



CLOSED CASE SUMMARY

ISSUED DATE: JULY 20, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0057

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 the Named Employee groped them and struck the Subject in the face.

SUMMARY OF INVESTIGATION:

During an interview in another case (2020OPA-0665), the Complainant alleged that Named Employee #1 (NE#1) inappropriately groped them in the immediate aftermath of the traffic stop and struck another individual in the face. As a result of these allegations, OPA commenced this investigation.

During his OPA interview, the Complainant said that a vehicle in which they were a passenger was pulled over. The Complainant asked whether they could take their personal items out of the vehicle but was told that they could not. Ultimately, they were allowed to take keys out of the vehicle, but they were not allowed to take cell phones or the wallet to which the keys were attached. The Complainant said that they were compliant with the officers' directions to stand back and away from the vehicle. The Complainant said that one of the officers – identified as NE#1 – inappropriately and impermissibly groped them in the immediate aftermath of the traffic stop. The Complainant said that NE#1 had engaged in similar conduct during past demonstrations. The Complainant described that NE#1 would push protestors and/or grab their breasts. The Complainant further described NE#1 as grabbing them by their waist and stomach and NE#1 sweeping his fingers towards their genitals. Lastly, the Complainant alleged that NE#1 struck another person who was with him – referred to here as the "Subject," hitting them in the face.

OPA reviewed the reports generated by NE#1 and other involved officers, as well as the Body Worn Video (BWV) of this incident. The reports indicated that NE#1 and other officers assigned to the North Precinct Anti-Crime Team (ACT) stopped the vehicle based on probable cause articulated to them by SPD detectives. Specifically, ACT was requested to stop and impound the vehicle so that it could be searched pursuant to a search warrant.



The BWV showed the stop. NE#1 and other officers directed the occupants of the vehicle, including the Complainant, to get out. Once out of the vehicle, the Complainant stood nearby and asked to be allowed to go back inside to obtain various items. NE#1 told the Complainant that they could not do so and that nothing was being taken out of the vehicle pending the execution of a search warrant. The Complainant further alleged that officers would steal items from the vehicle. At one point, NE#1 extended his hand, made contact with the Complainant's arm, and moved them back.

The Complainant repeatedly asked to be allowed into the vehicle. Ultimately, the officers agreed to let the Complainant take house keys out. However, the Complainant lingered in the vehicle and appeared to be searching for other items. NE#1 asked the Complainant about the additional items they were taking out and they said that it belonged to the other occupants of the vehicle. NE#1 told the Complainant to leave the items and took hold of the Complainant's arm. NE#1 told the Complainant to put the other items back in the vehicle or they would be arrested for obstruction. Officers repeatedly told the Complainant to get out of the vehicle and to take the keys and go. The Complainant argued with the officers and again accused them of stealing. The Complainant eventually exited the vehicle with the keys.

After the Complainant got out of the vehicle, they stood near NE#1, yelled at him, and accused him of groping the Complainant and others. NE#1 told the Complainant that they were spitting and asked them to put on a facemask and move back. The Subject, who was also standing near NE#1, blew smoke into his face. NE#1 asked the Subject not to do that. The Subject said that their actions were not illegal and told NE#1 to kill himself. The Subject blew smoke into NE#1's face again and he put his hand over their mouth and pushed them back and away from him. The Complainant and others began yelling and accusing NE#1 of striking the Subject. The Complainant moved towards NE#1, and he pushed them back. The BWV did not show NE#1 strike the Subject at any time.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The BWV established that the Subject blew smoke in NE#1's face and he asked them to not do so again. OPA finds this instruction to have been both lawful and reasonable given the ongoing pandemic and the right for NE#1 to not want smoke blown directly at him and from a close distance. Instead of abiding by that request, the Subject told NE#1 that they had the right to blow smoke in his face – errantly from OPA's understanding of the law – and also advised him to kill himself. The Subject then again blew smoke in NE#1's face. In response, NE#1 placed his hand over the Subject's mouth and moved them back and away from him. NE#1 did not, as the Complainant asserted, strike the Subject. Again, OPA deems NE#1's actions and decision-making to have been entirely appropriate under the circumstances. To the extent this was, in fact, force – which is questionable under the definitions in SPD policy – it was reasonable, necessary, and proportional.



Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

6.120 - Impounding Vehicles 5. Officers May Impound Vehicles Without Prior Notice

As discussed above, the Complainant alleged that NE#1 acted inappropriately when he groped the Complainant. This conduct, if true, would violate the Department's professionalism policy. 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.)

Based on a review of the BWV, the Complainant's allegation that they were improperly touched by NE#1 is clearly unfounded. The video confirmed that NE#1 did not touch the Complainant's stomach or waist, he did not grope any person's breasts, and did not move his hand towards the genitals of the Complainant or any other person. Moreover, OPA has found no evidence indicating that NE#1 did so on any other occasions. Notably, during the incidents involving the Complainant that have been at issue in OPA cases, he has repeatedly engaged in aggressive and abrasive conduct towards officers and has made statements that are not supported by the evidence. This appears to also be the case here.

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

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