



## ***CLOSED CASE SUMMARY***

ISSUED DATE: DECEMBER 10, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0259

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained (Training Referral)
# 2	8.100 De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities,	Not Sustained (Training Referral)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.100 De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities	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:**

This complaint was initiated by an SPD captain following a Use of Force Blue Team review of this incident. The complaint alleged that, while escorting the Subject out of a retail store, Named Employee 1 (NE#1) made unprofessional comments and NE#1 and Named Employee 2 (NE#2) failed to de-escalate as required by policy.

### **SUMMARY OF INVESTIGATION:**

The Named Employees responded to a disturbance at a Bartell Drugs store in which the Subject allegedly assaulted a store security guard after being asked to leave the premises. After contacting the Subject and ordering him to leave the premises, the Named Employees went hands on and began guiding the Subject out of the store. As the Named Employees and Subject approached the exit, the Subject resisted the officers' holds and was placed under arrest for obstruction and assault in the fourth degree. The Named Employees and backing officers used Type II force to gain the Subject's compliance and place the Subject into handcuffs. The Subject suffered minor injuries consisting of a small rug burn, possible swelling, and a red mark.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

***5.001 - Standards and Duties 10. Employees Will Strive to be Professional***



The Complainant alleged that NE#1 was unprofessional when he directed insulting language at the Subject and used expletives while discussing the incident with both the Subject and the security guard.

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.*)

After the Subject was in custody, NE#1 made a number of inappropriate comments. First, NE#1 stated to the Subject, “[a]ll you had to do was [expletive] listen ... punk.” While talking to the security guard and while outside of the presence of the Subject, NE#1 also referred to the Subject saying: “what a piece of [expletive].” These public comments by a uniformed member of service were not professional. That these comments were “derogatory, contemptuous, or disrespectful” is beyond dispute.

NE#1’s comments to the security guard were already addressed by his chain of command through a supervisor action (see 2021OPA-0204). Similarly, NE#1’s comments to the Subject were addressed by his chain of command through retraining, counseling, and a PAS entry. NE#1 was receptive to his supervisor’s feedback and acknowledged a mistake in word choice. Considering that NE#1’s chain of command has addressed this issue with him, and NE#1 recognized his mistake and explained how he would avoid revisiting this conduct in the future, OPA finds it appropriate to issue the following training referral here:

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings and review SPD Policy 5.001(10) with him. NE#1’s chain of command should advise NE#1 that future use of “derogatory, contemptuous, or disrespectful” language with members of the public will not result in further training referrals and, instead, will necessitate discipline. The retraining and counseling conducted should be documented, and this documentation should be maintained in an appropriate database.

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

#### **Named Employee #1 - Allegation #2**

##### ***8.100 De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities***

The Complainant alleged that NE#1 did not use de-escalation techniques prior to physically contacting the Subject.

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL).

In this instance, the Named Employees made a decision to go “hands on” with the Subject—an individual who may have been in crisis—within ten seconds of entering the store. In its review of the force and, specifically, the Named Employees’ tactics and decision-making, the chain of command opined that, while not necessarily in violation of policy, the Named Employees did not employ best practices. They noted that the Subject was not believed to be violent and



that the officers could have taken more time to employ time, distance, and shielding, as well as to try to communicate before using force. Both officers received extensive training and counseling from the chain of command and were receptive to this.

OPA agrees that, while perhaps not consistent with best practices, the officers did not violate policy. As such, OPA issues the below Training Referral to both Named Employees.

- **Training Referral:** The Named Employees' chain of command should discuss OPA's findings and review SPD Policy 8.100(1) with them, paying particular attention to examples of communication and time techniques that could have achieved voluntary compliance or stabilized the situation in this instance. The chain of command should provide any further retraining and/or counseling that it deems appropriate. To the extent the chain of command believes that it has fully addressed, no further retraining or counseling is required. Any additional retraining and counseling that is conducted should be documented in Blue Team.

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

**Named Employee #2 - Allegation #1**

***8.100 De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Training Referral.

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