, maybe that explains why you didn’t see me behind you why you didn’t pull over. Because you have your phone in your hand...that’s a whole separate violation... so do me a favor, put your car in park, if it’s not already in park, turn off the ignition, and you probably want to put that up.” The NE said, “You probably want to put that up, you know, you’re hands free.” The Complainant responded that he was recording.

The Complainant stated that he did not want to turn off his camera but that his proof of insurance was on his phone, so when NE#1 requested to see his insurance, he had to turn his phone on. The video clip provided matches with this explanation. The Complainant also recalled the NE#1 saying that he was audio and video recording.



The explanation provided by both the complainant and the NE#1 is consistent except where the Complainant stated that the NE#1 told him to turn off his phone. The Complainant stated that he had two video recordings of the interaction with NE#1. OPA requested the second video, but the Complainant failed to provide any additional video. On review of the evidence, OPA cannot reach a conclusion as to whether a policy violation occurred in this instance.

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

Recommended Finding: **Not Sustained - Inconclusive**

**Named Employee #1 - Allegation #6**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

The Complainant alleged that NE#1 may have violated the law by being intoxicated.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

The Complainant alleged that during the interaction, that NE#1 was “slurring his words a little bit,” was sweaty, and that the NE#1 stated that he was coming from a Mariners game.

The Complainant stated that when NE#1 was speaking with him that NE#1’s speech was slurred. The Complainant stated that “it sounded like someone had a drink, you know.” NE#1 did not remove his helmet during the interaction with the NE#1 and the Complainant also stated that he was unsure whether the slurring was due to the fact he was sweating or whether it was his normal speech pattern.

No objective evidence suggests that NE#1 had consumed an intoxicant. To the contrary, a comparison of NE#1’s speech pattern during his OPA interview appears to be consistent with the video provided by the Complainant. NE#1 was dressed in a full motorcycle uniform, jacket, and helmet. SPD timesheets indicate that the NE#1 worked a regular shift and then a Mariner’s game from about 5:00 P.M. until 11:00 P.M. or midnight. The temperature on the night was in the mid to upper 70’s and by midnight it was still at 60 degrees. The sweating by NE#1, as described by the Complainant, is consistent with the warm weather on that night.

The Complainant also stated that the citation issued by NE#1 also had the wrong date and time. A copy of the ticket confirms that this is correct, the wrong date and time were noted on the citation. In interview, NE#1 stated that this was a clerical error on his part. In interview, NE#1 stated that he was “trying to head home. I’m not trying to intentionally stop motorists unless my belief that a movement or an action that they were doing was egregious enough for I believe it needed to be addressed.”

OPA found no evidence to suggest that NE#1 violated this policy. The error in the date is of note, but there is nothing to suggest that the dates and time were intently changed to deceive the Complainant. While OPA recognizes how this error may have suggested sloppiness to the Complaint, the supporting evidence speaks more to human error than any willful intent or intoxication.

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

Recommended Finding: **Not Sustained - Unfounded**