



CLOSED CASE SUMMARY

ISSUED DATE: MAY 5, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0041

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained - Unfounded
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained - Training Referral
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	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 Named Employee failed to respond appropriately to a theft incident and acted unprofessionally towards Home Depot staff during an incident on January 20, 2021.

SUMMARY OF INVESTIGATION:

This complaint related to a theft from Home Depot on January 20, 2021. The Complainant alleged that when Named Employee #1 (NE#1) was called to assist in a theft call, he failed to engage professionally with Asset Protection Specialist staff (APS#1 and APS#2). NE#1's BWV was not activated for this call. No ICV was activated, and no report was documented by NE#1. There was, however, BWV recorded earlier in the day by NE#1 for other calls at the location in question.

During its investigation, OPA reviewed the complaint, 911 calls, Computer Aided Dispatch (CAD) Call Reports, and Body Worn Video (BWV). OPA also interviewed the Complainant, two Asset Protection Staff and NE#1.

The Complainant, a senior security staff member at Home Depot, was remotely watching Community Member #1 (CM#1) who the Complainant believed was preparing to steal from the store. Although viewing CCTV remotely the Complainant had sight of NE#1's patrol vehicle responding to the 911 call as it entered the parking lot. The Complainant was speaking with APS#1 and APS#2 over the phone and heard the comments made by NE#1 to APS#1 and APS#2. The Complainant stated that NE#1 pulled up and asked, "what the deal?" APS#1 then explained that there was a known felon in the store, who currently had open warrants, and who staff believed was about to unlawfully remove merchandise worth thousands of dollars. The Complainant heard NE#1 interrupt APS#1 several times as he



was speaking, and at one point heard him tell APS#1 that he was [hired by Home Depot] to prevent thefts, not to entrap people. There is no recorded version of this discussion as described by the Complainant and NE#1 did not have his BWV activated during the interaction.

OPA interviewed both APS staff whose version of events corroborated the Complainant's version. APS#1 stated that he tried to explain to NE#1 that they could not make an approach while the suspect was in the store, but NE#1 continued to argue that they were "trapping people." NE#1 eventually told APS#1 that he had to go to another call and activated his emergency lights. APS#2, who was monitoring the parking lot, saw CM#1 exiting the store. APS#2 stated that when CM#1 saw the police vehicle and lights, he ran to his own vehicle and drove away, abandoning the stolen merchandise which was on a forklift.

In this investigation, OPA reviewed BWV of the NE#1's attendance at the store earlier that day which included interactions with the same APS staff members. In this footage, NE#1 was seen engaging with an individual, Community Member #2 (CM#2) accused of having stolen from the store. His engagement with CM#2 and the attending APS staff was of note. BWV depicted NE#1's engagement and comments to APS staff and CM#2 during this encounter with them. This call related to a CM#2 being held by APS staff for allegedly stealing merchandise valued at approximately \$100. When APS were engaged with CM#2, NE#1 waved his hand at the APS staff and stated, "this is your show, so do it, you do it. You do it your way or do it my way. So, let's go." Among other things, NE#1 also stated to CM#2, "what would be really weird is if I take you down to jail, and then you're not going to be real comfortable down there because they do a lot of things, you're probably already aware of that," "it's your lucky day because normally officers don't mess around with little screw arounds like you," "what the f***," and "so what you should probably do now is shut your mouth." He processed CM#2 regarding a trespass and subsequently left the area.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department's expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

NE#1 did not document either response to Home Depot on an Incident Report. There are no reports listed in Mark43 for either incident.

The first call which NE#1 responded to had associated BWV. As such the facts of this response are not in dispute. The approximate value of the stolen property in this incident, initially reported to be approximately \$100, was determined to be approximately \$40 at scene. As such, no report was required from NE#1 according to the Retail Theft manual. NE#1 updated CAD in line with policy.

The second call was updated to indicate that the male left without having taken anything. OPA finds that it was only through the inadvertent actions by NE#1 that no property was taken. The exiting of NE#1's car from the store parking lot with sirens on fortunately encouraged CM#1 to leave the store empty handed. When Interviewed by OPA, NE#1 stated that there was nothing to document because no theft occurred. This is accurate and within policy.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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 “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.

OPA finds that this allegation umbrellas both the professionalism and failure to document allegations listed. Accordingly, OPA has removed removing this allegation as it is duplicative and better addressed by Allegation #1 (Officers Shall Document all Primary Investigations on a Report) and Allegation #3 (Professionalism).

Recommended Finding: **Allegation Removed**

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.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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 Complainant specifically alleged that NE#1 was argumentative and sarcastic in his engagement with Home Depot APS Staff. The Complainant stated that he had over 40 years of law enforcement experience and found NE#1’s behavior to be “totally reprehensible and unprofessional.” A review of BWV from the first incident, described above, captured the engagement that NE#1 had with APS staff and the detained individual, CM#2.

NE#1’s engagement with both CM#2 and APS staff in this incident were questionable. NE#1 stated that he was deescalating the situation between CM#2 and APS#1. BWV shows APS#2 stating that CM#2 was refusing to identify himself and NE#1 state that he would handle that. NE#1 exited his car and told the CM#2 to identify himself or he would go to jail. CM#2 then identified himself.

Often this firm but fair approach assists police officers in controlling a situation. However, as the engagement continued, NE#1 waved his hand at the APS Staff, and stated “this is your show, so do it, you do it. You do it your way or do it my way. So, let’s go.” NE#1 also stated to CM#2, “what would be really weird is if I take you down to jail, and then you’re not going to be real comfortable down there because they do a lot of things, you’re probably already aware of that,” “it’s your lucky day because normally officers don’t mess around with little screw arounds like you,” “what the f***,” and “so what you should probably do now is shut your mouth.” He then processed CM#2 regarding



a trespass and subsequently left the area. SPD officers must strike a balance between effective, real-world command presence at a scene and language that others could find disrespectful. OPA finds that NE#1's comments and the way NE#1 delivered them to be unnecessary and possibly violative of policy. However, based on the situation, the substance of NE#1's comments, and NE#1's explanation that he was attempting to deescalate the situation between CM#2 and APS#1, that NE#1's actions were willful misconduct.

Finally, OPA notes that programs like the Retail Theft Program rely on the positive relationship between SPD staff and the public. The way NE#1 engaged with both APS staff and CM#2 brought this positive relationship into question. NE#1's behavior did little to build the trust and positive communications required with the community. OPA also recognizes the negative impact such an encounter can have on APS staff as was noted in this case.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 5.001-POL-10 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #4

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

SPD Policy 16.090-POL-5 requires that SPD employees record police activity in certain delineated circumstances using both (or either, in some cases) their ICV and (BWV) systems. These situations include, but are not limited to, dispatched calls and "on-view infractions and criminal activity." *Id.*

During the first call that NE#1 responded to, the BWV was operational. In the second response, there was no BWV. NE#1 state that the reason why there was no BWV was because he was approached by an individual and was not actively investigating a call. NE#1 stated that he happened to be driving through the parking lot when he was approached. OPA noted that the call was broadcast after he left the parking lot per GPS and CAD update. This is in line with SPD Policy.

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

Recommended Finding: **Not Sustained - Unfounded**