



CLOSED CASE SUMMARY

ISSUED DATE: JULY 22, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0046

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	Not Sustained (Training Referral)
# 2	15.180 – Primary Investigations: 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)
# 3	15.180 – Primary Investigations: 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained (Training Referral)

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 was unprofessional towards her, failed to conduct an adequate or thorough investigation, and documented this incident in an incomplete and inaccurate manner.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was dispatched to a disturbance reported by the Complainant. The Complainant had called 911 to report that, the previous day, a male who was not wearing a facemask was yelling in her face. The Complainant told the 911 operator that the male told her to “die.” NE#1 went to the scene for the purpose of speaking with the Complainant. At the time of this incident, NE#1 had been working for SPD for less than a year and was still a probationary officer.

Body Worn Video (BWV) captured NE#1's response to this incident. When he arrived at the Complainant's building, he spoke with building management. He asked the manager: “So, this is about a guy not wearing a mask?” She responded that it was more than that. She explained that the Complainant was on the elevator when the male got on and was not wearing a mask. She asked him to put a mask on or to let her ride the elevator alone. The male became angry, got close to the Complainant's face, and told her: “You're gonna fucking die.” The manager relayed that the Complainant felt “threatened” by the male. NE#1 asked the manager about the mask dispute: “Is this not an issue you guys deal with?” The manager said that they did deal with it some of the time, but she noted that she was not allowed to “do that much.” She told NE#1 that the male was a veteran with mental and physical disabilities who, at times, suffered “emotional reactions.” She said that the male did not often threaten other residents.



The Complainant then came into the lobby. She motioned to the couches and asked NE#1 if he wanted to sit down. He told her that he would rather stand and he explained that he sat in his patrol vehicle for most of the day. She laughed and responded: "good." The Complainant reiterated her account that she was in the elevator when the male entered without a mask. She asked him to put on a mask and he grew angry and said: "You fucking die." As he said that to her, spit came from his mouth onto her face. NE#1 asked the Complainant: "Is there anything I need to do for you?" She said that had referred to incident to the building for them to take possible action. She said that the male engaged in an "assault" when he spit on her. NE#1 said to her: "The main question here is going to be, if he spit on you yesterday, why didn't you call yesterday?" The Complainant told NE#1 that she wanted to see how building management would handle the incident. When asked again, the Complainant said that she thought about the incident more and felt that she should report it.

The Complainant asked NE#1 about an order of protection and NE#1 told her that she could probably obtain the order online. She again stated that the incident was, in her opinion, an assault. However, she noted that she was aware that there was likely not much NE#1 could do. NE#1 told the Complainant: "You're right on there's nothing I can do." He explained that he could not enforce the mask mandate and further said: "quite frankly, if they yell at you, there's not much I can do about that either." The Complainant told NE#1 that she was not worried about the yelling and was more concerning about the spitting. NE#1 replied that he could not "get to that point" with the assault. He explained that if the male leaned forward and spit in her face it would be a different story. The Complainant grew frustrated and told NE#1: "You know what? This is why I didn't report it yesterday." She further stated: "I was pretty sure what your attitude would be." NE#1 denied that he had a bad attitude. He asked if there was anything else that the police could do for her. The Complainant said that she would handle the incident through the building. She asked NE#1 if the male would have to knowingly spit in her face for a crime to be committed. NE#1 affirmed this and said that the male would have had to act intentionally. NE#1 asked if he could do anything else for the Complainant and she said no.

NE#1 waited in the lobby for the manager to return. At that time, the Complainant asked about the significance of the male telling her: "You fucking die." NE#1 responded: "So, that would fall under a harassment crime, which requires a few elements be met." He explained to the Complainant that the words must put her in reasonable fear and the subject must have the means to carry out the threat. The Complainant stated that it seemed that the male was making a threat and that she was in a tiny space with him. The manager came into the lobby and the Complainant told her: "He doesn't think it's a big deal." NE#1 denied that he said this. The manager stated: "Well, we think it's a big deal and the fact that it's reported is really helpful for us in the legal steps that we take." The Complainant told the manager about NE#1 questioning her why she reported the incident late. The Complainant remarked to NE#1: "I can't believe you're not even going to speak to him." NE#1 explained that he did not say that the incident was not a big deal and that he disagrees with the man's actions. However, he said that he had no control over the laws and that the male's action did not rise to harassment.

The manager asked for an incident number and NE#1 provided it to her. The Complainant again expressed her frustration with NE#1's question concerning her late reporting and NE#1 said that he needed to ask the question because the prosecutor would need to know the answer. NE#1 said that he would note what occurred in the call but that he was not going to write a report because there was no crime.

The Complainant later filed a complaint with OPA concerning this incident. During her OPA interview, she asserted her belief that NE#1 acted unprofessionally towards her and was dismissive of her concerns and what occurred. She also felt that NE#1 did not take any true investigative steps and that his comments attached to the call were inaccurate. OPA lastly interviewed NE#1 and reviewed the CAD Call 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.)

From a review of the BWV, OPA reaches two main conclusions.

First, NE#1 was correct that, based on what he was told, no crime had been committed. The Complainant alleged that the male said: “you fucking die.” Notably, he did not tell her that he was going to kill her or cause her to die. This statement alone, while clearly disturbing and threatening to the Complainant, was insufficient to support a harassment charge. Again, like NE#1 stated, this is not said to condone the statement, but it a legal reality.

Second, NE#1 could have handled this situation in a more empathetic and thoughtful manner. From his initial conversations with the manager, it appeared that NE#1 had concluded that no crime had been committed. His first statements to the manager were concerning whether this incident was only about a mask and then whether this was something that the building could handle. It seems clear from the video that the Complainant quickly felt the same and believed that NE#1 was not taking her complaint seriously. OPA believes that there were other means of communication that NE#1 could have used to provide the same information to the Complainant, while convincing her that he took what she was saying seriously. For example, even if NE#1 believed that a report was not required – which OPA does not agree with – he could have offered to complete the report anyway and told the Complainant all the things that he would do rather than focus on what he would not or could not do.

While NE#1 did not use profanity or make unprofessional statements to the Complainant, his handling of this incident clearly diminished her confidence in him and was simply not good customer service. For these reasons, OPA believes that NE#1 would warrant from retraining and counseling to make sure that he handles future similar situations in a more adept fashion.

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

- **Training Referral:** NE#1’s chain of command should review the video of his interaction with the Complainant. The chain of command should discuss the following: (1) alternate approaches that NE#1 could have used, including accentuating what he could do and the steps he would take to address the Complainant’s concerns and being more empathetic; (2) the lack of investigatory steps taken by NE#1; and (3) his decision to not complete a report when doing so would have been appropriate under the circumstances of this case. The chain of command should provide any further retraining and counseling that it deems appropriate. The retraining and counseling that is conducted should be documented, and this documentation should be set forth in an appropriate database.

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

Named Employee #1 - Allegation #2



15.180 – Primary Investigations: 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 requires that, when engaging in primary investigations, officers conduct a thorough and complete search for evidence.

During her OPA interview, the Complainant asserted that NE#1 did not do so here. While recognizing that he did not perform a number of investigative steps, NE#1 stated that they were not necessary because no crime had occurred.

OPA's review of this incident indicated that NE#1 did not do any of the following: (1) ask the Complainant or the manager for their contact information; (2) ask for the male's name, address, and contact information; (3) ask if the Complainant recorded the incident on her phone; (4) ask if there was any evidence in the possession of the building, including security video or elevator video; or (5) locate or speak with the male.

Moreover, at the inception of his discussion with the Complainant, he asked her no substantive questions concerning whether she felt that the male's action posed a threat and whether she felt that he would act on that threat. He assumed the answers, but this falls short of what is required under policy.

Given the above, OPA finds that NE#1's investigation into this incident was insufficient and that he did not complete a thorough search for evidence. In assessing whether discipline or retraining is the appropriate result here, OPA recognizes that NE#1 was still a new officer (on probation) and that this likely contributed to the manner in which he handled this incident. However, NE#1 is now on notice that, moving forward, the expectations of his investigations will be significantly higher and further similar conduct will likely result in discipline.

Accordingly, OPA recommends that this allegation be Not Sustained and refers to the Training Referral set forth above (see Named Employee #1 – Allegation #1).

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

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 all officers shall document their primary investigations on a report.

OPA finds that NE#1 did not fully comply with this policy in two main respects.

First, NE#1 did not complete a report when it would have been appropriate to do so. NE#1's assertion that he had no obligation to document this incident in a report because there was no crime and that it was not a domestic violence (DV) incident that mandated a report. However, OPA disagrees. The Complainant asserted that she was threatened in an elevator and that, during the course of the incident, she was spit on. Even if this did not meet the elements of harassment, it was an allegation of criminal conduct, and a report should have been generated. In addition, a crime does not have to be DV related for a report to be completed and policy does not include such a restriction. Moreover, NE#1 learned from the manager that the male suffered from mental illness and that, while he sometimes yelled at staff, he did not often have negative interactions with other residents, suggesting that such conduct was outside of his baseline. The existence of crisis elements is another reason why a report should have been completed.



Second, the documentation that NE#1 did complete – the notes on the CAD Call – were incomplete. Moreover, OPA agrees with the Complainant that the “investigative” questions that NE#1 asked were primarily limited to why she took a day to report the incident. As discussed above in Allegation #2, NE#1 did not ask virtually any substantive questions that went to the elements of the crime until the end of the interaction.

While OPA concludes that NE#1 did not fully comply with the requirements of this policy, for the same reasons as stated above, OPA recommends that NE#1 receive retraining rather than discipline. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral (see Named Employee #1 – Allegation #1).

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