



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 13, 2019

CASE NUMBER: 2018OPA-0834

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	Sustained
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Sustained
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)
# 5	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Lawful and Proper)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Sustained
# 7	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained
# 8	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Training Referral)
# 9	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Unfounded)

Imposed Discipline

Suspension without Pay – 15 day

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Sustained



# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)
# 5	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Lawful and Proper)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Sustained
# 7	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained
# 8	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 9	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained
# 10	5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Sustained

Imposed Discipline

Suspension without Pay – 3 day

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

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:

It was alleged that Named Employee #1 and Named Employee #3 violated multiple Department policies during an incident involving the Complainant and a number of other individuals. It was further alleged that Named Employee #2 and Named Employee #4, who were supervisors during this incident, failed to identify, investigate, and/or refer potential misconduct.



ADMINISTRATIVE NOTE:

OPA initially recommended that Named Employee #4 receive a Sustained finding for failing to identify potential serious misconduct engaged in by Named Employee #1 and Named Employee #3. At the discipline meeting in this matter, Named Employee #4's chain of command argued that he should receive a Training Referral rather than a Sustained finding. The chain of command recognized that Named Employee #4 failed to initially critically review and identify misconduct, but also pointed out that he did ultimately refer this matter to OPA. The chain of command believed that the failures on Named Employee #4's part would be better rectified through training rather than discipline and that this training could ensure that Named Employee #4 would not repeat this conduct in the future. Lastly, the chain of command identified that it seemed unfair that Named Employee #4 was receiving a Sustained finding while Named Employee #2, who also failed to identify misconduct, was issued a Training Referral. OPA agrees and accordingly amends its finding for Named Employee from Sustained to a Training Referral.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and Named Employee #3 (NE#3) were dispatched to a call concerning 10 individuals who were involved in a disturbance at bus stop in West Seattle. It was reported that these individuals were likely intoxicated, were breaking bottles, and were pushing each other. No weapons were seen. In addition, no specific descriptions were given for the individuals, only that there were approximately 10 males involved.

The CAD Call Report indicated that NE#1 and NE#3 arrived on scene at 00:05 hours. The CAD further indicated that two other officers arrived a minute later ("out with four"). Lastly, the CAD noted that the incident was under control "for now" at 00:07 hours and was fully under control at 00:20 hours. The call was cleared by NE#1 and NE#3 at 03:12 hours with the notation "report written."

NE#3 wrote the General Offense Report for this incident. The report stated that he and NE#1 responded to the bus stop and observed the 10 males. NE#3 wrote that the males were sitting on the side of the road with open containers of alcohol. He recounted that the individuals all appeared to be intoxicated. NE#3 reported that the males thought that the incident was "funny." With regard to his and NE#1's conversation with the men sitting on the side of the road, NE#3 wrote the following: "While we were trying to talk to the males they were making jokes and thinking everything [NE#1] and [I] was saying was a joke and funny." NE#3 wrote that there were two other males across the street that were yelling profanities at the officers. He stated that he "addressed" them and that, at a later point, one of the males told NE#3 that he would call an Uber for him and his friends. NE#3 concluded his report by documenting that a Sergeant, Named Employee #4 (NE#4), arrived on scene and instructed the officers to leave. No *Terry* Templates were included with the General Offense Report and, based on a review of the Department's Record Management System, none appear to have been completed. The report further indicated that no force had been used.

The response by NE#1 and NE#3 to this incident was fully captured on Body Worn Video (BWV). The video recorded: the interactions between the officers and the involved males, including some of the statements that formed the basis for the professionalism allegations in this case; the force used by the officers; the detentions of the males; and NE#4's response to the scene. A detailed recitation of the video is set forth in the Case Summary for this case.



An OPA referral was later made concerning the Complainant allegation that he was subjected to excessive force by NE#1. NE#4 did not refer, and did not appear to investigate, any other potential misconduct on the officers' part. NE#4 also conducted an investigation into the force used by NE#1 and had him complete a Type I use of force report. That force was later reviewed by Named Employee #2 (NE#2), who was the officers' Lieutenant. NE#2 documented watching the portion of the BWV that concerned NE#1's force. She deemed the force to be consistent with policy. She did not identify or refer to OPA any potential misconduct. Notably, neither NE#2 nor NE#4 identified any performance issues on the part of NE#1 and NE#3 during this incident. No Performance Appraisal System entries or other counseling was completed for either officer.

During its intake investigation, OPA reviewed the BWV, as well as the other documentation concerning this case. OPA classified a number of other allegations for investigation regarding the detention of the individuals, the force used on them, and other issues germane to the officers' professionalism and how they conducted themselves during this incident. OPA also alleged that NE#2 and NE#4 both failed to identify and to refer to OPA potential serious misconduct on the part of NE#1 and NE#3. As part of its investigation, OPA interviewed all of the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 used force against the Complainant when he picked him up from a seated position and, when the Complainant was standing, walked him over to a patrol vehicle and pressed the Complainant against the side. NE#1 reported that he took this action because the Complainant was "very vocal" and, as such, he wanted to get the Complainant away from the other individuals to increase those individuals' compliance with the officers. NE#1 stated that this force was reasonable and necessary to further the officers' investigation into the incident. NE#1 confirmed that he did not perceive the Complainant to present a physical threat to him; however, he still believed that the force he used was proportional under the circumstances of this case.

Based on OPA's review of the video, only a low level of force was used. NE#1 did not appear to slam the Complainant against the car, as the Complainant later alleged. While I do not completely agree with NE#1 that the force was necessary, given the low level of force and given NE#1's at least plausible explanation for why he felt it was appropriate, I find that it was 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

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.*)

NE#1’s conduct and statements during this incident violated the Department’s professionalism policy in a number of respects.

First, NE#1 used profanity towards the individuals and the Complainant on multiple occasions. Included among his statements were the following: “I’ll throw your ass in the back of the car so fast”; “sit your ass down and shut-up”; and “get your ass outta here.” These statements represented profanity purposed to insult and, as such, were inconsistent with policy. Moreover, after the incident had concluded and while talking to other officers, NE#1 was recorded saying “Fuck Frank-1, Fuck Frank-2.” NE#1 explained that this was meant to convey his frustration that he was required to handle a call outside of his assigned sector. NE#1 should have been aware that this statement was recorded on BWV and that it reflected poorly on him and the Department.

Second, NE#1’s statements and demeanor during this incident were contemptuous and disrespectful. NE#1 told OPA that he chose to speak as he did to the individual and the Complainant, in part, “to be on their level a little.” While this may be the case, it does not exempt him from complying with the requirements of this policy.

Third, NE#1 statements and demeanor during this incident served to unnecessarily escalate the interaction and played a factor in NE#1’s ultimate decision to go hands on. As such, he acted inconsistent with this policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

SPD Policy 6.220-POL-1 governs *Terry* stops and stands for the proposition that *Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a *Terry* stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a *Terry* stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it "cannot provide the justification for the original stop." (*Id.*)

Even presupposing that NE#1 and NE#3 had reasonable suspicion to detain the individuals who were sitting by the side of the road with open containers surrounding them, there was no such legal authority to detain the individuals at the bus stop.

NE#1 told OPA that he went over to the bus stop because NE#3 was already there. He contended that the man was not detained at the time. NE#1 stated that this was the case even though NE#3 had a hand on the man's shoulder and was pointing his Taser at him, and even though NE#1 told the man to "sit down" and "shut up" and threatened to arrest him. NE#1 indicated that, from his perspective, the man was free to leave at any time. When asked what reasonable suspicion existed to detain the man, NE#1 responded: "We had none, because I didn't, - me, I didn't detain him. I was over because [NE#3] went over, and I figured he knew something about this guy and figured they was together." However, NE#1 confirmed that they did not know that man was connected with the other individuals until after the detention had been effectuated and after they had spoken to the individuals.

When asked what the specific facts and circumstances were that supported the detention at the bus stop, NE#3 responded: "There were no facts at the time" and stated that he believed that the man "might be a part of whatever was going on." NE#3 also suggested that the detention was appropriate because the man could have been a victim of a crime; however, even if true, this did not provide legal authority to conduct a *Terry* stop. Moreover, NE#3 acknowledged that he would not normally approach a victim as he did the man. Further, OPA notes that he pointed his Taser at the man, which strongly undercuts any possibility that NE#3 truly believed that the man was a victim.

Ultimately, at the time they detained the man at the bus stop, the officers did not have reasonable suspicion to do so. Being obnoxious or intoxicated at a bus stop is not a crime and did not provide a basis for the stop. Accordingly, this stop was contrary to policy. While NE#3 effectuated the stop, NE#1 took part in and extended the stop when he told the man to "sit down" and "shut up," as well as when he threatened to arrest him. Contrary to NE#1's assertion, a reasonable person would not have felt that they were free to leave at that time.

For the above reasons, I recommend that this allegation be Sustained as against both NE#1 and NE#3.

Recommended Finding: **Sustained**



Named Employee #1 - Allegations #4

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

NE#1 and NE#3 did not activate their In-Car Video (ICV) until eight minutes into the incident. This matter was brought to their attention by NE#2. After becoming aware of the late activation, the officers drove their vehicle to be inspected by SPD Information Technology (IT). SPD IT believed that an interference signal delayed the start of the officers' ICV. The officers later drafted supplemental reports that documented the late activation and the steps they took to explore and address this issue. Lastly, NE#1 and NE#3 recorded the entirety of their law enforcement response to this incident on BWV.

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; searches and inventories of vehicles, persons, or premises; and questioning victims, suspects, or witnesses.

Here, I find that NE#1 and NE#3 attempted to properly activate their ICV, but that it began recording late based on circumstances outside of their control. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both officers.

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

Named Employee #1 - Allegation #5

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

As discussed above, when they became aware that their ICV was activated late, both officers documented this in a supplemental report and provided the reason for the late activation and the steps they took to explore and address the issue. While the officers did not update the CAD Call Log, this was due to the fact that they did not know about the late activation at the time.

Given the above, I find that NE#1 and NE#2 substantially complied with this policy and I recommend that this allegation be Not Sustained – Lawful and Proper as against both officers.

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



Named Employee #1 - Allegation #6

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that officers document all *Terry* stops using a *Terry* Template. Within the *Terry* Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

OPA’s investigation revealed that NE#1 and NE#3 did not complete *Terry* Templates for any of the detentions they effectuated.

At his OPA interview, NE#1 recognized that no *Terry* Templates were generated. He contended, however, that he did not believe that *Terry* Templates were required for dispatched calls. He stated that, instead, he believed that they were only needed when conducting proactive stops. While this may be NE#1’s understanding of the policy, this is incorrect. A *Terry* Template is required for every detention based on reasonable suspicion conducted by an officer. There is no support in the plain language of the policy for the contrary explanation proffered by NE#1.

NE#3 also acknowledged that no *Terry* Templates were generated even though multiple *Terry* stops were effectuated. He stated that he forgot to do the *Terry* Templates and that he did not have the names of any of the individuals stopped. However, NE#3 had the Complainant’s identification.

When NE#1 and NE#3 failed to complete *Terry* Templates even though they detained multiple individuals, they acted contrary to this policy. As such, I recommend that this allegation be Sustained as against both officers.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #7

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)



The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

Based on OPA’s review of the evidence – most notably, the Department video, it is evident that NE#1 and NE#3 failed to de-escalate this matter and, in many respects, impermissibly escalated this incident. The officers did not use time, distance, and shielding. They did not use containment or place barriers between themselves and the individuals. Neither applied the LEED model and, instead, they aggressively spoke to the individuals. Most notably, they both failed to abide by the direction in this policy to avoid physical confrontation unless immediately necessary.

At his OPA interview, NE#1 acknowledged that de-escalation was safe and feasible at the time he began interacting with the Complainant and the individuals and stated that neither he nor NE#3 were in danger at the time. NE#1 recognized that he could have used time, distance, and shielding, as well as cover and containment. However, he did not do so. Instead, he approached the Complainant while using threatening language. He stated that he would not have done so had the Complainant complied with his direction to “come here.” But based on the video, such an order was never given by NE#1. Moreover, NE#1 went hands on with the Complainant approximately 35 seconds after first arriving. While NE#1 contended that he used verbal persuasion on the Complainant, the video suggests the opposite. Indeed, virtually immediately after responding to the location, NE#1 told the individuals that he was not “playing” with them and that he would throw their “ass” in his patrol vehicle “so fast.” As the incident progressed, NE#1 continued to use escalating and threatening language, which increased the need to use force. Notably, when asked whether he used LEED, NE#1 stated that he did not know what this was.



NE#3, like NE#1, acknowledged that de-escalation was safe and feasible in this situation. He told OPA that he approached the individual at the bus stop and pushed him into a seated position in order to “confront” the individual, to “set a police presence,” and to make the individual aware that he was not there to “mess around and fool around” and that he and NE#1 “mean business.” He recognized that he was not in danger of physical harm and that he could have just ignored the individual’s statements and walked away. He admitted that his actions increased the likelihood that he would need to use force. The video depicted, and NE#3 admitted, that he did not use any verbal persuasion or apply LEED.

Given the above, I find that both NE#1 and NE#3 failed to de-escalate during this incident. To the contrary, they inappropriately escalated the situation by their words and conduct and made it more likely that they would be required to use force. This was inconsistent with this policy and, as such, I recommend that this allegation be Sustained against both NE#1 and NE#3.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #8

5.001 - Standards and Duties 14. 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.*)

NE#1 made several statements to the individuals that suggested that his conduct towards them was retaliatory. For example, at one point, NE#1 threatened to put an individual into his patrol vehicle if he kept “playing around.” Another individual told NE#1 that he had the right to free speech and NE#1 responded that the individual’s rights would get him into the back of the patrol vehicle and, if he spoke again, he would be arrested. On another occasion, a witness officer told NE#1 that the Complainant was seeking to make an OPA complaint based on NE#1’s alleged use of excessive force. NE#1 replied that if he had to do paperwork he was going to take the Complainant to jail.

NE#1 denied that his statements or actions were retaliatory. With regard to his statements that he would put the individual in the rear of the patrol vehicle, he claimed that he had probable cause to arrest that individual so his actions would not have constituted retaliation. With regard to his statement concerning the Complainant, he stated that this was a joke. He acknowledged that he did not have probable cause to arrest the Complainant and stated that he did not make his comment to interfere with the Complainant pursuing an OPA complaint against him. I note that this did not ultimately deter the Complainant from doing so here.

While I find that these statements were inappropriate, they are already captured by the recommended Sustained finding for professionalism. Ultimately, while a close call, there is insufficient evidence to establish that NE#1’s actions, even if largely impermissible, were retaliatory in nature. As such, I recommend that NE#1 receive a Training Referral.



- **Training Referral:** NE#1 should receive retraining concerning the provisions of SPD Policy 5.001-POL-14. He should be counseled by his chain of command concerning how his conduct and statements could have been construed to suggest retaliation on his part. He should be informed that similar behavior in the future will likely result in a recommended Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #9

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

While I find that the General Offense Report that was completed in this case was deficient, this report was the responsibility of NE#3, not NE#1. NE#1 had no requirement under policy to write a report. As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

Named Employee #2 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

The only reason that I do not recommend that this allegation be Sustained against NE#2 is because she, unlike NE#4, did not watch the entirety of the video and only reviewed one minute of NE#1's BWV. While this short clip should have been sufficient to give NE#2 concern about this incident and should have prompted her to watch more video to determine whether there was serious misconduct, I cannot say that she violated policy when she failed to do so.

That being said, NE#2 did not, in OPA's opinion, conduct a comprehensive review of this incident. For example, while she heard NE#1 tell the individuals that he was going to throw their "ass" into his patrol vehicle. She did nothing with that statement. She did not even note it in her review, let alone counsel NE#1 concerning his use of profanity and take other appropriate action. When she failed to do so, she acted inconsistent with the expectations placed on her as a Lieutenant. NE#2 should work on conducting more thorough and critical reviews in the future.

For the above reasons, and while the decision to not sustain this allegation was a close call, I recommend that she receive the below Training Referral.



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- **Training Referral:** NE#2 should be reminded of her responsibility to investigate or refer allegations of misconduct. She should be counseled concerning her failure to do here and should be instructed to conduct more thorough and critical reviews of her officers' conduct in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegations #1

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

NE#3 used force when he grabbed the left upper chest area of one of the males at the bus stop and forced that male into a seated position. The man initially refused to sit down, telling NE#3 that there was no legal justification for that order. However, NE#3 then withdrew his Taser and pointed it at the man. This caused the man to comply with NE#3's orders and to sit.

As discussed more fully below, NE#3 recognized that he did not have reasonable suspicion to detain the male. He stated his belief that he was justified in threatening the male with a Taser as a form of de-escalation and to make the male sit down in order to put the male in a position of disadvantage. NE#3 told OPA the following:

"I'm trying to get him to sit down, just to show that – I'm not, you know, we're not there to play any games, and I'm not just having him sit down just to sit down, trying to put him at a disadvantage, he's intoxicated, I don't know what he's going to do."

Ultimately, NE#3 asserted that he believed his force used on the male was reasonable, necessary, and proportional.

Here, NE#3 had no legal authority to detain the male. As such, he had no legal authority to use force to compel the male to sit down. This was the case regardless of whether he used de minimis force or a higher level. Accordingly, any force that he used was, under the circumstances, not reasonable, necessary, and proportional, and was, thus, inconsistent with policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #3 - Allegation #2

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

NE#3, like NE#1, engaged in numerous instances of unprofessional behavior during this incident.

First, he used profanity directed towards the individuals and the Complainant on several occasions. Included were the following statements: “What the hell is all this shit?”; “You don’t want to find out, you got a big ass mouth like you do; sit your ass down right now”; “This is what happened, you guys tore up the whole fucking street”; “We tried to fuck with you, if you guys weren’t over here acting the fool...”; “your priorities are all fucked up tonight”; “You’re not being the most reasonable”; and “you’re being a dumbass right now.” While, standing alone, each of these statements may not rise to the level of misconduct, they do collectively and when viewed in concert with NE#3’s other behavior. Notably, NE#3 acknowledged that his excessive profanity was unprofessional at his OPA interview.

Second, NE#1’s statements were contemptuous and disrespectful towards the individuals and the Complainant. This is clear from the plain language of these statements and the manner in which they were said.

Third, NE#3’s statements impermissibly escalated this incident. His statements were aggressive and served no discernable law enforcement purpose. To the contrary, his statements made it more likely that he would be required to use force during this interaction.

As indicated above, I find that NE#3’s conduct and statements during this incident were unprofessional. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegations #4

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

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegation #5

16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

For the same reasons as stated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #6

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegations #7

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as stated above (see Named Employee #1, Allegation #7), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #8

5.001 - Standards and Duties 14. Retaliation is prohibited

NE#3 acknowledged that he was angered when he was called a “midget” by one of the individuals at the scene. However, he denied that this caused him to take adverse actions against the Complainant or any of the other individuals. He further denied retaliating against the Complainant or the other individuals during this incident.

While I find that NE#3 engaged in unprofessional behavior and other misconduct during this incident, the evidence is insufficient to establish that he did so in order to retaliate against the Complainant or any of the other individuals.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#3.

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



Named Employee #3 - Allegation #9

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 requires officers to document all primary investigations on a General Offense Report. The policy further instructs that such reports “must be complete, thorough and accurate.” (SPD Policy 15.180-POL-5.)

NE#3 completed the General Offense Report for this incident. His report contained virtually no details concerning the specific nature of his interactions with the individuals and it was largely an incomplete picture of his and NE#1’s involvement in this incident. He did not report that he detained several of the individuals, as well as the basis for those detentions and the duration and nature of the stops. He further did not report that he used physical force, even if de minimis, or that he pointed his Taser at one of the individuals.

From NE#3’s recounting, he simply came to the scene, approached and spoke briefly to the individuals, and was then was told to leave by a supervisor. This report was significantly lacking in nearly every respect and, as such, it was inconsistent with policy.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #10

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

NE#3’s BWV captured that one of the men at the bus stop asked him what his name was. NE#3 responded: “My name is officer.” NE#3 did not provide his name or serial number to the man at any point.

SPD Policy 5.001-POL-7 requires SPD employees who are engaged in Department-related activities to identify themselves when requested. This includes providing their names and serial numbers when requested. (SPD Policy 5.001-POL-7.)

At his OPA interview, NE#1 acknowledged that he was required to provide this information when it was requested, stated that there was no exigency or threat that prevented him from doing so, and explained that he did not respond to the male appropriately because he was frustrated with the actions of the male and his companions.

When NE#1 failed to provide his identifying information upon request, he violated policy. This was not excused by his frustration with the individuals. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #4 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

NE#4 reviewed the video and identified the allegation by the Complainant that NE#1 subjected him to excessive force and had a “vendetta” against him. NE#4 ensured that this matter was referred to OPA. However, even though he watched NE#1’s BWV 12 times during a seven-day period, he failed to identify any of the other acts of potential misconduct engaged in by NE#1 and NE#3.

At his OPA interview, NE#4 recognized that he failed to identify potential serious misconduct during his review. He noted that he observed some of the officers’ unprofessional statements, but indicated that, due to his focus on the excessive force claim, he did not investigate or report that conduct. NE#4 told OPA that he initially had no issue with NE#3’s detention of the man at the bus stop but, after further review, he thought it was not supported by reasonable suspicion. NE#4 also acknowledged that he failed to identify any of the other potential violations of policy classified for investigation in this case. He further confirmed that he did not counsel or train either NE#1 or NE#3 as a result of this incident, and that he did not document any deficiencies or concerns with their conduct in Performance Appraisal System entries.

In the initial DCM for this matter, OPA engaged in the following analysis concerning NE#4’s review of this incident:

OPA recognizes that Sergeants have a great deal of responsibility and that their regular duties involve reviewing copious amounts of Blue Team incidents, force reports, arrest reports, and Department video. However, as perhaps the most essential supervisory position in the Department, the role of a Sergeant carries high expectations with it. Included among these, is the expectation that Sergeants will critically review the law enforcement activities of the officers they supervise and, when necessary and appropriate, that they will identify when those officers act inconsistent with policy and take action in this regard.

Here, NE#4 simply failed to do so. He did not critically review this case or identify and address what should have been clear to him was potential misconduct. For these reasons, I find that he acted contrary with this policy and I recommend that this allegation be Sustained.

However, as discussed above, OPA was convinced by NE#4’s chain of command that his lack of a critical and comprehensive review in this case is better addressed by training rather than discipline. As such, OPA amends its findings on this allegation and now recommends that NE#4 receive the below Training. NE#4 should be on notice that similar conduct in the future will likely result in a recommended Sustained finding.



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- **Training Referral:** NE#4's chain of command should debrief this incident with him, including watching the BWV together and going over the review NE#4 conducted. The chain of command should make clear the Department's expectations that NE#4 will comprehensively and critically review incidents and identify and refer potential misconduct when appropriate. As discussed above, NE#4 should be informed that a future failure to do so, will likely result in a recommended Sustained finding by OPA. This counseling and training should be documented and this documentation should be maintained in an appropriate database.

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