



CLOSED CASE SUMMARY

ISSUED DATE: MAY 7, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0696

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	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	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 unprofessional and engaged in behavior that constituted a failure to de-escalate.

SUMMARY OF INVESTIGATION:

OPA received two complaints concerning the handling of an incident by Named Employee #1 (NE#1). The Complainants both described concerns with the stop of a vehicle and the arrest of the female driver. They were particularly bothered by the fact that officers pointed firearms in the direction of the driver and the vehicle. Complainant #2 also complained about how NE#1 interacted with her and others. She contended that he was unprofessional towards her and “violently” shoved her back. This OPA investigation ensued.

OPA’s investigation indicated that the vehicle was pulled over because officers operating an Automatic License Plate Reader got a hit indicating that the vehicle was stolen. The officers effectuated a traffic stop of the vehicle. Given that it was an occupied stolen vehicle, the officers performed a high-risk felony stop, which was consistent with their



training. This included giving the driver directions to exit the vehicle, while pointing their firearms in the direction of the driver and the vehicle. The driver was told to walk backwards toward the officers and was handcuffed. She was placed under arrest for driving a stolen vehicle and was ultimately transported from the scene in a patrol vehicle.

During this time, community members gathered around the incident. NE#1 set up police tape between the sidewalk and the stopped vehicle. Some of the individuals watching began to make negative comments towards NE#1 and other officers. As discussed more fully below, NE#1 engaged with these individuals and replied to their statements. He also commented about the community members to other officers, including calling them “idiots.”

At one point, NE#1 observed a woman – Complainant #2 – standing on the corner of the street by the crosswalk. The tape ended at a streetlight to Complainant #2’s right and, based on a review of Body Worn Video (BWV), she was technically not within the crime scene. NE#1 advanced towards her and said: “Hey, if you’re not crossing the street it needs to be on the other side of this line. Thank you very much.” Complainant #2 responded: “I’m on the sidewalk.” NE#1 replied: “If you refuse to do it, I will arrest you, do you understand? We’re not fucking around.” This statement was made approximately three seconds after initially telling her to move back. Complainant #2 said: “Really? You’re going to arrest me for being on the fucking sidewalk?” NE#1 walked towards her, said “back up” twice, and pushed her back with two hands. The push appeared soft based on video and was not “violent” as described by Complainant #2. NE#1 then walked away.

Complainant #2 asked for NE#1’s serial number. He replied: “It’s right here. Use your eyes.” After being asked a second time, he provided the serial number.

Complainant #1 additionally alleged that the officers violated policing when they conducted a high-risk felony stop and that they used excessive force on the driver. Complainant #1 also asserted that unknown SPD employees failed to record this incident on BWV.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

It was alleged that NE#1 was unprofessional with regard to how he handled this incident, including how he interacted with community members and his discussions with other officers.

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 a review of the BWV, OPA identified the following statements as problematic: (1) telling another officer, regarding community members observing the scene: “I’m just getting more people here for these idiots”; (2) saying to another officer, regarding her advising him to stop going back and forth with community members: “I know, it’s



just so hard...so hard”; (3) responding to a community member who told him “go fuck yourself” by saying: “I’d rather you didn’t”; (4) telling a community member who accused him of infringing on people’s First Amendment rights: “I’m sure you feel so good about yourself”; (5) when interacting with the Subject, telling her, within four seconds of first instructing her to move back: “If you refuse to do it, I will arrest you do you understand? We’re not fucking around”; and (6) when initially asked for his serial number by Complainant #2, replying: “It’s right there, use your eyes.”

OPA further had concerns regarding how little time NE#1 allowed Complainant #2 to follow his initial order to move back and the fact that he chose to push her within seconds and without allowing for voluntary compliance. While the force was not excessive and he was permitted to move her back, he failed to provide her with sufficient time to comply and, as discussed above, his statements, including “we’re not fucking around,” were escalatory in nature.

When asked about these various comments and actions at his OPA interview, NE#1 recognized that he was annoyed during parts of this incident and “quipped back” to onlookers. He described himself as a sarcastic individual and said that, while he handled this incident imperfectly, he had a human reaction to what he experienced.

OPA ultimately concludes that the totality of NE#1’s comments and actions violated the Department’s professionalism policy. NE#1 used profanity that was unnecessary, and he made dismissive comments about and to community members. OPA additionally finds that telling the Subject that he was “not fucking around” just seconds after telling her to move and virtually immediately prior to pushing her was escalatory and impermissible under the circumstances. While OPA recognizes that officers are human, make mistakes, and do not always handle incidents perfectly, the violations here were significant enough that a Sustained finding is warranted in OPA’s opinion.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics

As discussed above, OPA finds that NE#1’s statements and actions towards Complainant #2 were escalatory. However, given that this conduct is already fully addressed in the context of the Sustained finding issued in Allegation #2, OPA finds it unnecessary and duplicative to also sustain this allegation. Accordingly, OPA instead recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** OPA requests that NE#1’s chain of command discuss this incident with him and, specifically, go over how his actions and statements escalated this matter. The chain of command should discuss the time he gave Complainant #2 to comply with his initial order to move back and his use of profanity at that time. NE#1 should be informed that future non-compliance with this policy will result in progressive discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized



As discussed above, after initially stopping the stolen vehicle, officers performed a high-risk felony stop. This included giving orders for the driver to show her hands, to exit the vehicle, and to walk backwards towards the officers prior to being handcuffed. This also included the officers drawing their firearms.

Officers are trained by SPD to engage in high-risk felony stops when pulling over a stolen vehicle. As such, the officers did not violate their training when they did so here. Moreover, there was no evidence that the officers used any force on the driver other than that used to handcuff her.

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

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

Named Employee #2 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

Complainant #1 asserted his belief that officers did not turn on BWV during the stop of the vehicle. This was quickly disproved by OPA as it was verified that all officers were equipped with and activated BWV during this incident. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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