



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 22, 2019

CASE NUMBER: 2018OPA-0734

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

EXECUTIVE SUMMARY:

It was alleged that the Named Employees engaged in unprofessional behavior and failed to report misconduct engaged in by another officer.

ADMINISTRATIVE NOTE:

OPA initially recommended that all of the Named Employees receive Sustained findings for both professionalism and their collective failures to report the misconduct engaged in by their then Sergeant to another supervisor and/or to OPA. The Named Employees’ chain of command concurred with the recommended Sustained findings. This matter proceeded to Loudermill hearings before the Chief of Police. At their Loudermill hearings, the Named Employees took responsibility for their actions to varying degrees. They largely recognized that, based on their conduct, it could have



been interpreted that they were willing participants in the underlying misconduct, even if this was not their intent. They further articulated – and OPA found this compelling – that they were put in a very difficult place by their then Sergeant. They contended that this was an extremely unique situation and they universally recognized that they could have and should have handled it better. Ultimately, while OPA continues to have serious concerns about the role the Named Employees played in the underlying incident, OPA believes that, under the specific circumstances of this case and given the Named Employees’ presentations at their Loudermill hearings, retraining is the more appropriate results. As such, OPA herein amends its findings.

STATEMENT OF FACTS:

This case stems from an investigation into the acts of a Department employee – referred to here as the “Officer” – who was found to have violated several Department policies. It was alleged that the Named Employees were unprofessional when they knew that the Officer was violating policy and saw him do so, but took no action and laughed and joked with him. It was also alleged that the Named Employees acted contrary to policy when they did not report the misconduct that they observed.

Background Facts

In summary, the Officer 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 the Officer. Both the owner and the Subject were upset about the tow and both criticized the Officer. At one point, the Subject called the Officer a “ho” and the owner called him a “bitch.” When the Officer 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, the Officer logged himself to a premise at Auto Zone. His Body Worn Video (BWV) was activated at this time. The BWV showed the Officer 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 Officer what he was doing and whether he was “posted” there now. The Officer responded: “for now, I got a little disrespected earlier today, so I’m going to hang out.”

Approximately five minutes later, a patrol unit pulled in front of the store. Inside of that patrol vehicle were Named Employee #1 (NE#1) and Named Employee #2 (NE#2). NE#1 greeted the Officer and, in response to that greeting, the Officer stated: “I’m just cold kicking it.” He further stated: “just doing some community oriented policing stuff.” The Officer asked NE#1 if NE#2 told him why the Officer was at the AutoZone. NE#1, referring to his prior conversation with NE#2, said: “yeah, he told me all about it.” The Officer remarked, apparently about the Subject: “this guy’s freaking out...” They discussed how there were less people than usual in the vicinity of the store. The Officer stated: “I was hoping more people would be out here.” NE#1 and NE#2 then left the scene.

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



At that point Named Employee #3 (NE#3) and Named Employee #4 (NE#4) drove up in another patrol vehicle. While laughing, one of them said to the Officer: "Hey Sarge, what are you doing?" The Officer 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?" The Officer continued: "that's not his car, that's his girlfriend's ex-boyfriend's 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." They continued to laugh and then NE#3 and NE#4 drove away from the location.

Approximately 23 minutes after he first sat down, the Officer was approached by another community member, who was the individual who filed the initial complaint against the Officer. This individual stated to the Officer: "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." The Officer responded "ok." In response to a request from the individual, the Officer provided his badge number and the spelling of his last name. The individual told the Officer: "I just think it's a bad representation." The Officer responded: "hanging out with the public." The individual stated: "No man, they know why you're here." When the Officer asked who "they" were, the individual said: "you think you're owed an apology for a person whose vehicle got towed...it's just bad form in general." The Officer again stated that he did not know who "they" referred to and the individual responded: "It's from one of the customers inside the store, they're fully aware of why you're here." The Officer said "ok," and the individual walked away.

Around eight minutes after his interaction with the individual, the Officer began wheeling his chair back to his patrol vehicle. He interacted with a man sitting in a car who asked him what was going on and the Officer said that someone was calling him names earlier. Another person responded: "that's a sign of being pissed off, you brought an office chair out." The Officer 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 the Officer's behavior and counseled him about unnecessarily escalating the interaction with the subject. He provided the Officer with guidance on how to avoid conflict and communicate with the subject. The male told the Officer that the behavior the Officer was currently engaging in was the wrong thing to do and that it would be better to wait and let the situation settle down. The Officer 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, the Officer was seated in front of the store while on duty for approximately 40 minutes.

MDT Messages

The Officer exchanged multiple MDT messages with NE#3 and NE#4 on the date in question. The pertinent messages are referenced below:

Officer – 6:35 a.m.: "2 questions for you guys...Have you seen the movie Colors/if not, that's your homework."

NE#3/NE#4 – 6:38 a.m.: "COLORS!!!"

Officer – 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."



NE#3/NE#4 – 7:15 a.m.: “Whenever you’re ready! We will change out at around 1030.”

Officer – 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.”

NE#3/NE#4 – 7:16 a.m.: “Pac Man!!!!”

Officer – 9:16 a.m.: “I’m pulling into Plaza.”

NE#3/NE#4 – 9:16 a.m.: “We are in position.”

Notably, the movie *Colors*, referenced by both the Officer and NE#3 and NE#4, 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.

OPA Interviews of the Named Employees

NE#1, who was the first to the scene with NE#2, told OPA that the Officer did not speak with him concerning the towing of the car earlier that day. NE#1 was asked about what NE#2 told him concerning why the Officer was going to be at the AutoZone. He did not recall the “specific conversation.” He just remembered hearing that the Officer would be there and said that he did not know exactly why. NE#1 stated that he and NE#2 decided to “check on” the Officer because he was alone at the AutoZone. He told OPA that, had he know the true reason for why the Officer was at the scene, he would have reported it as potential misconduct. He did not recall ever speaking with the Officer about what occurred after the date of the incident.

NE#2 told OPA that he and NE#1 went to check on the Officer, who was performing a premise check at the AutoZone. NE#2 said that the Officer did not tell him about the towing of the car. When OPA informed NE#2 that he was at the precinct at the same time as the Officer directly after the towing and asked what they discussed at that time, NE#2 stated that he did not remember what was discussed. When confronted with the Officer’s statement to NE#1 concerning his earlier conversation with NE#2, NE#2 again stated that he did not remember what he discussed with the Officer prior to his arrival at the AutoZone. He said that, knowing what he knows now, he believed that the Officer engaged in misconduct.

NE#3 initially told OPA that he did not recall communicating with the Officer about the towing of the car or the Officer’s plan to go to the AutoZone. He was then shown the MDT messages between him, NE#4, and the Officer. NE#3 stated that he did not recall seeing those messages. After reviewing the messages, NE#3 acknowledged that they discussed the individuals whose car the Officer had towed and the Officer’s intent to go to the AutoZone where the individual was believed to be. NE#3 also confirmed that the messages indicated that he and NE#4 planned with the Officer to come to the AutoZone. NE#3 watched the BWV of the incident, where he drove to the scene with NE#4 and interacted with the Officer while laughing. NE#3 recognized that, at that time, the Officer was sitting in an office chair in front of the AutoZone and told the officers that he was there to seek an apology from the Subject. NE#3 stated that, at first, he thought the Officer was joking. He told OPA that he did not believe that what the Officer did was appropriate. NE#3 further stated that, if he had realized what the Officer was actually doing in the parking lot, he would have reported the Officer’s conduct to a supervisor. NE#3 was re-interviewed and was



confronted with the Officer's statement that he discussed going to the AutoZone with NE#3 in person. NE#3 denied any recollection of that conversation.

NE#4, like NE#3, initially told OPA that he did not recall communicating with the Officer concerning the towing of the car or the plan to go to the AutoZone. After reviewing the MDT messages, he remembered discussing Colors. NE#4 stated that, from the messages, he construed the Officer's reason for going to the business to be to obtain an apology from the Subject. He believed that the Officer wanted him and NE#3 nearby to back him up. NE#4 confirmed that this was inappropriate on the Officer's part. NE#4 further confirmed that he believed that the Officer's acts constituted misconduct. He stated that the fact that the Officer was his supervisor put him in a difficult situation. To that end, he provided the following explanation: "if a Sergeant's asking you to do something, you do what your Sergeant is asking you to do. You don't anticipate misconduct or the request to participate in misconduct from a Sergeant." NE#4 was re-interviewed and was confronted with the Officer's statement that he discussed going to the AutoZone with NE#4 in person. NE#4 denied any recollection of that conversation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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.*)

The Named Employees all contended that they had limited knowledge of what the Officer was planning to do at the AutoZone and why. They all further stated that, while they now recognized that the Officer had engaged in clear misconduct, they did not necessarily perceive that to be the case at the time.

Based on my review of the evidence – most notably, the video, which captured the Officer's conduct and the Named Employees' conversations with him, as well as the MDT messages – I find the assertion that the Named Employees did not know that the Officer was engaging in misconduct at the time to be difficult to reconcile. Moreover, if they truly did not recognize in the moment that the Officer was engaging in misconduct, that is perhaps even more concerning. In no event, however, would it have been appropriate for a supervisor – or, for that matter, any Department employee – to bring a rolling chair to a business and sit there for 40 minutes waiting for an apology from a community member, all the while devaluing community policing and diminishing public trust and confidence in the Department.

OPA recognizes, however, that the Officer put the Named Employees in a difficult situation when he included them in the events on that date. This was particularly the case given that he was a supervisor at that time. As discussed above, based on the Named Employees' statements at their Loudermill hearings, OPA believes that they are sincerely regretful concerning what occurred and, if they could repeat this situation, they would have handled it very



differently. OPA is inclined to give the Named Employees the benefit of the doubt and amends its findings to now issue the below Training Referral.

- **Training Referral:** The Named Employees should be counseled by their chain of command regarding this incident. The chain of command should make clear that the failure to report the Officer's behavior to a supervisor and/or OPA was inconsistent with policy and the Department's expectations. The Named Employees should further be counseled concerning their own role and behavior during this incident and how it served to undermine community trust and confidence both in them and the Department. The Named Employees should be informed that future failures to comply with the policies at issue in this case will likely result in recommended Sustained findings. This counseling and any associated training should be documented and this documentation should be maintained in an appropriate database.

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

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.) 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.*)

All of the Named Employees denied having knowledge of the extent of the Officer's plan to seek an apology from the Subject. However, the evidence in this case suggests otherwise. With regard to NE#1 and NE#2, the video captured the Officer confirming that he had told NE#2 why he was going to be at the AutoZone. The video further indicated that NE#1 acknowledged to the Officer that this "all" of this information was relayed to him by NE#2. In addition, GPS logs established that NE#2 was at the East Precinct at the same time as the Officer right after the towing of the car. This corroborates that the conversation described on the video occurred. The evidence also indicates that NE#3 and NE#4 were aware of what was planned before they arrived at the scene. Most notably, the MDT messages established that NE#3 and NE#4 knew in advance that the Subject had called the Officer "names," that the Officer was going to where the Subject was to get an apology from him, and that the Officer would not be "dissuaded." The references in the MDT messages to Colors further suggests that NE#3 and NE#4 were aware that the Officer was intending on acting in an aggressive manner to make some sort of statement. Lastly, the MDT messages clearly showed that NE#3 and NE#4 engaged in a coordinated plan to be at the location with the Officer. As they wrote to the Officer: "We are in position."

Moreover, even if they had not been aware of the Officer's intentions, the Named Employees clearly saw what he was doing when they arrived at the scene and observed the Officer sitting in an office chair outside of the AutoZone. The video also established that the Named Employees were directly informed by the Officer of what he was doing. The Officer told NE#1 and NE#2 that he was "cold kicking it" and was "just doing some community oriented policing stuff." After confirming with NE#1 that NE#2 told him "all about it," the Officer remarked that the Subject was "freaking out." The Officer then mentioned how he wished that more people were in the area.



With regard to NE#3 and NE#4, they also saw the Officer sitting in the office chair when they arrived. In response to their query as to what he was doing, the Officer stated: "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?" The Officer continued: "that's not his car, that's his girlfriend's ex-boyfriend's 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." NE#3 and NE#4 laughed and then drove off.

The video indicated that the Named Employees appeared to make light of this situation and did not seem to see anything wrong with what the Officer was doing in the moment. This was the case even though several community members, who do not have the same training or law enforcement expertise as the Named Employees, all immediately identified that the Officer was engaging in misconduct. Indeed, based on their conduct, statements, and demeanor, the Named Employees could have plausibly been perceived by the community to be at best overlooking and/or condoning serious misconduct and, at worst, engaging in a joint enterprise with the Officer.

OPA has significant concerns with this incident and the role that the Named Employees played. That being said, and as discussed above, OPA recognizes the uniqueness of this case and what a difficult position the Named Employees were placed in by the Officer. OPA also credits the Named Employees' expressions of regret and assertions that they did not intend to participate and collaborate in the Officer's misconduct, even if the evidence raises questions in this regard. Ultimately, OPA concludes that training, rather than discipline, is the more appropriate result. As such, I recommend that the Named Employees be retrained and refer to the Training Referral set forth above. (See Named Employee #1, Allegation #1.)

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

Named Employee #2 - Allegations #1

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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

Named Employee #2 - Allegation #2

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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



Named Employee #3 - Allegations #1

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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

Named Employee #3 - Allegation #2

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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

Named Employee #4 - Allegations #1

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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

Named Employee #4 - Allegation #2

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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