



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 2, 2018

CASE NUMBER: 2018OPA-0212

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 Complainants alleged that Named Employee #1 and Named Employee #2 were unprofessional towards the victim of an assault and a witness to the assault and that Named Employee #1 subjected the victim to excessive force. The Complainants further alleged that Named Employee #3 also engaged in unprofessional conduct towards the victim.

ADMINISTRATIVE NOTE:

The allegations against Named Employee #1 and Named Employee #2 were designated for Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings for these allegations based solely on its intake investigation and without interviewing these Named Employees. As such, these Named Employees were not interviewed as part of this case. OPA conducted a full investigation as to the professionalism allegation against Named Employee #3.

STATEMENT OF FACTS:

The victim of an assault and the mother of a witness to that assault collectively made three complaints concerning an interaction with the Named Employees. First, the victim complained that the officers’ response to the incident was too slow. Second, the victim stated that one of the officers – believed to be Named Employee #1 (NE#1) –



“immediately grabbed [her] and started shaking [her]...and screaming into [her] face telling [her] to calm the fuck down.” Third, the victim and the witness’s mother contended that all of the Named Employees were rude and unprofessional. The victim specifically identified that Named Employee #3 (NE#3) told her that the officers were not her “bodyguards.”

As discussed above, the allegations against Named Employee #1 and Named Employee #2 (NE#2) were expedited. As such, neither NE#1 nor NE#2 was interviewed as part of this case. OPA conducted a full investigation into the professionalism allegation against NE#3. I note that OPA did not investigate the allegation that SPD’s response was too slow, as response times are incident, time, and resource dependent and a late response does not constitute a violation of policy. I further note that, based a review of the CAD Call Report, the officers responded to the scene and reported having it under control just minutes after the call went over the radio.

As part of its investigation, OPA reviewed the Named Employees’ Body Worn Video (BWV). The BWV showed NE#1 responding to the scene to investigate this matter. Officers contacted the subject and detained him. The subject stated that he had been maced by a woman. The officers also began to speak with nearby community members who identified the subject as the primary aggressor and stated that there was a victim in a different location. The victim then arrived on the scene. She came running towards the officers and the subject and was yelling expletives at the subject. NE#1 grabbed the lapels of her jacket in order to keep her back and told her repeatedly to sit down. The victim was very upset and continued yelling. She knocked NE#1’s hands of her jacket and was eventually guided away by two other officers and sat down. At no point did NE#1 use expletives towards the victim.

NE#1 then spoke to a witness, who was a friend of the victim. The witness said that the subject approached them when they were sitting together and began talking to them and saying inappropriate things. She stated that he offered them “fifty” for an undisclosed act. NE#1 then asked the subject, “I’m not saying you are, but he thought you were prostitutes?” The witness looked shocked by that question and responded: “he didn’t think we were prostitutes.” NE#1 agreed and said: “you’re obviously not.”

NE#1 then went to update the other officers, including NE#2. NE#2 also spoke with the witness and with the victim. The victim refused to engage in a substantive conversation with him. During his discussion with the witness, he asked whether the subject had solicited her for prostitution purposes. The witness responded that he had proposed giving them “fifty.” The victim asked for a female officer to come to the scene and NE#2 went over the radio to see if a female officer was available. A female officer later arrived. NE#2 asked both the victim and the witness whether they wanted to speak with a supervisor and the victim said yes. NE#2 called a supervisor to the scene.

NE#3 was the supervisor who came to the scene. He was advised of the situation and went to speak with the victim. The victim was very upset and spoke to NE#3 with a raised voice. In response to her statements, NE#3 kept saying “ok.” The victim asked him why he kept saying “ok” and what he was going to do about her complaints. NE#3 responded that he was letting the victim talk to get her frustration out of her system. NE#3 began to explain why the officers’ response time might have been slow and the victim interrupted and began to speak about the assault. NE#3 tried to interject but was unable to. At one point, he stated: “are you going to let me talk at any point, or are you just going to talk over me the whole time.” They continued to go back and forth and ultimately NE#3 told her that if she was not going to let him talk he would just refer her complaint to OPA. NE#3 explained that when officers respond to calls, they receive vague information and need to search for the participants in the incident. NE#3 then told her that they were “not bodyguards” and they could not be there at the time the assault occurred. The victim asked him to



repeat that and he did. The victim then stated that she wanted to make an OPA complaint. An OPA complaint was filed by NE#3 on her behalf.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The victim alleged that she was subjected to excessive force when NE#1 grabbed her jacket and “shook” her. First, while the BWV showed that NE#1 did grab the lapels of the victim’s jacket, it conclusively established that he did not shake her. Second, at the time she rushed up to the officers, yelling and screaming expletives, the officers were still conducting their investigation. Even though they likely suspected that the subject was the primary aggressor, they did not know that for sure at that time and it was reasonable for NE#1 to be alarmed by a woman running towards him and to stop her from doing so. Third, even if they did absolutely know that the subject was the primary aggressor, they still would have been warranted in keeping the victim away from him and preventing a further physical altercation.

The force used by NE#1 to keep the victim back and to prevent her from nearing the subject was de minimis. It was further reasonable, necessary, and proportional, and, thus consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

The victim and the witness’s mother alleged that NE#1 and NE#2 were unprofessional when they referenced prostitution in their conversation with the witness. Based on my review of the video, NE#1 and NE#2 both asked questions concerning the incident that touched on prostitution. NE#1 asked the witness: “I’m not saying you are, but he thought you were prostitutes?” When the witness responded with apparent surprise to that question and said that they were not prostitutes, he responded: “you’re obviously not.” NE#2 asked the witness if the subject was trying to solicit them for prostitution. She did not appear to take offense to this question and provided an answer.

While I do not fault the witness for being taken aback by these questions, I do not believe that they were inappropriate. I believe that they were legitimate and probative questions that allowed the officers to further investigate this case. I do not feel that these questions constituted unprofessional behavior on the part of either NE#1 or NE#2.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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



Named Employee #2 - Allegations #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegations #1

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

The victim alleged that NE#3 was unprofessional when he stated, in response to her criticisms of the law enforcement response to this incident, that the officers were not her “bodyguards.”

SPD Policy 5.001-POL-9 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-9.)

At his OPA interview, NE#3 provided further explanation for this comment. He stated that he was trying to convey that the officers could not arrive at the scene immediately and could only assist the victim after being dispatched to the call. He told OPA that he did not believe that this statement was unprofessional.

At the outset, I agree that NE#3’s comment did not rise to the level of unprofessional conduct. Moreover, I agree with the substance of his comment – police officers cannot be expected to be omnipresent and cannot be faulted for not responding to calls instantaneously. That being said, under the circumstances that faced him at that time, I believe that this statement and its delivery were inadvisable. As he could tell when he arrived, the victim was very emotional and upset. Indeed, she had just been assaulted. Perhaps the better course of action would have been to calmly listen to the victim and, when their discussion became unproductive, to simply end the conversation and file an OPA complaint on her behalf rather than to make the “bodyguard” statement. I counsel NE#3 to choose his words more carefully in the future but recommend that this allegation be Not Sustained – Unfounded.

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