



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 2, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0105

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300-POL-3 – Use of Force – Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force	Not Sustained (Unfounded)
# 2	5.100 – Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	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 pointed a gun at them without cause. The Complainant also alleged that the Named Employee did not provide his identification when requested.

SUMMARY OF INVESTIGATION:

On February 9, 2021, a supervisor from the Washington State Department of Labor and Industries called 911 to report that a client – the Complainant in this case – said over the phone that they were going to shoot themselves and then hung up. Officers attempted to call the Complainant over the phone multiple times and there was no answer. Body Worn Video (BWV) showed that the officers conducted a computer records check and learned that the Complainant was not allowed to possess firearms. When the records check also showed that the Complainant previously had a concealed pistol license with a firearm registered in their name, the officers screened the call with a supervisor and formed a plan to approach the residence in patrol vehicles and hail the occupants using the PA system to prioritize safety. The responding officers, including Named Employee #1 (NE#1), who was assigned as a cover officer with a patrol rifle, implemented the planned approach when two individuals – one being the Complainant – exited the residence.

Upon exiting their residence, the Complainant saw NE#1 with a patrol rifle and said: “Hey, why’s he got his gun out?” At the point that NE#1 was first visible to the Complainant, the BWV indicated that the patrol rifle was pointed at the ground. Additionally, all other available video showed that NE#1 did not point the patrol rifle at any person, including the Complainant. Indeed, the totality of the video showed that the highest the patrol rifle was raised was about 60 degrees from the ground and pointed to an area where the pavement met the grass. Available video footage also established that NE#1’s trigger finger was visible and remained outside the trigger guard the entire time.



NE#1's Sergeant told NE#1 to step back and out of sight as his presence appeared to antagonize the Complainant. At the Sergeant's instruction, NE#1 moved away and walked to the rear of the patrol vehicle with his patrol rifle still pointed to the ground. At that point, the Sergeant tried to talk with the Complainant to verify whether they wanted to hurt themselves. The Complainant asked for the Sergeant's and another officer's name and badge number, which were promptly provided. When it became clear that the Complainant was refusing to answer any questions regarding the initial 911 call, the officers spoke to the other individual with the Complainant who told the officers that the Complainant never made any suicidal statements. Shortly thereafter, the officers left the scene.

The Complainant later initiated an OPA complaint. The Complainant alleged that NE#1 pointed a rifle at them and had his finger on the trigger. The Complainant also asserted that NE#1 slipped away when they asked him for his name and badge number.

As part of this investigation, OPA reviewed the BWV of multiple responding officers, reviewed incident reports, and interviewed the Complainant over the phone.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 – POL-12 Use of Force – Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force

SPD policy states that pointing a firearm at a person is type I reportable force (SPD Policy 8.300-POL-12, Use of Force - Firearms 9.) The policy further instructs that officers "document all incidents where they point a firearm at a person." (*Id.*) Finally, "Unholstering or displaying a firearm – including in a sul or low-ready position – without pointing it at a person is not reportable force." (*Id.*)

Here, NE#1's BWV showed that his rifle was pointed at the ground. Review of all other available video also established that NE#1 did not point his rifle at the Complainant or anyone else. As explained above, the video evidence indicated that NE#1 pointed his rifle down during the entire incident, as well as conclusively proved that NE#1's finger was situated on the trigger guard, not on the trigger.

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 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-7 requires that SPD employees engaged in department related activities "provide their name and Department serial number verbally, or in writing if requested." (SPD Policy 5.001-POL-7.)

Here, the evidence does not show that the Complainant requested NE#1's name or badge number. The video confirmed that the Complainant did not ask for any officer's badge number until NE#1 had already walked away pursuant to his supervisor's request. There is no evidence that NE#1 heard this request, and the video definitively established that he did not refuse to provide his identifying information at any time.



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

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