



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0382

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	Sustained
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	9.060 - Firearms 2. Officers Shall Carry Firearms Authorized by the Department While Acting in the Capacity of a Seattle Police Officer	Not Sustained (Unfounded)
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 6	9.020 - Uniform 4. All Outward Facing Uniform Items Include Proper Identifying Markings	Not Sustained (Unfounded)
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 is alleged that the Named Employee violated multiple SPD policies during an interaction with a demonstrator in the CHOP/CHAZ Zone.

SUMMARY OF INVESTIGATION:

In the aftermath of SPD pulling back from the East Precinct, demonstrators created an "autonomous zone," which was referred to as the Capitol Hill Occupied Protest (CHOP) and/or the Capitol Hill Autonomous Zone (CHAZ). At times and particularly during the evening hours, armed demonstrators – some self-styled "security guards" – patrolled within CHOP/CHAZ. This, as well as the overall tenor of the relationship between the demonstrators inside of this area and the police, influenced the Department's decision that officers would not be dispatched to respond to crimes occurring within CHOP/CHAZ unless life safety issues were involved. It also contributed to law enforcement concerns that officers could be subjected to violence by CHOP/CHAZ occupants.



Named Employee #1 (NE#1) was, at the time, a Sergeant assigned to the East Precinct. He had been heavily involved in the demonstrators that had occurred in the prior weeks. As part of that, he had worked long shifts and, while staffing protests, he had been subjected to projectiles and repeated verbal insults from demonstrators.

In the early morning hours of June 18, 2020, the Subject – a CHOP/CHAZ “security guard” – reported that he was confronted by NE#1. The Subject asserted that NE#1 was first talking to several other people in the area and those people grew uncomfortable and summoned the Subject. When the Subject arrived, he observed NE#1 sitting in a marked patrol vehicle. He recalled that NE#1 had a handgun on his lap and the firearm did not appear, in the Subject’s opinion, to be a Department-issued weapon. The Subject described NE#1 as acting aggressively and moving his hand near his firearm. He stated that NE#1 told him that people in the CHOP/CHAZ had “seceded” from the United States and that the ATF and FBI were going to come in and arrest everyone. The Subject reported being afraid that NE#1 could shoot him. He asked for another supervisor to call him. NE#1 left the scene. The Subject reported to the supervisor that NE#1 was unprofessional and aggressive towards him. The Subject also contended that NE#1 may have been intoxicated, that he had his badge covered with tape, and that NE#1 did not record their interaction.

As part of its investigation, OPA verified that NE#1 did, in fact record Body Worn Video (BWV). Moreover, the BWV indicated that NE#1’s badge was not covered and, when coupled with a review of the supervisor’s BWV, disproved that NE#1 was intoxicated.

The BWV showed the interaction between NE#1 and the Subject. The Subject approached NE#1’s patrol vehicle and told him that some of the other CHOP/CHAZ occupants were “spooked” by NE#1’s presence. NE#1 stated: “You know you should be very spooked, and you know why you should be?” The Subject asked why, and NE#1 replied: “Because you’re all going to be charged federally.” The Subject asked how this would occur, and NE#1 stated: “...everything is being monitored by the ATF and the FBI...you guys need to make some serious decisions about where you want to spend the rest of your lives...you understand me?” When the Subject said that he understood, NE#1 told the Subject that he was giving him “fair warning.”

NE#1 then told the Complainant to “step away” from his car and to “go back to your own country.” The Complainant replied: “I don’t believe it’s a country, more of a free state seceded from Seattle.” NE#1 said: “Well you know what, you seceded from the United States of America and once you do that now you have to go through the immigration process.” NE#1 added: “My officers, we’re not even sure whether or not, you guys, the Constitution, the Bill of Rights or any of that even applies to you.” NE#1 continued: “I’m a sergeant and when I arrest you, I’m going to have to ask you which consulate you want me to contact...you guys need to make a decision about where you’re going to go, you understand me?” NE#1 and the Subject spoke briefly about personnel and equipment within CHOP/CHAZ and mentioned an AK-47 that had been found and that was turned over to the ATF. The Subject asked for NE#1’s name and he provided it. NE#1 then left the scene.

OPA further interviewed NE#1. He explained that the purpose of contacting the CHOP/CHAZ individuals was to determine the radio channel they were using. He was concerned that armed individuals – some with semi-automatic rifles – were walking around a multiple block area in the middle of the City and deploying to incidents. He was also concerned that they could be deploying to locations where his officers were present. He told OPA that he did obtain the tactical channel and was also provided a radio by CHOP/CHAZ security, which he later turned over to SPOC. He felt that it was necessary and appropriate for him to make contact with these individuals and that his actions were justified by officer safety concerns.



With regards to his demeanor towards the Subject, NE#1 explained: "My intent was not to be rude...my intent was to scare him to death...to scare him away." NE#1 said that he wished this was successful because, based on information available to him, the Subject had been targeted by a local gang for retribution because of an earlier murder of an individual within CHOP/CHAZ. When asked why he told the Subject to "go back" to his country, NE#1 stated: "I was trying to emphasize to him that if they decided that CHAZ was an autonomous zone and no longer part of the United States...then it's a different country."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

In evaluating this allegation, OPA fails to see the law enforcement need for NE#1's conversation with the Subject. It seemed, from OPA's perspective, that it was more purposed to scare the Subject than to convince him to leave CHOP/CHAZ for safety reasons. Per NE#1's OPA interview, this appears to have been his intent. Indeed, OPA can see why the Subject viewed aspects of why NE#1 said to be threatening.

Of NE#1's comments, OPA had the most concerns with NE#1's statement to the Subject to go back to his country. OPA also finds it problematic that NE#1 represented that the Subject would not be entitled to constitutional protections had he been arrested. None of that was correct and NE#1 should have known that. Again, this appeared to be more a threat than cautionary advice.

Ultimately, OPA concludes virtually the entirety of the conversation to have been unnecessary and counterproductive. Even if NE#1's frustration with armed self-appointed security guards roving through a residential neighborhood was legitimate, he should not have engaged in this manner with this Subject. This was especially the case given that he is a Sergeant and, thus, has higher expectations placed on his conduct by the Department. Accordingly, NE#1's discourse with the Subject was, in OPA's perspective, unprofessional.

In reaching this finding, OPA notes that the BWV does not support that Subject's claims that NE#1 ever brandished his firearm or made motions indicating that he could draw it and point it at the Subject. In addition, the BWV disproved that NE#1 ever used profanity towards the Subject.

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

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

Based on OPA’s review of the evidence and when evaluating NE#1’s reasoning, OPA does not believe that he violated SPD’s discretion policy. OPA finds that NE#1’s stated purpose – obtaining the CHOP/CHAZ radio frequency – was legitimate. Moreover, the issues OPA has with NE#1’s interaction with the Subject goes to professionalism, not discretion.

Accordingly, OPA recommends that his allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

9.060 - Firearms 2. Officers Shall Carry Firearms Authorized by the Department While Acting in the Capacity of a Seattle Police Officer

SPD Policy 9.060-POL-2 requires SPD officers to only carry firearms authorized by the Department.

While the Subject asserted that NE#1 possessed an unauthorized firearm during the incident, this was conclusively disproved by the video. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

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

The Subject alleged that NE#1 did not record their interaction on BWV. This, like several other of the Subject’s allegations, was deemed to be demonstrably false.

NE#1 did, in fact, record BWV as required. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #5

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

The Subject asserted that NE#1 may have been intoxicated during their interaction. If true, this conduct would have violated SPD Policy 5.001-POL-2, which requires that employees adhere to laws, City policy, and Department policy.



From a review of BWV recorded by NE#1 and a supervisor, OPA deemed this allegation to be meritless as there was no evidence supporting that NE#1 was intoxicated.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #6

9.020 - Uniform 4. All Outward Facing Uniform Items Include Proper Identifying Markings

SPD Policy 9.020-POL-4 requires officers to include proper identifying markings on their uniforms. In the context of patrol personnel such as NE#1, this includes a nametag and a badge.

The Subject's claim that NE#1 was not wearing his proper identifying markings was disproved by the BWV. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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