



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 10, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0418

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
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 engaged in unprofessional conduct towards the Complainant.

SUMMARY OF INVESTIGATION:

Officers were dispatched to a call concerning an "unruly" subject who was refusing to leave a hospital. When they arrived, they spoke with hospital security who reiterated that the subject was causing a disturbance and that they wanted him to leave. The officers observed the subject yelling at a security guard who was telling him that he needed to leave the hospital. The officers made contact with the subject – who they later identified as the Complainant, identified themselves as SPD officers, and said that they would speak with him outside.

While outside, the Complainant told the officers that he had been in a car accident and said that he needed a ride home. While one officer stepped away to call his supervisor to clear a courtesy ride for the Complainant, the interaction between the Complainant and another officer escalated significantly. Eventually, the two officers attempted to place the Complainant under arrest and a use of force ensued.

OPA investigated the use of force, as well as concerns with one of the officer's lack of de-escalation and professionalism. That investigation resulted in a recommended Sustained finding for de-escalation and discipline was imposed by the Chief of Police.

During that same investigation, OPA also evaluated concerns regarding the professionalism of another officer – Named Employee #1 (NE#1). As NE#1 was out on leave for a period of time, the case against him was governed by a different 180-day timeline and is addressed in this supplemental DCM.



With regard to NE#1, the Body Worn Video (BWV) showed that, at the time he arrived on scene, the Complainant was on the ground and in handcuffs. The Complainant was still agitated at that time. Another officer – referred to here as Witness Officer #1 (WO#1) – was trying to build a rapport with the Complainant. NE#1 began interjecting and the Complainant stated that he wanted to speak with WO#1. NE#1 held up his hands and remarked: “That’s cool.” However, the Complainant, again grew escalated, began loudly referring to his rights as a “human being.” NE#1 interrupted him and said: “Are you done?” NE#1 then said: “I just got here. I’ll keep my mouth shut but I’m not going to move from where I am.” NE#1 removed a necklace from the Complainant and placed it in his shoe and described to the Complainant what he was doing.

The Complainant continued to try to speak with the officers and ask them why he was arrested. Witness Officer #2 (WO#2), who was standing in the immediate vicinity, began debating with the Complainant about what it meant for the Complainant to “ask for his rights.” This caused the Complainant to grow more upset. WO#1 tried to interject and calm the situation down. NE#1 told him that he did not know why the Complainant was arrested and taken to the ground.

The Complainant brought up his necklace and NE#1 told him that it was in his shoe. The Complainant referenced officers paying for damage to the necklace. NE#1 responded: “I’m not paying for anything because that’s not the way it works.” The Complainant continued to complain about how he was treated. NE#1 remarked: “You yelling at somebody, right, and saying don’t touch me, don’t touch me, and getting all animated, is not complying right?” The Complainant said that he was never yelling. NE#1 said: “Well, you’re yelling at me right now.” The Complainant stated: “I’m in handcuffs, so I have a reason to yell.” NE#1 retorted with a raised voice: “That’s incorrect, that’s a complete bs lie. Cause your in handcuffs you have a right to yell? You have a reason to yell? You know how many people I’ve put in handcuffs? They don’t yell, they don’t talk to me like that. I’m not a kid.” The Complainant began responding and NE#1 cut him off and said: “You want to be treated like an adult, act like an adult.” The Complainant responded: “I’m not acting like an adult. I’m acting like a slave right now.” NE#1 interjected and stated: “I know you’re not. You’re acting like a kid, you’re acting like a kid.”

The Complainant again asked why he was in handcuffs and NE#1 responded that he did not know but that the Complainant was “detained” and was not “free to go.” The Complainant stated: “Well stop talking then if you don’t know what’s going on.” NE#1 responded: “Well you’re the one that has all these questions man. You make absolutely no sense sir. Zero.” WO#1 again tried to step in and calm down the situation by telling the Complainant: “I’ll get you an answer.” NE#1 further stated: “I know you’re being detained. I know that. I know you ended up on the ground probably for a good reason.” NE#1 continued: “Well officers just don’t thrown people on the ground and put them in handcuffs.” The Complainant began stating: “Can I not ask...” NE#1 cut him off and said: “Ask what? I thought you didn’t want to ask anything,”

The Complainant again started talking and asked NE#1 to look him in the eyes. NE#1 responded with a raised voice: “What am I doing, what am I doing?” He told the Complainant: “You’re unreasonable.” They argued about calling each other sir and they continued to talk over each other. The Complainant mentioned five to six officers trying to get him into handcuffs and NE#1 denied this and said that there were only two officers doing so. He referenced the other “imaginary” officers “disappearing.” The Complainant talked about the force used on him and NE#1 interrupted and referenced the Complainant resisting. At that time, WO#1 walked over and interrupted. He said that he had the answers that the Complainant was looking for and that NE#1 did not know anything. NE#1 then walked away and did not further interact with the Complainant.



As part of its investigation into this incident, OPA interviewed NE#1. He stated that his perception of the Complainant at the time he contacted him was that the Complainant was intoxicated and not acting “reasonably.” NE#1 said that he had received training on how to deal with intoxicated individuals and that with “somebody that’s highly intoxicated, you have to be a little bit more patient with that individual, because once again they’re not thinking rationally and they’re not acting as a reasonable person would.”

NE#1 recalled that the Complainant was asking questions of a number of different officers and was moving from officer to officer and “talking over” them. NE#1 felt that his responses to the Complainant “met the needs” of the questions posed. NE#1 explained that, in his opinion, the Complainant’s intoxication level was not an excuse for his behavior. NE#1 said that: “if you want to be respected, you have to give that respect back.”

When asked about some of the specific comments he made to the Complainant – including those involving the Complainant acting like a kid, the Complainant creating imaginary officers, and his non-responses to the Complainant’s request for clarity surrounding his arrest – NE#1 did not believe that they were unprofessional. He further felt that his comment concerning the Complainant acting like a kid was de-escalatory.

NE#1 told OPA that he was not more unprofessional during this incident than he was in any other incident during his thirteen-year career at SPD. He recognized that, at one point, his interaction with the Complainant reached a “point of diminishing returns” and his presence was doing more harm than good. NE#1 opined that the Complainant set the “tempo” of the interaction when he fought with officers and that the Complainant, in doing so, “burned that respect bridge” between himself and officers. NE#1 told OPA that: “respect is a two-way street—if you want to be treated like an adult, act like an adult.” He noted, however, that respect could be earned back and was not burned forever. Ultimately, when asked what if anything he would have done differently on the call looking back, he remarked that, had he known that he was going to receive an OPA complaint, perhaps he would not have responded in the first place.

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.*)

OPA believes that NE#1’s conduct and demeanor towards the Complainant were unprofessional. OPA reaches this conclusion for two main reasons.

First, OPA finds that NE#1’s statements to the Complainant unnecessarily escalated the incident. As NE#1 articulated at his interview, he knew the Complainant was intoxicated and he had been trained that intoxicated individuals needed to be treated with more patience. He did not do so here. Instead, he engaged in an unnecessary dialogue with the Complainant that was entirely unproductive.



Second, OPA concludes that NE#1's comments to the Complainant were argumentative, dismissive, and contemptuous. Again, as indicated above, there was simply no reason for any of those statements to have been made. In reaching this finding, OPA believes it relevant and helpful to contrast NE#1's conduct and demeanor with that of WO#1. While NE#1 chose to engage in a virtually completely negative back and forth with the Complainant, WO#1 tried to build a rapport with him, spoke to him calmly and respectfully, and tried to get him information that could calm the Complainant down and diffuse the situation. In doing so, WO#1 acted in line with the expectations of the Department and with the letter of his training. Unfortunately, NE#1 did the exact opposite.

In assessing whether NE#1's conduct warrants a Sustained finding or retraining, OPA is simply not confident that retraining would have any effect. Importantly, NE#1 was clear at his interview that he did not believe that he was unprofessional or, stated differently, that he acted any differently here than in countless other intentions during his career. In OPA's perspective, this is a problem, as is the fact that NE#1 does not appear to understand what went wrong here and how it could or should be remedied. Indeed, it is telling to OPA that his solution for this situation would be to not respond in the first place. While NE#1 is certainly entitled to hold that opinion, OPA finds it to be disheartening and counterproductive.

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

Recommended Finding: **Sustained**