



CLOSED CASE SUMMARY

ISSUED DATE: JULY 8, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0755

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 14. Retaliation is Prohibited	Sustained
# 3	15.180 – Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Sustained
# 4	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	6.220 – Voluntary Contacts, Terry Stops & Detentions 1. Officers Will Document All Terry Stops	Not Sustained (Unfounded)
# 6	16.090 – In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
# 7	16.110 – Crisis Intervention 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis	Sustained
# 8	6.220 – Voluntary Contacts, Terry Stops & Detentions 6.220 – POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based upon Reasonable Suspicion	Not Sustained (Unfounded)
# 9	8.100 – De-escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Allegation Removed
# 10	5.140 – Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Unfounded)

Imposed Discipline

Suspension Without Pay – 6 days

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports (A &B)	Not Sustained (Training Referral)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	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:

It was alleged that Named Employee #1 violated multiple SPD policies during an incident involving the Complainant. It was alleged that Named Employee #2 also acted contrary to policy when he did not investigate or refer the incident and when he approved Named Employee #1's incident report.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) responded to a call of a person throwing cones into the road and who appeared to be high and/or intoxicated. NE#1 responded to the scene and made contact with the suspect. He also observed an individual – the Complainant in this case – who was on the other side of the street and was holding a sledgehammer. The initial conversations between the suspect and NE#1 were not captured on Body Worn Video (BWV) because it was in pre-buffer mode; however, the audio subsequently recorded NE#1 saying to the suspect: "You didn't see it? Fuck, yeah, the dude had a sledgehammer." NE#1 asked the suspect whether he had any weapons on him and then passed the suspect off to another officer. NE#1 spoke to another person on the other side of the street – referred to here as Witness #1 – and asked him: "What the fuck is going on?" NE#1 discussed that the suspect had been throwing cones in the street and that he was responding to the call surrounding this. NE#1 asked Witness #1 about the Complainant's sledgehammer and Witness #1 said that the Complainant came out with the sledgehammer to make sure that Witness #1 was okay. Witness #1 explained that the suspect walked towards him with his hands in his pocket and that this caused him alarm.

BWV captured the Complainant yell something at NE#1 from the other side of the street. NE#1 responded: "You're goddamned right I did." NE#1 explained that he placed his hand on his firearm because the Complainant had a sledgehammer. Witness #1 reiterated that the Complainant came out with the sledgehammer to protect him. Witness #1 did not state at any point that he was scared, intimidated, or threatened by Witness #1's holding of the sledgehammer.

After speaking with the other officers, NE#1 crossed the street and tried to interact with Witness #1 and the Complainant. Additional witnesses were also present at the time. BWV captured Witness #1 thanking the Complainant for coming to his assistance. NE#1 asked the Complainant if he wanted to have a conversation. While NE#1 spoke calmly at the time, the Complainant appeared agitated and angry. The Complainant told NE#1 that he did not scare anyone. NE#1 said that he was not trying to do so, and the Complainant pointed to him having his hand on his firearm. NE#1 stated that he did so because the Complainant was carrying a sledgehammer. NE#1 asked the Complainant: "Do you want to have a logical conversation or are you just gonna sit and get loud?" They continued to discuss the incident until the Complainant's partner came over and said that they were just going to get NE#1's information and file a complaint against him. NE#1 replied: "That's totally fine." The Complainant and his partner indicated that they would get the information from another officer. NE#1 told them goodnight and walked away to his patrol vehicle.

At that time, NE#1 spoke with another officer who was sitting in the patrol vehicle running the Complainant's information through the MDT system. NE#1 told the other officer: "Tell me he has a warrant." NE#1 told the other officers that the Complainant got mad because he put his hand on his firearm. The other officer said to NE#1, referring to the Complainant: "That's him." NE#1 said: "Does he have any warrants? Does he?" The other officer disclosed that



the Complainant had a prior conviction and a specific post-conviction status that appeared during the search. NE#1 told the other officer that he would write up a report. NE#1 also noted: "I wonder if we can get him for menacing."

The other officer later provided NE#1's identifying information to the Complainant and his partner. They subsequently filed a complaint with OPA.

The other officer later told OPA that, upon his return to the precinct, he spoke with a supervisor, Named Employee #2 (NE#2). The other officer believed that he told NE#2 that the Complainant and his partner were likely going to file a complaint against NE#1. He further informed NE#2 that the Complainant and his partner had asked for NE#1's contact information and that he provided this to them on a business card. NE#1 said that he also spoke to NE#2 briefly. He recalled telling NE#2 that the Complainant and his partner might file a complaint against him. He said that the reason for this was his putting his hand on his firearm. NE#2 did not complete an OPA referral on the Complainant's behalf and did not further investigate the incident.

NE#1 completed an incident report. In that report, he requested charges by officer for the Complainant's holding of the sledgehammer, a misdemeanor offense. The report did not identify witnesses or victims, it did not contain any witness or victim statements, and it did not include the information provided by Witness #1 that the Complainant came out with the sledgehammer in order to protect Witness #1 from the suspect, who Witness #1 perceived to be threatening. The report also did not contain photographs of the sledgehammer and NE#1 did not seize the sledgehammer as evidence. In the report, NE#1 noted the Complainant's post-conviction status. He also wrote that the Complainant: "was unable to have a rational conversation due to his highly escalated childish behavior." The report was approved by NE#2.

Based on the complaint submitted by the Complainant and his partner, OPA investigated NE#1's conduct, including his interaction with the Complainant, his decision-making, and the report he later submitted. OPA also investigated whether NE#2 failed to sufficiently investigate the incident and whether NE#2 violate policy when he approved NE#1's potential deficient report.

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 finds that NE#1 violated the Department's professionalism during this incident. Specifically, OPA finds that his use of profanity and his aggressive tone towards the Complainant unduly escalated the incident. Notably, at his OPA interview, NE#1 recognized that this may have been the case. Had NE#1 taken a different and more reasonable approach, it is likely that this incident and complaint would have been avoided altogether.



Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

The Complainant asserted that NE#1’s seeking charges against him was based on the argument they had and the Complainant stating that he was going to file a complaint.

NE#1 denied that this was the case. He told OPA that, instead, he wanted to take the Complainant “off the streets” because of his interaction with the sledgehammer.

As discussed more fully herein, OPA believes that there was no legal basis to conclude that the Complainant violated the law or menaced anyone. Indeed, the only possible victim in this case – Witness #1 – never said that he felt alarmed or threatened. To the contrary, he was captured on BWV thanking the Complainant for assisting him. Given this, OPA fails to see how NE#1 could have believed that charging the Complainant with a crime was justified.

Absent this, OPA feels that the evidence points to NE#1 acting in a retaliatory manner. OPA believes that this is further supported by NE#1’s statement to the other officers that the Complainant got “mad” because his hand was on his firearm, his statement about hoping the Complainant had an open warrant, and the information he included in his report concerning the Complainant’s post-conviction status and his purported demeanor towards NE#1. It is also relevant to OPA that, prior to seeking to charge the Complainant, NE#1 was aware that the Complainant was intending on filing an OPA complaint against him.

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

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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

SPD Policy 15.180-POL-5 states that officers shall document all primary investigations on a report. The policy further requires that these reports be thorough, complete, and accurate.

OPA finds that NE#1’s report was not thorough and complete. OPA further finds that it contained extraneous and inappropriate information.



With regard to thoroughness and completeness, NE#1's report was missing victim and witness information, it did not contain any victim and witness statements, and it failed to include the potentially exculpatory statements made by Witness #1 on the Complainant's part. The report also did not include photographs of the allegedly brandished sledgehammer.

OPA further believes that NE#1's reference to the Complainant's post-conviction status and his comment about the Complainant being "childish" were inappropriate and should not have been in the report.

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

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

While OPA believes that NE#1 should not have charged the Complainant and that doing so was improper, OPA does not see sufficient evidence in the record to suggest that this was based on the Complainant's race. Instead, and as discussed above, OPA believes that NE#1's actions and decision-making were based on the interaction they had and the possibility that a complaint would be filed. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #5

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Officers Will Document All Terry Stops

Based on OPA's review of the BWV, OPA does not believe that this incident constituted a Terry stop. At no point was the Complainant told that he could not leave or was his freedom restricted. He was not frisked, moved to another location, or handcuffed. The Complainant further did not make any statements indicating that he felt that he was detained.

Given that OPA finds that a Terry stop did not occur, NE#1 was not required to complete a Field Contact Report. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #6

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

OPA determined that, while NE#1 recorded BWV and In-Car Video, he did not timely activate it. However, the lack of a timely activation did not prevent OPA from fully assessing this matter and did not prevent the discovery of relevant information. Given this and because NE#1 has no prior history of failing to activate Department video, OPA recommends that this allegation be Not Sustained and issues NE#1 the below Training Referral.



- **Training Referral:** NE#1 should be reminded to timely activate his BWV and In-Car Video when required. He should be informed that future failures to do so may result in a sustained finding and the imposition of discipline. This counseling and any retraining should be documented in Blue Team.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #7

16.110 - Crisis Intervention 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis

From OPA's review of the BWV, it appeared that the suspect was in crisis. NE#1 stated that he felt that the suspect was intoxicated and that he was not aware whether this was a crisis state that needed to be documented.

SPD Policy 16.110 generally provides that crisis "includes people exhibiting signs of mental illness, as well as people living with substance use disorder and those experiencing personal crises." Given this, even if NE#1 believed that the suspect was intoxicated rather than mentally ill, he should have completed a crisis report.

NE#1 is an experienced patrol officer who should have known of this requirement, which is trained by SPD. Given his other documentary deficiencies in this case, OPA also recommends that this allegation also be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #8

6.220 – Voluntary Contacts, Terry Stops & Detentions 6.220 – POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based upon Reasonable Suspicion

For the same reasons as stated above (see Named Employee #1 – Allegation #5), OPA recommends that this allegation be Not Sustained - Unfounded.

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

Named Employee #1 - Allegation #9

8.100 – De-escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

As discussed in the context of Allegation #1, above, NE#1 made several statements, which included profanity, that OPA determined were escalatory. However, given that NE#1 did not ultimately use force during this incident, OPA finds that his conduct is better captured by the Department's professionalism policy. Accordingly, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #10

5.140 – Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing



SPD Policy 5.140-POL-5 requires officers to call a supervisor to the scene when they become aware of an allegation of biased policing. From a review of the BWV, there is no indication that the Complainant or any other witness made a bias allegation in NE#1's presence. As such, he did not fail to comply with this policy and OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports (A&B)

SPD Policy 5.100(III)(B)(6)(A&B) governs the responsibilities of patrol sergeants. It specifically notes that sergeants are required to ensure the "accuracy and completeness" of officer reports.

As discussed above, NE#1's report was deficient in a number of respects. However, NE#2 failed to identify any of these and approved it regardless. In addition, NE#2 failed to recognize that NE#1 included unprofessional and unnecessary language in the report concerning the Complainant's demeanor, as well as failed to remove the reference to the Complainant's post-conviction status. NE#2 said that, based on past experience, he felt that this information was important for follow-up units to be aware of. While this may be relevant in some cases, OPA fails to understand why it would have been necessary to include this in a charge by officer case for a brandishing misdemeanor.

In assessing the level of culpability held by NE#2, OPA recognizes that he is a diligent supervisor who has not failed to comply with this policy before. OPA also understands, as NE#2 articulated in his interview, that he may have paid less attention to this case because it was a charge by officer misdemeanor. However, NE#2 needs to do a better job assessing reports prior to approving them in the future. OPA accordingly issues NE#2 the below Training Referral.

- **Training Referral:** NE#2 should be counseled concerning his failure to identify and take action on those portions of NE#1's report that were incomplete and improper. NE#2 should be reminder to pay closer attention to such reports in the future. This counseling and any retraining should be documented in Blue Team.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires that supervisors either investigate or refer potential allegations of misconduct.

Here, the evidence indicates that no complainant made an allegation of misconduct to NE#2 directly. It further appears, based on the interviews of NE#1, NE#2, and a witness officer, that the officers told NE#2 that a complaint was likely, but did not tell him that he needed to investigate it or make a referral. Given this, OPA finds that NE#2 did not violate policy during this incident and recommends that this allegation be Not Sustained – Lawful and Proper.

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