



CLOSED CASE SUMMARY

ISSUED DATE: JULY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0042

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communications	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	5.001 – Standards and Duties 8. On Duty Officers in Civilian Attire Identify Themselves when Contacting Citizens	Not Sustained (Lawful and Proper)

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 the Named Employee acted aggressively and unprofessionally towards him and did not identify himself during an off-duty incident. The Complainant also alleged that the Named Employee's later recounting of the incident was inaccurate and dishonest.

SUMMARY OF INVESTIGATION:

The Complainant filed a complaint with OPA concerning an incident that occurred on September 27, 2019. The Complainant reported that he was in a vehicle that was stopped in front of the East Precinct parking garage when an individual – who he later learned to be Named Employee #1 (NE#1) – pounded on his window. He alleged that NE#1 initiated a confrontation between them and tried to trap the Complainant in his vehicle when he tried to get out to speak with NE#1. The Complainant asserted that NE#1 never identified himself as a police officer. The Complainant told OPA that, as a result of his incident, he was being unjustly prosecuted. OPA commenced this investigation.

OPA interviewed the Complainant. He confirmed that, at the time of the incident, he was driving for Lyft. He stopped his vehicle in front of the garage while waiting for a rider. He moved the car once when someone drove up. He was looking at his phone when he heard someone banging on his window. He looked up and saw NE#1. He described NE#1 as "pounding on it aggressively." The Complainant said that he did not know who NE#1 was. He tried to get out of the car, putting his leg outside; however, NE#1 pushed the door against him and told him not to get out. The Complainant then opened the door and pushed into NE#1 causing NE#1 to move back. The Complainant told NE#1 to get away from him. When NE#1 took two steps forward, he again told NE#1 to back away and said that, if NE#1 did not, he would "get physical."



The Complainant spoke with NE#1 but did not recall the specifics of their interaction. The Complainant denied that NE#1 ever identified himself as a police officer and said that NE#1's assertion to the contrary was a lie. The Complainant said that he then got back into his vehicle and left. He did not think anything of the incident until he received a notice in the mail informing him that he was being criminally charged. He retained an attorney and the attorney showed him the security video. The attorney no longer represented him because the Complainant could not afford it. The Complainant believed that the charges were not warranted and that he did nothing wrong and only defended himself.

OPA reviewed the security video capturing the interaction between NE#1 and the Complainant. The video showed the Complainant's vehicle parked in front of one lane of the garage. NE#1 pulled towards and into the other lane of the garage. He stopped his car and got out. He walked to the driver's side window of the Complainant's vehicle and bent downwards. At the time, the NE#1 was carrying a dark square object in his left hand. There was no indication from the video that NE#1 engaged in motions consistent with pounding on the Complainant's window. The Complainant then opened his door and NE#1 moved back. There was no indication that NE#1 pushed the door closed at any time. The Complainant got out of his vehicle, moved towards NE#1, and pushed him back with his left hand. NE#1 raised his hands in a defensive posture as he stumbled backwards. NE#1 took two additional steps back as the Complainant remained by his vehicle. NE#1, who continued to hold the black square object in his hand, took another step back while the Complainant shifted forward. They spoke for a period of time (there is no audio on the security video) until they both got back into their vehicles. NE#1 pulled into the garage and the Complainant drove away.

OPA further reviewed the report generated concerning this incident. The officer who completed the report documented that NE#1 alleged being the victim of an assault and threats. NE#1 identified the Complainant as the perpetrator. NE#1 reported that he walked to the Complainant's vehicle and asked him to move his vehicle. The Complainant then pushed NE#1 and threatened him. NE#1 identified himself as a police officer and said that the Complainant was parked in front of a police station; however, the Complainant said that he did not care and again threatened him.

OPA lastly interviewed NE#1. He said that he observed the Complainant parked in front of the garage. He honked his horn once. He then got out of his vehicle with his badge in his left hand. He walked to the driver's side window and tapped on it, holding his badge up. He observed that the Complainant appeared to grow angry and began to open the door. NE#1 was concerned by the Complainant's demeanor and actions and tried to keep the door from opening while telling the Complainant to stay in the vehicle. However, the Complainant opened the door and got out. The Complainant pushed NE#1 back, knocking him off balance. NE#1 backed up. He recalled that he told the Complainant to calm down while again showing his badge. The Complainant yelled at NE#1 and said that he was going to kick NE#1's ass. NE#1 stated that he acted professionally during this incident. He contended that he treated the Complainant politely, even when the Complainant pushed him. He also stated that he identified himself as a police officer orally and by showing his badge. Lastly, NE#1 denied that he fabricated any portion of his account.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. The Complainant alleged that NE#1 did not truthfully recount what occurred. Specifically, the Complainant said that NE#1



approached him aggressively and never identified himself as a police officer. If true, this would constitute a violation of SPD policy.

However, the Complainant's version of events is undercut by the evidence. First, the security video provides no support for the assertion that NE#1 aggressively approached the Complainant. The video did not show NE#1 pounding on the window, as the Complainant suggested. It further did not show NE#1 yelling at the Complainant or positioning his body in any sort of an aggressive manner. Second, the video appears to corroborate NE#1's assertion that he identified himself as a police officer during this incident. Specifically, the video shows NE#1 holding a small black object in his hand consistent with a badge and holding it in view of the Complainant. This is consistent with NE#1's account of the incident.

For these reasons, OPA finds that there is no evidence establishing dishonesty on NE#1's part. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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.*)

As a starting point, OPA finds that NE#1 had a legitimate reason to contact the Complainant during this incident. Notably, the Complainant was blocking a garage that was clearly marked and was doing so in front of a police precinct. Moreover, the security video indicated that the manner in which NE#1 contacted the Complainant was reasonable and not unprofessional. Again, contrary to the Complainant's assertions, the video did not show NE#1 pounding on the window, yelling at the Complainant, or posturing in an aggressive manner. Indeed, the Complainant was the only individual depicted acting aggressively on the video.

Given the above, OPA finds no basis to conclude that NE#1 acted unprofessionally in any respect and finds that his conduct and demeanor during this incident were consistent with policy. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

5.001 – Standards and Duties 8. On Duty Officers in Civilian Attire Identify Themselves when Contacting Citizens

SPD Policy 5.001-POL-8 requires off-duty officers in civilian attire to identify themselves as police officers when contacting citizens.



As discussed above, OPA finds that the security video corroborates NE#1's assertion that he showed his badge to the Complainant during this incident. When he did so, he identified himself as a police officer and, thus, complied with this policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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