



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 21, 2018

CASE NUMBER: 2018OPA-0023

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)

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 improperly using his cell phone while driving. The Complainant further alleged that the Named Employee was unprofessional during a traffic stop.

STATEMENT OF FACTS:

The Complainant, who is a Sergeant at the King County Sheriff’s Office reported that he was driving in an unmarked vehicle when he observed a Subaru Impreza with tinted windows. At that time, the Complainant was driving in the right lane southbound on 6th Avenue. He was attempting to merge into the left lane. The Complainant stated that the Impreza moved aggressively into the middle lane and, when it drove by him, he observed the driver was on his cellphone and had his middle finger extended towards the Complainant.

The Complainant stated that, based on the driver’s demeanor and the fact that he was driving while on his cellphone, the Complainant effectuated a traffic stop. When he did so, he discovered that the driver, Named Employee #1 (NE#1), was a Seattle Police Officer. The Complainant described NE#1 as rude and argumentative. The Complainant recalled that NE#1 commented about his driving. The Complainant went back to his vehicle and called his Captain. The Complainant returned to the vehicle and informed NE#1 that he would not be citing him but told NE#1 that he would be raising this matter with his supervisor. The Complainant recalled that NE#1 was on his cellphone again when he drove away.

NE#1 recalled that the Complainant was driving in an unsafe manner. He stated that the Complainant, at one point, quickly merged in front of him, causing NE#1 to have to slam on his brakes to avoid a collision. NE#1 acknowledged that he was on his cell phone. He told OPA that he was discussing work-related matters with a Detective at the South Precinct. NE#1 denied extending his middle finger towards the Complainant. He reasoned that he could not have steered his vehicle had he done so while also using his cellphone. NE#1 described the Complainant as angry and recounted that he demanded NE#1’s license, registration, and proof of insurance without providing any basis for the



stop. NE#1 stated that he told the Complainant that his driving had been dangerous. NE#1 denied that he again got on his cellphone when he drove away from the scene.

NE#1 self-reported to his supervisor that he was being stopped. He told his supervisor that he drove by an unmarked King County vehicle and, when he did not allow the vehicle to merge into traffic, he was pulled over. NE#1 told his supervisor that the Complainant was “irate” because NE#1 had not allowed him to merge in. The supervisor asked whether NE#1 wanted him to come to the scene and NE#1 stated that it was unnecessary. They did not talk about the stop again until NE#1 told his supervisor that he had received this OPA complaint.

After conferring with his Captain, the Complainant referred this matter to OPA. This investigation ensued. As part of this investigation, OPA interviewed the Complainant, NE#1, and NE#1’s supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. State law prohibits drivers from holding their cellphone while driving. The law provides an exception for an individual operating an authorized emergency vehicle. The law further defines an authorized emergency vehicle as including a “police” vehicle.

Here, NE#1 was driving a Department vehicle to a work assignment. Moreover, he contended that, at the time of the stop, he was having a work-related conversation with a Detective. OPA was unable to interview the Detective and was unable to verify that this was the case. However, even if it was not, there is no language in the law or policy that distinguishes between personal and work-related conversations. For this reason, this issue is largely irrelevant.

Ultimately, applying a preponderance of the evidence standard, 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-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.)

As discussed above, the Complainant alleged that NE#1 was rude and unprofessional during the stop. NE#1 denied this and stated that the Complainant was the one who was angry and aggressive. Unfortunately, neither vehicle had In-Car Video and neither of the parties were equipped with Body Worn Video. As such, it leaves irreconcilable disputes of fact. It is likely that the truth of what occurred is an amalgam of both accounts. Ultimately, however, I cannot determine conclusively whether NE#1 engaged in unprofessional behavior in this instance.



For the above reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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