



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 30, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0228

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Sustained
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 4	5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in all Communications	Not Sustained (Inconclusive)

Imposed Discipline

Written Reprimand

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 the Named Employee may have failed to conduct an adequate investigation, as well as that the Named Employee may have engaged in unprofessional conduct and dishonesty.

ADMINISTRATIVE NOTE:

In addition to his claims against Named Employee #1, the Complainant also asserted that the Acting Sergeant to whom he spoke concerning Named Employee #1 was dismissive towards him and unhelpful. OPA also identified that, even though a complaint was made and while there were apparent shortcomings with Named Employee #1's handling of this incident, the Acting Sergeant took no remedial action and did not make an OPA referral. These allegations were returned to the chain of command to be handled as a Supervisor Action.

SUMMARY OF INVESTIGATION:

Named Employee #1 was dispatched to a report of a shoplift at a grocery store. The call was later updated to indicate that a community member – the Complainant in this case – was reporting that the suspect had also blown his nose at the Complainant. Given the ongoing COVID-19 epidemic, the Complainant asserted that this constituted an assault. The Complainant requested contact by the responding officer. When he arrived at the store, NE#1 spoke to the Complainant. The Complainant said that he was the person who had been “snotted on.” NE#1 told him that no one was getting arrested for blowing their nose and said that he would check the security cameras. The Complainant



referenced that he could get sick and die. NE#1 said that it would be documented and again indicated that he would review the security camera. The Complainant asked whether the police would track down the suspect if the Complainant did die. NE#1 responded: "dude this Corona virus going on and you talk about somebody snotted on you?" The Complainant told NE#1 that he had a friend in the hospital on life support. NE#1 queried whether the blowing of the nose by the suspect was purposeful and the Complainant said that it was. NE#1 stated that, if it was not on purpose, the Complainant would be found to be making a false report. NE#1 asked if the Complainant was making a false report and the Complainant said no. NE#1 asked if there were any witnesses and the Complainant referenced the security camera. NE#1 then walked away to go watch the video.

The security camera showed the suspect blowing his nose to his right side while walking out of the store with the stolen merchandise. A store manager was able to locate video of the suspect and the Complainant. The manager opined that the video showed that the suspect performed a "farm blow" near the Complainant but not at him. The manager took still photographs, including those that showed the suspect's face, and said that he would email them to NE#1.

NE#1 returned to speak with the Complainant. He told the Complainant that, based on his reviewing the video twice, it showed that the suspect blew his nose down and not at the Complainant. NE#1 said that the suspect did not blow his nose in the Complainant's direction "at all." NE#1 again referenced the false reporting warning he gave the Complainant at the beginning of their contact. NE#1 stated that the suspect was not even looking at the Complainant when he walked by him and that the suspect was walking away when he blew his nose. The Complainant disagreed and said that the suspect walked right by him and he looked right at the suspect. NE#1 concurred that the Complainant was looking at the suspect but affirmed that the suspect was not looking at the Complainant. The Complainant again disagreed. They continued to argue about whether the blowing of the nose was intentionally directed at the Complainant. Ultimately, NE#1 said that he would document the incident. The Complainant asked about the shoplift and said that he was a witness. NE#1 replied that whether to pursue the shoplift was up to the store, not him. NE#1 gave the Complainant a business card and incident number and began to leave the store. At that time, he spoke with another store employee. She said that she was unsure whether the store wanted to pursue the shoplift and NE#1 responded: "they didn't." She also relayed the suspect's direction of travel. NE#1 walked back to his patrol vehicle and drove from the scene.

NE#1 later documented this incident in a general offense report. NE#1 characterized it as a "disturbance." NE#1 listed the Complainant as the reporting party. NE#1 noted the Complainant's assertion that the suspect blew his nose in the Complainant's direction but indicated that, based on his review of the video, the suspect blew in a downward direction and not at the Complainant. NE#1 stated that, in his opinion, no crime occurred. NE#1 did not reference the shoplift in the report. NE#1 further did not provide a description of the suspect in the report.

The Complainant later initiated a complaint with OPA. He stated that NE#1 was rude to him and inappropriately threatened to charge him with false reporting when he was the victim. The Complainant felt that NE#1 did not do a thorough investigation. The Complainant further asserted that NE#1 was dishonest when he said that the store did not want to pursue to shoplift. He stated that he later spoke to the manager who confirmed that he never made such a statement to NE#1.

As part of its investigation, OPA reviewed the BWV and the report generated by NE#1. OPA also interviewed the Complainant, the store manager, NE#1, and an Acting Sergeant.



The store manager recalled watching video of the incident with NE#1. He said that, based on his review of the video, it appeared that the suspect blew his nose at the feet of the Complainant as the suspect walked out of the store. The store manager stated that he did not tell NE#1 that the store did not want to pursue the shoplift. Indeed, he was surprised that NE#1 never referenced the shoplift at any point when they were together.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence.

As discussed more fully in the context of Allegation #3, NE#1's handling of the assault allegation alternated between dismissive and hostile. That being said, he did conduct a preliminary investigation including speaking with the Complainant and reviewing the video. While he did not complete a formal interview of the Complainant, this was not required under policy.

Even putting aside his investigation of the assault, his handling of the shoplift violated policy. Ultimately, NE#1 conducted no investigation concerning this crime. He did not interview the manager or any store employee about the theft, explore what was stolen, or ask whether the store was interested in pursuing charges. While the store may not have wanted to do so and may have declined to participate in such cases in the past, this did not absolve NE#1 of his responsibility to verify that here. Moreover, NE#1 took no steps to locate the suspect, even though he had a description from viewing the security footage and he was informed in which direction the suspect went after leaving the store. These were simply the minimum investigatory requirements that NE#1 was expected to perform and his failure to do so was contrary to this policy.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Such reports must be "complete, thorough, and accurate." (SPD Policy 15.180-POL-5.) The policy further instructs that: "Officers shall document whether victims of non-custody incidents want to pursue charges, as feasible." (*Id.*)

Not only did NE#1 fail to investigate the shoplift, but he also did not document the crime in any respect in his report. In this respect, the report was not thorough or complete. Moreover, NE#1's report did not have information concerning whether the Complainant, as the victim of the alleged assault, or the store, as the victim of the shoplift, wanted to pursue charges. Again, this yielded his report neither thorough nor complete.

Accordingly, OPA recommends that this allegation be Sustained.



Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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.*)

OPA finds that NE#1’s interaction with the Complainant and handling of this matter violated the Department’s professionalism policy in several respects. First, OPA concludes that NE#1’s approach towards the Complainant through their interaction was dismissive and aggressive. For example, NE#1 downplayed and disbelieved the Complainant’s claim of assault from the outset. Indeed, this was the case without conducting any investigation. Even if NE#1 did not believe that an assault occurred, the Complainant still perceived himself to be a victim and NE#1 should have treated him as such. By not doing so, NE#1 caused the interaction to immediately get off on a bad foot and fostered distrust in the Complainant. As another example, within minutes of their interaction beginning, NE#1 referenced possibly charging the Complainant with false reporting. Again, even if NE#1 questioned his account, this was an unproductive statement to make.

Second, NE#1’s failure to discern whether the store was interested in pursuing the shoplift and then making a statement to a store employee that, at the very least, gave the perception that he had done so and the store had declined, was inaccurate and unprofessional, even if it did not rise to the level of dishonesty. This statement served to decrease public trust and confidence in both NE#1 and the Department.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in all Communications

The Complainant asserted that NE#1 was dishonest when he asserted that the store was not interested in pursuing charges for the shoplift. If true, this would violate SPD Policy 5.001-POL-11, which requires Department employees to be truthful and complete in all communications.

OPA could not find any evidence of conversation between NE#1 and the Complainant in which NE#1 stated that the store was not interested in filing charges.

However, NE#1 did tell a store employee, in response to her statement that she was unsure whether the store wanted to file charges, “they didn’t.” While opaque, this statement could be interpreted to suggest that NE#1 spoke to the store about charges and the store orally declined. However, as it clear from the video, this did not occur. That being said, even if not plausible, it is possible that NE#1 meant that the store had not explicitly asked him to file charges, which, while arguably a misleading response, was technically true.



While OPA believes that the misleading nature of this statement contributes to the finding that NE#1 was unprofessional, OPA cannot meet its burden of proof to establish that it was dishonest. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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