




CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 8, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0325

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to be Professional	Sustained
# 2	8.200 - Using Force 2. Use of Force: When prohibited	Sustained
Proposed Discipline		
27 hours to 45 hours (Three to Five Days) Suspension		
Imposed Discipline		
27 hours Suspension		

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:

The Complainant—an acting sergeant—alleged that Named Employee #1 (NE#1) used prohibited force when he punched an arrestee’s—Community Member #1 (CM#1)—chest multiple times to prevent CM#1 from swallowing narcotics. It was also alleged NE#1 was unprofessional during the encounter.

ADMINISTRATIVE NOTE:

NE#1 initially responded to the incident location to investigate a collision that resulted in injury. During its intake investigation, OPA found NE#1 failed to complete a report for the crash. OPA returned the matter to NE#1’s chain of command for Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant sent an OPA complaint via Blue Team. The Complainant wrote he screened CM#1’s arrest. The Complainant wrote NE#1 admitted to punching CM#1’s chest about three times to stop him from swallowing a baggie of suspected narcotics CM#1 put in his mouth.



OPA opened an investigation. During its investigation, OPA reviewed the complaint, computer-aided dispatch data, incident and supplemental reports, and body-worn video. OPA also interviewed NE#1 and three witness officers. OPA searched for CM#1's contact information but could not find an address, phone number, or email address. Accordingly, CM#1 was not interviewed.

BWV captured NE#1's interactions with CM#1.

On September 16, 2022, NE#1 worked foot patrol with Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2). While on patrol, NE#1 recognized CM#1 as a "high offender" listed on an SPD bulletin.¹ NE#1 stopped CM#1, demanded his name, and told CM#1 he was not free to leave. CM#1 objected, stating NE#1 was interrogating and harassing him. NE#1 responded, "Oh, so now you're being harassed? Would you like to talk to a supervisor? Would you like to talk to a supervisor?" CM#1 declined. NE#1 replied, "Cause he's not going to want to listen to your nonsense either." CM#1 said, "You guys are full of shit, and you guys suck, dude." CM#1 also commented about SPD potentially causing another riot. NE#1 replied, "Do you hear yourself? Most felons say that." CM#1 denied being a felon. NE#1 replied, "You don't. Just misdemeanor thefts."

NE#1 told CM#1, "Well, let's get your name, and we will get you out of here." CM#1 provided his name, and WO#2 entered a cruiser to run it. NE#1 stated, "Do you have a warrant? Is that why you were being so antsy and pissed off and not happy with us?" CM#1 responded, "I just don't like being stopped like that." NE#1 replied, "Well, stop having warrants and stop committing crimes, and you won't get stopped." CM#1 responded, "So you guys are just stopping me and running me for warrants?" NE#1 replied, "No because I recognize you from a wall that this detective has where everybody can walk and go...." CM#1 interrupted to ask, "And go what?" NE#1 replied, "I'm trying to tell you. Fucking stop interrupting me."

NE#1 explained he recognized CM#1 from an officer's board of wanted individuals. NE#1 said, "I am one hundred percent convinced that you're one of the guys on the list. I'm willing to bet you a cup of coffee. You want to shake on it? That you're on that wall? Bet me. No?" NE#1 extended his hand, but CM#1 kept quiet with his hands folded. WO#1 stated, "He does lose from time to time." NE#1 said, "I do. I do lose from time to time, and I will get you that cup of coffee. But if you're on that wall, then you owe me a cup of coffee. No? It's a simple bet. Alright?" CM#1 remained quiet.

While NE#1, WO#1, and CM#1 waited, NE#1 commented, "Hey, I get it. You have a narcotics issue or problem. I don't know what your struggles are. I don't wish that on nobody. But don't put that shit on me, okay?" WO#2 returned and told NE#1 that CM#1 had several warrants. NE#1 stepped away to speak with Witness Officer #3 (WO#3) at a cruiser. NE#1 and WO#3 discussed CM#1's warrants and delivering him to the law enforcement agency from where a warrant was issued. NE#1 then spoke with a nearby building security guard, explained why CM#1 was stopped and asked to use a restroom.

NE#1 left the building and reapproached CM#1, who stood with WO#1, WO#2, and WO#3. Officers told CM#1 he was going to jail. CM#1 reached his right hand toward his front hoody pocket. NE#1 told CM#1 several times to remove

¹ NE#1 documented that he recognized CM#1 "as a person of interest for [another officer] as frequently being involved in thefts and burglaries. [The other officer] has an information wall with pictures of prolific people, posted so officers are familiar with individuals who need to be identified for cases he has past and present." OPA did not classify allegations against NE#1 concerning CM#1's detention. As such, this investigation did not cover the stop's legality or identification demand.



his hand. CM#1 removed his hand and placed an object—later found to be narcotics—into his mouth. NE#1 said, “That was dumb. Why would you do that?” NE#1 and the three witness officers took CM#1 to the ground.

With CM#1 on the ground, NE#1 yelled, “Get it out of your fucking mouth right now! Right fucking now! Get it out of your mouth right now. You understand? NE#1 gripped CM#1’s mouth and jaw. NE#1 also punched CM#1’s upper torso three times. NE#1 commanded CM#1 several times to “take the drugs out of your fucking mouth!” NE#1 also said, “That was stupid.”

As the officers prepared to handcuff CM#1, NE#1 demanded him to “Roll on your fucking stomach, right now!” CM#1 complained of pain, saying “ow” and “help me.” NE#1 whined, “Uhhh, uhh, uhh, stop!” As NE#1 handcuffed CM#1, NE#1 said, “You failed [CM#1]. You failed.”

After CM#1 was handcuffed, NE#1 asked him:

- “Do your parents know you have a coke habit?”
- “Did it dawn on you that you were going to swallow dope, and we were going to tackle you, and I was going to punch you like I did to get the dope out of your mouth? Now I have to be accountable for that. You think I want to fucking hit people? I don’t. I don’t like to hit people. You’re swallowing shit. You’re trying to kill yourself. I don’t know if you’re trying to kill yourself. You put me in that predicament where I have to save you because I don’t know if you’re choking. I don’t know if you have drugs that can kill you. Does that make you think about things? Now you’re being a dick to me.”

NE#1 also told CM#1 the encounter was “tough love, without the love.” He told the transporting officer to roll down the windows because “[CM#1 was] kind of stinky. Sorry for stinking up your car.” NE#1 also inquired about the suspected drugs recovered from CM#1, stating, “I want to keep what he was trying to ingest so I can show the sergeant why I got myself a type whatever it is. A type 4. We don’t have that yet, do we? We do today. I’m probably going to get in trouble for doing that.”

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

It was alleged that NE#1 was unprofessionalism by engaging CM#1 in a discourteous and profane manner.

Employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers....” *Id.* Employees must also “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.* Furthermore, “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.*

Here, NE#1’s language, demeanor, and behavior throughout the incident were unprofessional. He directed profanity at CM#1, called him a “high offender,” and insinuated he was a felon. Also, when CM#1 suggested he was being



“harassed,” NE#1 mockingly asked whether CM#1 wanted a supervisor. When CM#1 declined, NE#1 called his concerns “nonsense” that his supervisor would not “want to listen to.” Similarly, NE#1’s offer to “bet” CM#1 about whether he appeared on an officer’s wanted suspects board was inappropriate and distasteful. Even after CM#1 was handcuffed, NE#1 continued his inappropriate behavior, joking about whether punching CM#1 was a “Type Four”² and his body odor.

More troubling, NE#1 has prior discipline and training referrals for similar conduct. In 2017OPA-0894, NE#1 received a sustained finding for verbal aggression and acting in an “emotionally unstable manner,” which escalated a situation, frightened a complainant and her son, and caused another officer to suggest NE#1 leave the scene. In 2019OPA-0359, NE#1 received a training referral for an unnecessary “back and forth” and sarcasm with a complainant. Finally, in 2020OPA-0399, NE#1 received a sustained finding for unprofessional demeanor and comments.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.200 - Using Force 2. Use of Force: When Prohibited

The Complainant alleged NE#1 used prohibited force when he punched CM#1 three times to prevent him from swallowing suspected narcotics.

SPD Policy 8.200(2) lists circumstances where an officer is prohibited from using force. Among that list is “Officers will not use force to stop a subject from swallowing a substance that is already in their mouth.” SPD Policy 8.200(2). Where an officer believes a suspect has ingested harmful substances, the officer must summon medical aid. *Id.* The officer cannot use force to extract a substance or item from inside the body of a suspect. *Id.*

BWV showed NE#1 punched CM#1 three times to prevent him from swallowing narcotics. Those strikes were no less than Type I uses of force. Moreover, NE#1 told OPA he “immediately recognized” that action constituted a “policy violation,” and he reported it to his supervisor. To the extent NE#1 and witness officers suggested the strikes may have prevented CM#1 from choking or overdosing, that explanation is speculative, contrary to policy, and—to avoid choking—counterproductive.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

² SPD policy categorizes uses of force by “types.” In addition to *de minimis* force and deadly force, SPD policy defines three types of force, in increasing levels of seriousness, referred to as “Type I,” “Type II,” and “Type III.” See SPD Policy 8.050 – Use of Force Definitions. There is currently no “Type IV” use of force.