



CLOSED CASE SUMMARY

ISSUED DATE: MAY 16, 2023

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0314

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 - Training Referral
# 2	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Lawful and Proper

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Sustained
# 2	5.001 Standards and Duties. 7: Employees Engaged in Department-Related Activities Identify Themselves When Requested	Sustained

Proposed Discipline

Written Reprimand to One (1) Day Suspension

Imposed Discipline

Written Reprimand

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Sustained
# 2	5.001 Standards and Duties. 7: Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained - Training Referral

Imposed Discipline

Oral Reprimand

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties. 7: Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained - Lawful and Proper



Named Employee #5

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties. 7: Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained - Lawful and Proper

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.

ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

EXECUTIVE SUMMARY:

It was alleged that the Named Employees failed to properly identify themselves in writing when requested by the Complainant. It was also alleged that Named Employee #1 failed to conduct a thorough and complete search for evidence, and that Named Employee #2 and Named Employee #3 were unprofessional.

SUMMARY OF INVESTIGATION:

The Complainant—the putative victim of a robbery and assault—alleged that the Named Employees “didn’t do anything” when he pointed out the suspect’s vehicle to them. The Complainant also alleged that the Named Employees failed to provide their names and serial numbers when he requested them and that the Named Employees need to be “nicer.” OPA commenced this investigation.

OPA reviewed the Complaint, CAD, Incident/Offense Report, audio recordings of related 911 calls, and Body Worn Video (BWV). OPA also interviewed the Complainant and the Named Employees. There is no credible dispute of fact related to this incident. Certain allegations made by the Complainant are directly contradicted by BWV; these instances are noted below.

In summary, the Named Employees responded to multiple 911 calls reporting a robbery that involved a knife. Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #4 (NE#4) were the first officers to arrive on scene. Named Employee #3 (NE#3) and Named Employee #5 (NE#5) were partners and arrived later. NE#1 was the primary officer.

After arriving on scene, the Named Employees contacted the Complainant and Community Member #1, both of whom reported being assaulted and had visible injuries. The Complainant also reported that his cell phone had been stolen. The suspects of the reported crime had already fled in a vehicle by the time the Named Employees arrived. While interacting with the Named Employees, the Complainant appeared highly agitated, repeatedly talked over the Named Employees, shouted, and threatened to “get” the suspect. The Complainant repeatedly used profanity with the Named



Employees and directly gendered slurs at NE#3, the only female officer on scene. The Complainant also repeatedly demanded business cards from every officer on scene.

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 according to SPD Policy.

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.)

BWV showed NE#1 asking NE#3 to obtain case numbers for the Complainant and Community Member #1, and that NE#3 wrote on two business cards and provided them to Community Member #1 (with a verbal request to give the second card to the Complainant). NE#3 also stated that her usual practice would be to write the incident number and the primary officer’s name and serial number on such a card. While NE#3 affirmatively stated that she wrote the incident number on the cards, she did not recall whether she wrote NE#1’s information on the cards in this instance. The Complainant stated that he only received one business card on the night of the incident, and that it did not have any names on it. On this evidence, OPA can draw no other conclusion but that—more likely than not—the cards that NE#3 provided only had the incident number recorded on them.

NE#1 was the primary officer for this incident and OPA recognizes that, during his time on scene, he was busy conducting his primary investigation of this incident. OPA further recognizes that NE#1 made at least some effort to comply with policy by asking NE#3 to provide case numbers. However, NE#1 admitted to OPA that he was not sure if his name or serial number was included on the cards provided by NE#3.

Considering NE#1’s efforts to comply with policy in this case, OPA finds that any violation of this policy by NE#1 was not willful and did not amount to misconduct. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-7 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented in Blue Team.

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

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

The Complainant alleged that NE#1 failed to conduct a thorough and complete search for evidence. Specifically, the Complainant alleged that NE#1 did not immediately pursue the suspects, whom the Complainant stated he pointed out to the officers.



SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

BWV evidence directly refutes the Complainant's specific allegation. Multiple videos depict NE#1, NE#2, and NE#4 arriving at the scene. At no point did the Complainant point out the suspects' vehicle. Moreover, NE#1, NE#2, and NE#4 were on scene for approximately five minutes before the Complainant even approached the officers to provide any information. Finally, the information that NE#1 received from Community Member #1 was that the suspects had already driven away and were no longer in the vicinity.

More generally, NE#1 appears to have taken other appropriate steps to secure evidence in this matter by speaking to witnesses, attempting to photograph the Complainant's injuries, requesting relevant surveillance video from the nearby bar (NE#1 was informed there was none), and completing an accurate Incident/Offense Report for further investigation.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2 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.*)

During the course of their interactions, NE#2 told the Complainant to "shut up" and, when the Complainant informed NE#2—correctly—that policy required NE#2 to provide his business card, NE#2 responded: "It is not my policy."

OPA appreciates that the Complainant was incredibly difficult to interact with. At times, the Complainant's words were degrading and abusive towards the Named Employees. But the Complainant's poor behavior does not relieve the Named Employees from their higher obligations to maintain their professionalism, even in the face of verbal abuse. This is especially true when the difficult community member is the putative victim of a violent crime—here, the Complainant reported that he had just been assaulted and robbed and was visibly bleeding from his mouth and hand. Moreover, NE#2's words were likely to only escalate the situation with the Complainant and publicly called into question NE#2's respect for SPD's own policies. Finally, OPA observed that NE#2 initially responded to the Complainant's request for his name and serial number by telling the complainant: "You want it? You want it? You gotta stop talking so I can tell you." Then NE#2 repeatedly refused to identify himself. In totality, these statements were antagonistic, unnecessary, and unprofessional.



Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

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

The Complainant alleged that NE#2 did not provide him with his name and serial number in writing on request.

NE#2 did not provide his name and serial number in writing after the Complainant specifically requested it. In his OPA interview, NE#2 explained his interpretation of the policy is that an officer may choose whether to provide this information orally or written, and that NE#2 did not want to occupy his hands with a business card given the Complainant's unpredictable behavior.

NE#2's interpretation of SPD Policy is mistaken. SPD Policy 5.001-POL-7 states that employees engaged in Department-related activities will "provide their name and Department serial number verbally, or in writing if requested." (SPD Policy 5.001-POL-7.) The right to choose whether an officer identifies himself verbally or in writing belongs to the requestor, not the officer.

Moreover, NE#2's explanation that it would have been unsafe to occupy his hands with a business card given the Complainant's behavior is overstated. There were five uniformed officers present during this conversation on a public street. Moreover, to the extent that the Complainant was expressing irritation with NE#2 at that time, the source appeared to be either the absence of a supervisor or NE#2's delay in providing his name and serial number.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #1

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

The Complainant alleged that NE#3 was unprofessional.

As discussed above, OPA recognizes that the Complainant was extremely difficult to interact with. Moreover, the Complainant twice referred to NE#3 using a gender-based slur. Given his abusive language, OPA is sympathetic to the difficult decision that NE#3 faced as the only female on scene, to either continue responding professionally to the Complainant's inexcusable verbal abuse or to disengage from the Complainant entirely. However, NE#3 was not free to curse back dismissively at the Complainant, stating "F*** you, too. F*** you, too." This violated policy. Commendably, NE#3 acknowledged to OPA that her response was not professional.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #3 - Allegation #2

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

The Complainant alleged that NE#3 failed to identify herself according to policy.

As discussed above, NE#3 provided Community Member #1 with two business cards, one of which was for the Complainant. However, NE#3 stated that she did not remember whether she recorded anything on these cards besides the incident number. Moreover, NE#3 stated that her usual practice in any event, would have been to write the incident number and the primary officer's information, in this case, NE#1. Moreover, on the BWV, the Complainant stated to NE#3 "you too," apparently indicating that he wanted NE#3 to write her information on the card as well. NE#3 responded to this by stating "You can find it on there" before verbally telling the Complainant her information.

While NE#3 did not ultimately provide her information, it did not appear to be intentional, as with NE#2. Instead, it seemed to OPA to be an oversight. Given this, OPA issues NE#3 a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policy 5.001-POL-7 with NE#3, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented in Blue Team.

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

Named Employee #4 - Allegation #1

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

The Complainant alleged that NE#4 failed to identify himself according to policy.

The BWV shows that, after the Complainant demanded "a card" from each Named Employee, NE#4 provided a business card to the Complainant. At his OPA interview, NE#4 stated that he has pre-printed business cards with his name and serial number. At his OPA interview, NE#4 also displayed such a business card and stated that this is the type of card he provided to the Complainant. OPA finds that, more likely than not, NE#4 properly identified himself with a business card according to policy. See SPD Policy 5.001-POL-7 ("Employees may use a Department-issued business card that contains their name and serial number to satisfy the request for the information.")

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #5 – Allegation #1

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

The Complainant alleged that NE#5 failed to identify himself according to policy.



The BWV shows that, after the Complainant demanded that NE#5 write his information on a card, NE#5 wrote on a business card. In his OPA interview, NE#5 stated that he wrote his name and serial number on the card. Moreover, despite OPA's request that the Complainant provide any business cards that he received during the incident, the Complainant has not done so. OPA finds that, more likely than not, NE#5 provided his information to the Complainant according to policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**