



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2020

CASE NUMBER: 2019OPA-0555

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	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)

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 Employees were unprofessional to her and the Subject during and after the Subject's arrest.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees were conducting an emphasis patrol for boating under the influence. The Named Employees observed the Subject drive a boat onto a trailer and then drive a truck "up the ramp to a vessel securing station." Named Employee #1 (NE#1) documented that he heard the Subject speak in "poorly enunciated and slurred speech." NE#1 also documented that he saw that the Subject: "clamored out of the boat in a somewhat ungainly and uncoordinated manner." NE#1 approached the Subject and asked him if he had been drinking. The Subject replied that he had consumed one drink. Notably, the officers had earlier watched the Subject walk off of the boat with a translucent trash bag that appeared to contain several beer cans. The Subject consented to perform field sobriety tests and, at the conclusion of those tests, NE#1 concluded that the Subject was impaired. The arrest was screened by a supervisor at the scene.

NE#1 documented that, post arrest, the Subject admitted to drinking three beers and a can of White Claw over a four-hour period. At the precinct, a blood alcohol content test was administered. The Subject blew a 0.029 and 0.028, both below the legal limit. NE#1 noticed that the Subject had a medical bracelet and learned that he had been treated for a gastro-intestinal infection. Due to the high heat on that day, the amount of time that the Subject had spent on the boat while in the sun, and the infection, NE#1 no longer believed that he had probable cause to believe that the Subject was impaired by alcohol. NE#1 informed the Subject of this decision and released him from custody. The Complainant arrived at the precinct to meet the Subject. NE#1 discussed the initial decision to arrest the Subject, as well as why he was released, with both the Subject and the Complainant.

The Complainant later complained to OPA concerning the arrest and her belief that the officers were unprofessional. She felt that, overall, NE#1 conducted an unfair investigation. She asserted that the public nature of the investigation was inappropriate. She believed that the officers made assumptions and concluded that the Subject was drunk without any evidence. She further asserted that NE#1 continued to harass the Subject even after he was arrested and released. Lastly, she alleged that Named Employee #2 (NE#2) made an unprofessional statement to her when NE#2 said that getting arrested would be the best thing to ever happen to the Subject. This investigation ensued.

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.*)

The Named Employees’ contact with the Complainant and the Subject was captured in its entirety on Body Worn Video (BWV). A review of that video does not support the Complainant’s allegation that NE#1 was unprofessional towards the Subject or that NE#1 harassed the Subject at any time. Notably, he spoke calmly and politely with both the Complainant and the Subject during this incident and endeavored to explain his decision making before and after the arrest. While NE#1 did perform the criminal investigation while in public, this does not represent a policy violation and, to the contrary, is appropriate police procedure. Lastly, while NE#1 may ultimately have been incorrect in his belief that the Subject was intoxicated, the law enforcement action he took was based on his good faith observations at the scene. These observations, which were captured on BWV, were not unreasonable, even if later deemed insufficient to establish probable cause.

While it is certainly unfortunate that the Subject was forced to deal with being arrested and even though OPA empathizes with both him and the Complainant, NE#1 did not violate SPD policy during this incident and, based on the BWV, did not appear to have been unprofessional. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegations #1

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

As discussed above, the Complainant believed that NE#2’s statement concerning the Subject’s arrest being potentially the best thing that could happen to him was unprofessional. OPA understands the Complainant’s perspective and sees why the Complainant was upset by this statement. This is particularly the case given that the Subject was later un-arrested and released.

However, even if the Subject reasonably deemed the statement insensitive, OPA concludes that NE#2 was well intentioned when he made the statement. From OPA’s review of the BWV, it appears clear that, based on what NE#2 knew at the time, he believed the Subject to be drunk. Moreover, given his past experience, NE#2 genuinely

thought that being caught was the best thing that could happen as it could serve to prevent the Subject from repeating this behavior in the future. For these reasons, OPA finds that the evidence does not support a determination that NE#2 was unprofessional. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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