



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 28, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0208

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 (Training Referral)
# 2	5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 3	15.180 – Primary Investigations. 5. Officers Shall Document all Primary Investigations on a Report	Sustained
# 4	5.001 – Standards and Duties 10. Employees Will Strive to be Professional	Sustained
# 5	5.001 – Standards and Duties 4. Retaliation Is Prohibited	Not Sustained (Unfounded)

Imposed Discipline

Suspension Without Pay

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 SPD policies when he broke a car window and failed to report it.

ADMINISTRATIVE NOTE:

Following the discipline meeting in this matter, OPA amended its finding on Allegation #1 from Sustained to Not Sustained – Training Referral. This is discussed in more detail in the analysis section below. The Sustained findings issued for Allegation #3 and Allegation #4 remain unchanged.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was on patrol and observed a car stopped at a gas station. NE#1 ran the plate of the car and determined that it was sold more than two years prior, but title had not been transferred. NE#1 stopped his patrol vehicle and approached the car. At that time, the occupants were outside. He made contact with the driver, who got back into the car and closed the door. NE#1 told him to “roll the window down” but the man shook his head and began to drive away. At this occurred, NE#1 used a hard object to strike and shatter the driver’s side window. The driver left the scene and NE#1 returned to his patrol vehicle. NE#1 did not pursue the car.



NE#1 later completed a report concerning this incident. He wrote the following:

I initiated a stop and activated my over head lights. I noticed a Hispanic male and a white female at the vehicle. I advised the two that I wanted to talk to them about the car. The male ignored my command to talk and immediately jumped in the driver seat and locked his door. I told him to roll his window down and as soon as the female got in the passenger front seat he sped off guilty of SMC 11.59.060 – Refusal to Stop.

NE#1 did not document in the report that he broke the car window.

Approximately two months later, the driver was stopped again by other Southwest Precinct officers. They determined that he had an outstanding felony warrant for DOC escape. The driver tried to flee on foot but was taken into custody. NE#1 was not involved in that incident.

In April 2021, approximately four months after the incident, an unidentified SPD officer told his supervisor – Sergeant #1 – that NE#1 had broken the window but not reported it. Sergeant #1 notified a Lieutenant who viewed the Body Worn Video (BWV) and In-Car Video (ICV) and confirmed that NE#1 broke the window. The Lieutenant also reviewed NE#1's report and confirmed that the breaking of the window was not documented therein. The Lieutenant spoke with NE#1's supervisor from the evening in question – Sergeant #2 – and asked whether NE#1 ever reported the breaking of the window to him. Sergeant #2 said that NE#1 did not but that he heard about the incident from other officers. The Lieutenant subsequently met with NE#1 and Sergeant #1. The Lieutenant asked NE#1 if he reported the breaking of the window to anyone and NE#1 said that he did not. NE#1 told the Lieutenant that he did not think he was required to report it because it was not a use of force. The Lieutenant reminded NE#1 that he was always required to report the destruction of a community member's property. The Lieutenant informed NE#1 that an OPA complaint would be filed. The Lieutenant documented that NE#1 responded that "he knew where this was coming from and that he was going to file a complaint against them."

After receiving the referral from the Lieutenant, OPA commenced this investigation. OPA watched the BWV and confirmed that NE#1 did break the window of the car. OPA also reviewed the report and verified that NE#1 did not document his conduct therein.

OPA interviewed NE#1, Sergeant #1, Sergeant #2, and two other officers.

Sergeant #2 told OPA that he heard about the breaking of the window sometime after the fact. He said that he was told by another officer but could not remember who that was. He said that he was NE#1's supervisor on the evening in question but he had no recollection of NE#1 ever screening this matter with him. He recalled that it was a "crazy" night because he was an acting sergeant at the time and the only supervisor on duty. Sergeant #2 said that, in a recent DUI training, officers were reminded of the distinction between obstruction and disobeying an officer on a traffic stop. He said that you were not allowed to break out a window "ad hoc" and that, if NE#1 did so, he would have known about it. Sergeant #2 said that he heard from multiple officers that NE#1 was "going around bragging about it." Sergeant #2 felt it possible that NE#1 was "embellishing" and "trying to sound like a tough guy."

Sergeant #1 said that, several months after the incident, he was approached by an officer – Witness Officer #1 (WO#1) – who asked to switch beats. WO#1 said that he wanted to do so because he did not like working with NE#1. WO#1 referenced the breaking of the window, which was the first time Sergeant #1 had heard about it. WO#1 had not seen



the video, but he said that another officer – Witness officer #2 (WO#2) – had done so. Sergeant #1 spoke with WO#1 and WO#2. WO#1 said that he did not personally see the video. WO#2 said that NE#1 showed him the video on NE#1's work phone. WO#2 said that he saw NE#1 then go to speak with Sergeant #2 and he assumed that NE#1 screened the incident at that time. Sergeant #1 was surprised that he had never known about the incident given what had occurred. He spoke with the Lieutenant, and they agreed that they would need to make an OPA referral. They spoke with NE#1, who informed them that he did not screen the incident with Sergeant #2. NE#1 was upset about the referral being made. Sergeant #1 warned him not to take any action that could be perceived as retaliatory. As far as Sergeant #2 was aware, NE#1 did not engage in such conduct. Sergeant #1 said that, despite this incident, NE#1 was probably his best officer and handled calls competently.

WO#1 recalled that NE#1 told him about the breaking of the window either the night of the incident or the next day. WO#1 said that NE#1 also showed him the BWV. WO#1 did not feel that breaking a window under the circumstances facing NE#1 was appropriate. He also felt that this should have been reported to a supervisor and documented in the report. When he learned that it was not documented in the report, he notified WO#2, who was a more senior officer. WO#2 said that he would contact a supervisor.

WO#2 told OPA that NE#1 showed the video to both him and WO#1. WO#2 stated his belief that NE#1 was showing the video both to provide them with evidence and to have them see what he did. WO#2 said that he told NE#1 that he should probably document the incident because he was showing everyone the video. WO#2 recalled that NE#1 did not seem "thrilled" by his suggestion. At some point, WO#2 learned that NE#1 did not document the breaking of the window in his report. WO#2 felt that, without this information, NE#1's report was not truthful, complete, and accurate. WO#2 spoke with Sergeant #2 to ask him to speak with NE#1 about the incident and to ensure that a report was completed. WO#2 did not know whether Sergeant #2 did so or watched the video.

NE#1 was interviewed twice by OPA. At his first interview, NE#1 told OPA that he intended to arrest the driver. When the driver began to leave the scene, it caught him by surprise. He broke the window in an attempt to prevent the driver from leaving. This was not a trained tactic, but he had done it previously. NE#1 acknowledged that his actions constituted destroying property; however, he did not believe that he was required to report it. OPA asked NE#1 if he showed other officers the video of the incident. He first stated that he did not do so and that he did not watch the video. He later changed his account to state that he did not recall watching the video. NE#1 recalled meeting with the Lieutenant to discuss the incident. He said that he did not try to hide anything. He remembered speaking with WO#2 and discussing his generating a report. He may have intimated that he was not going to write a report, but he said that he was being sarcastic. He confirmed that he did, in fact, create a report. He denied that he was trying to cover up his actions by not including the broken window in his report. NE#1 did not remember what Sergeant #2's response was to the incident. When he was told that Sergeant #2 denied that the breaking of the window was screened with him, NE#1 said that he did not "officially" screen the incident with anyone but that he thought they discussed it at some point over a meal. He said that he also informed other officers of the breaking of the window.

During his second interview, NE#1 noted that his answers at his first interview were incomplete. He said that he should have been clearer when he did not remember certain aspects of the incident, instead of guessing. He stated that, without this context, he could see how his answers might be perceived as misleading. NE#1 told OPA that he should not have broken the window in the first place and that this was an error on his part. He said that he, at most, had reasonable suspicion to detain the driver and that the breaking of the window was not warranted. He further recognized that he should have included the information about the window in his report but denied that this was purposed to conceal his acts. He acknowledged that his report was not complete, thorough, or totally accurate. He



confirmed that he did not officially screen the incident with Sergeant #2 and said that he mentioned it casually. He said that he did not initially remember showing the video to others but said that he later realized that he did. He said that this was, in part, to show off but that was not the “essence” of what he did what he did. NE#1 denied that he attempted to mislead OPA at his first interview. Lastly, NE#1 denied that he engaged in retaliation. He explained to OPA, however, that he felt that some other officers might be trying to retaliate against him.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #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.

OPA finds that NE#1’s decision to break the window of the car was contrary to policy and his training. At the time he broke the window, NE#1 had reasonable suspicion to investigate a failure to transfer title. While he may have thought there was more given the driver’s conduct, he did not know that definitively. It was not reasonable to break the window given the lack of severity of the crime. Indeed, virtually all of the SPD witnesses interviewed by OPA affirmed this. NE#1 also recognized this at his second OPA interview and confirmed that he should not have broken the window based on the circumstances of this case.

When he did so, not only did he violate policy, but he further engaged in unwarranted property destruction. Such an act has the potential to seriously undermine public trust. OPA initially recommended that this allegation be Sustained for the reasons set forth above. After reconsideration, OPA amends its finding to Not Sustained – Training Referral, as this allegation is subsumed into Allegation #4 below.

Accordingly, OPA recommends that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional coaching on tactics and decision-making regarding solo officer contacts, requesting additional resources when necessary, and appropriateness of using untrained techniques under such circumstances. 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 #1 - Allegation #2

5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

In OPA’s opinion, whether NE#1 was dishonest here was a close call. First, OPA considered NE#1’s initial failure to document the breaking of the window and whether he intentionally failed to do so to cover up his conduct. While OPA believed this to be possible, this was undercut by the fact that NE#1 contemporaneously told several other officers about what he did. Second, OPA evaluated whether NE#1 purposely tried to mislead OPA at his first OPA interview. It is clear that his answers at his first interview were incomplete. This was particularly the case for his answers surrounding whether he screened the incident with Sergeant #2 and whether he showed the video to other officers. NE#1 acknowledged this when he was reinterviewed. He explained, however, that he was not trying to



mislead OPA and, instead, was unprepared and was guessing at his answers. He ultimately admitted that he was completely at fault.

OPA has concerns with NE#1's conduct and, particularly, his answers at his first OPA interview. However, OPA credits NE#1's assertion that this was based on his lack of preparation and his poor participation, rather than on dishonesty. OPA also notes that other witnesses in this case provided inconsistent accounts, which complicates OPA's ability to conclusively determine whether dishonesty exists. Given this, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

15.180 – Primary Investigations. 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 governs reports written by officers. The policy mandates that such reports must be complete, thorough, and accurate.

It is undisputed that, by not including any mention of the breaking of the window, NE#1's report was inconsistent with policy. He acknowledged this at his OPA interview and said that he should have included this information.

Given this, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

5.001 – Standards and Duties 10. Employees Will 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.*) 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.*)

OPA finds NE#1's conduct in this case to have been unprofessional in a number of respects. First, his showing of the video to other officers after the fact was improper, specifically because he admitted that this was done, in part, to brag. Second, OPA finds NE#1's overall approach to this incident and to his first OPA interview to have been unprofessional. NE#1 failed to provide sufficient information in his initial report and then provided incomplete and arguably misleading answers at his first OPA interview. This required him to be interviewed again and raised the specter of his dishonesty. While OPA did not ultimately deem him to be dishonest, it was a close call. Third, NE#1 put a number of other officers and his chain of command in a bad place because of his actions.



NE#1 affirmed that he learned significant lessons from this incident and that he would not repeat this conduct. OPA takes him at his word and warns that, if he does act similarly in the future, he will be subject to significant discipline if not termination. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #5

5.001 – Standards and Duties 4. Retaliation Is Prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

This allegation was alleged because of NE#1’s initial statement to the Lieutenant that he would take action against the person who filed the complaint against him.

NE#1 told OPA at his interview that he believed that he was being retaliated against; however, he confirmed that he took no action against anyone as a result of this complaint. OPA verified that this was the case.

Given that NE#1 did not actually engage in any acts that were retaliatory, OPA recommends that this allegation be Not Sustained – Unfounded.

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