



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 30, 2019

CASE NUMBER: 2018OPA-1073

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 (Unfounded)
# 2	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.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee cut his tent with a knife and then threatened to throw his belongings away. The Complainant further alleged that the Named Employee failed to identify himself pursuant to the Complainant’s request.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant initiated this complaint in which he alleged that Named Employee #1 (NE#1) engaged in misconduct. Specifically, the Complainant contended that, on November 10, 2018, NE#1 cut his tent open and further threatened to throw the Complainant’s belongings away.

As part of its investigation, OPA determined that there were no incidents that could be found in the Records Management System that involved a law enforcement response to the Complainant’s tent on November 10. OPA further reviewed all of NE#1’s Body Worn Video (BWV) for that date and did not observe any interactions between him and the Complainant.

OPA was able to locate the Complainant at his tent on January 2, 2019 and spoke with him concerning this incident. The Complainant declined to provide a recorded statement at that time, but he repeated his allegations against NE#1 and showed OPA the damage to his tent. OPA photographed the damage, which was consistent with the tent being torn or cut.

On January 17, 2019, OPA again went to the Complainant’s tent in order to speak with him. At that time, the Complainant agreed to a recorded interview. The Complainant stated that NE#1 yelled at him, kicked his tent, and threatened to throw the Complainant’s belongings away if the tent was not moved. He stated that NE#1 was with another officer at that time. The Complainant told OPA that he was able to get the officers to leave the vicinity of his

tent, but that they returned around an hour later. The Complainant alleged that, at that time, NE#1 cut his tent with a knife rendering it unusable. The Complainant described NE#1's knife as being six to eight inches long with a blade that curled at the tip and serrated edges. He told OPA that NE#1 grabbed his arm and told him that he was under arrest. The Complainant stated that individuals witnessed the incident but that he could not identify any of them.

OPA also interviewed NE#1. NE#1 stated that he did interact with the Complainant on November 10. He said that he was with another officer at the time – referred to here as Witness Officer #1 (WO#1). He told OPA that the City had recently removed tents from that location and that he observed that the Complainant's tent was still erected. NE#1 said that he asked the Complainant to remove the tent from that location. NE#1 stated that he knocked on the Complainant's tent and that the Complainant yelled at him and told NE#1 that he needed a warrant to speak with him. NE#1 recounted that he told the Complainant that he did not need a warrant to have a discussion. NE#1 denied that he kicked the tent. NE#1 denied ever cutting the Complainant's tent or threatening to throw away the Complainant's belongings. NE#1 indicated that he did not intend to take any law enforcement action against the Complainant and that he viewed their interaction as a social contact. NE#1 denied ever grabbing the Complainant's arm and telling him that he was under arrest.

OPA further interviewed WO#1. He provided a similar account to NE#1 in most respects. However, WO#1 stated that he believed that NE#1 made physical contact with the tent at one point. WO#1 recalled seeing the tarp fall off and assumed that NE#1 grabbed it. WO#1 denied, however, seeing NE#1 kick, cut, or otherwise damage the tent. WO#1 also stated that NE#1 told the Complainant that he could remove the tent and his belongings without a warrant. WO#1 also believed that their interaction with the Complainant was a social contact.

Based on WO#1's statements, OPA re-interviewed NE#1. He did not recall touching the tent. He speculated that, in response to the Complainant's assertions that the tent was damaged, he could have lifted up the tarp to verify whether this was the case, thus causing the tarp to fall to the ground. However, he again denied ever cutting or purposefully damaging the tent. NE#1 confirmed that he carried a knife with him on the date in question. OPA observed and photographed the knife. The knife possessed by NE#1 did not match the description provided by the Complainant. Lastly, NE#1 did not recall telling the Complainant that he could move his tent and property without a warrant and reasserted his belief that he raised the warrant in the context of not needing one to have a conversation with the Complainant.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If the Complainant's assertions were true, the behavior alleged would have constituted a violation of this policy.

Based on the totality of the evidence gathered during OPA's investigation, I do not believe that there is a sufficient basis to find that NE#1 engaged in the conduct alleged by the Complainant. NE#1 denied doing so and this account was corroborated by WO#1. I find WO#1's recollection of the events to be detailed and credible and, in OPA's opinion, it strongly supports a finding that no violation occurred. Moreover, the knife that the Complainant described as being used to cut his tent was inconsistent with the knife that NE#1 carried. I note that the Complainant contended that the knife used was the same as one that an assailant threatened him with several weeks earlier. I find it unbelievable that NE#1 would possess and utilize that same knife and, as such, this diminished the weight I placed on the Complainant's testimony.

Ultimately, when applying a preponderance of the evidence standard, I find that the misconduct alleged did not occur. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

The Complainant further alleged that he asked NE#1 to identify himself but that NE#1 refused to do so. If true, this would constitute a violation of SPD Policy 5.001-POL-7.

Both NE#1 and WO#1 confirmed that NE#1 provided his name and badge number to the Complainant. NE#1 stated that he did so multiple times. WO#1 asserted that he heard NE#1 relay this information to the Complainant on at least one occasion. I credit their accounts.

As I find that NE#1 complied with this policy, I recommend that this allegation be Not Sustained – Lawful and Proper.

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