



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 30, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0323

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to be Professional	Sustained
# 2	16.140 - Traffic Direction and Control I. Traffic Direction and Control B. When directing traffic, the following rules will be observed:	Not Sustained (Inconclusive)
# 3	9.020 - Uniform 9.020-POL 4. All Outward Facing Uniform Items Include Proper Identifying Markings	Sustained

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	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 was driving in stop-and-go traffic and alleged that Named Employee #1 (NE#1)—a parking enforcement officer—used misleading hand signals, engaged in unprofessional conduct, and failed to identify himself while working at traffic flagging. The Complainant alleged he had been given the right of way to drive when NE#1 accused him of driving at him. Named Employee's #2, #3, #4, and #5 attended the scene and it was alleged that they used excessive force in handcuffing the Complainant during his arrest.



ADMINISTRATIVE NOTES:

The Complainant alleged that Named Employees #2, #3, #4, and #4 pulled him out of his vehicle and handcuffed him in a "rough" manner. Upon review of the BWV, the excessive force allegations were processed as an Expedited Investigation because the evidence did not support any policy violation. The Office of the Inspector General certified this Expedited Investigation.

This is an amended memorandum. After release, OPA was made aware of a discrepancy between the findings listed in the "Allegations of Misconduct and the Director's Findings" section versus the "Analysis and Conclusions" section. Specifically, the finding for Named Employee #1, Allegation #2 has been edited to accurately reflect OPA's recommended finding of Not Sustained – Inconclusive. Additionally, a line in the "Analysis and Conclusions" section for Named Employee #1, Allegation #1 has been edited to reflect that OPA requested an interview with CM#1 through his legal representative, not through contact with CM#1 directly.

SUMMARY OF INVESTIGATION:

On 03/27/2019, Named Employee #1 (NE#1)—a parking enforcement officer—was working off-duty in the 100 block of Spring Street. He was flagging traffic to assist drivers as they exited a parking garage. The Complainant (CM#1) along with his 6-year-old son (seated in the backseat) were stopped with other drivers in traffic. The incident occurred during daylight hours and the weather was cloudy but bright and dry.

Another driver (Community Member CM#2) was driving directly behind CM#1 and had a dash cam and recorded the incident between NE#1 and CM#1. The recording captured CM#1 stopped in traffic in the first lane, west of the parking garage exit, and behind NE#1 who was standing in the street, near the middle of the two lanes. At about 5:30 P.M., as NE#1 was directing vehicles out of the garage, CM#1 was captured appearing to attempt to get in front of another vehicle exiting the garage and, by doing so, drove very close to NE#1. NE#1 was able to quickly step away and was not injured. OPA further reviewed this footage which captured the entirety of the traffic stop.

NE#1 alerted on his radio and officers arrived on scene shortly thereafter. NE#1 reported that he felt CM#1 deliberately tried to hit him. CM#1 stated, "...there were signals mixed. I thought he was waving me forward and we were on a hill, so I had to accelerate to move forward. He was like, no, not you but I had already accelerated up the hill." One of the attending officers interviewed CM#2, who provided the dash cam footage. The attending officer noted the following, "[CM#2] reported he observed [CM#1] stopped, then drive forward towards [NE#1], swerve around him, and continue eastbound. The dash Cam footage that [CM#2] showed to me and [another officer] corroborated this account. It appears that [CM#1] moved forwards, moved into the bike lane to go around [NE#1] and continued to drive past him. It does not show any contact made between the vehicle and [NE#1]."

CM#1 was subsequently arrested for Assault and transported to the West Precinct. His vehicle was impounded. He was processed for impairment (drugs and/or alcohol) by a DRE (Drug Recognition Expert). It was determined that he did not "exhibit any signs of impairment, from drugs or alcohol." CM#1 was released from the precinct with charges pending for Assault, Reckless Endangerment, and Reckless Driving. CM#1 was charged with Reckless Endangerment and Reckless Driving (the Assault charge was dropped).



As part of OPA's investigation, a supervisor in the Parking Enforcement section was interviewed as a witness (WO). This allowed OPA to obtain insight into the development and training of PEO personnel. NE#1 was also interviewed in relation to the incident.

ANALYSIS AND CONCLUSIONS:

5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to be Professional

It was alleged that NE#1 was unprofessional.

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.*)

CM#1 alleged that NE#1, "pounded and hit" the hood of CM#1's car and "screamed" to "Pull over or do something!" CM#1 further alleged that NE#1 appeared to be "belligerent, very irrational, and was not professional."

Independent dash camera obtained from CM#2 depicts NE#1 banging the hood of the vehicle and raising his voice to CM#1. The verbal exchange between NE#1 and CM#1 was partially captured on CM#1's phone and identified the elevated tone of NE#1's voice when he stated, "That's correct I hit your car cuz you were about to at me and hit someone else." When interviewed, NE#1 accepted that his engagement with CM#1 was "Probably not as professional as it could be. But again, given the circumstances I didn't think I was rude or unprofessional given that he just tried to kill, hurt me or cause an accident with somebody else." NE#1 stated he was "absolutely not" unprofessional given the circumstances. NE#1 stated that he was aggravated and "scared and he just tried to run me over with a 2500 pound moving vehicle."

While OPA sympathizes with the fright and possible adrenaline rush that NE#1 got when he was nearly hit by the CM#1's vehicle, his role as a traffic flagger demands that he keeps a calm demeanor, regardless of the circumstances. By raising his voice and banging the vehicle, NE#1 acted in an unprofessional manner because of a driver's actions which he was actually meant to control.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

16.140 - Traffic Direction and Control I. Traffic Direction and Control B. When directing traffic, the following rules will be observed..

It was alleged that NE#1 used improper hand signals.



SPD policy 16.140 1 requires that officers directing traffic (1) ensure that they are visible by utilizing flashlights, reflective clothing and flares, especially during hours of darkness or adverse weather conditions, (2) utilize the police whistle or voice commands depending on the situation, and (3) use uniform hand signals and gestures for manual traffic direction and control. Furthermore, officers should position themselves so that their hand signals can be seen from a long distance. Two basic hand signals are permitted: open hand, palm out sign to indicate “STOP” and pointing and waving to indicate that traffic should start.

CM#1 alleged that NE#1 was not wearing a helmet, did not have a “slow/stop” paddle or “the cool green gloves with a stop sign on the palm.” And that NE#1 “did not properly make the motions indicating whose turn it was at the traffic stop. BWV showed that NE#1 was clearly visible wearing reflective clothing and did not need to use a flashlight or flares (the incident occurred during daylight hours and the weather was cloudy but bright and dry). When interviewed NE#1 stated that could not say with certainty if he used his whistle (or voice commands) during this incident (although a whistle was around his neck). He added, “Generally I use the whistle. But once people—in those situations where people have already been stopped for a long period of time. They're already antsy and waiting to go so all I have to do is look point and make a wave or something to that effect...it's very, very clear there.”

NE#1 reported that he felt CM#1 deliberately tried to hit him. CM#1 however was referenced as saying, “...there were signals mixed. I thought he was waving me forward and we were on a hill, so I had to accelerate to move forward. He was like, no, not you but I had already accelerated up the hill.” On reviewing the dashcam footage with WO, OPA’s interview with the WO supported the hand signals taken by the NE#1 as he directed traffic from the garage. WO stated that review of the independent dash cam footage supports the perspective that the requirements or standards and procedure that should be followed by a PEO flagging at this location where vehicles were exiting a garage were complied with. WO stated that “Out of hand, [NE#1’s] not required [to keep his hand up]. It's not written down anywhere that he's required. He already had control of that lane of travel by the fact that there was there was already stopped traffic, he is stuck. He was in the middle of that lane.”

On review of the evidence, the preponderance of the evidence does not establish a policy violation in this instance. The dash cam footage depicts the actions of CM#1 and supports his contention that he did not hit NE#1 and NE#1’s escalated behavior. CM#1 alleged that he was on a hill, which required that he accelerate. Audio footage confirms that he can be heard referencing putting the parking brake on because of the steepness of the hill. CM#1 was visiting from the State of California and employed a private investigator to examine this matter further. Although OPA requested an interview with CM#1 through his legal representative, CM#1 was ultimately not interviewed, so OPA could not further clarify issues heard on audio recordings or dash cam footage. However, NE#1’s version of events cannot be discounted with respect to his version of why CM#1 accelerated to get ahead of an existing vehicle. Indeed, BWV would appear to support his suggested reasoning as to why CM#1 accelerated, *i.e.* to get ahead of the exiting vehicle.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #3

9.020 - Uniform 9.020-POL 4. All Outward Facing Uniform Items Include Proper Identifying Markings

It was alleged that NE#1 failed to wear proper identifying markings, in violation of policy.



SPD Policy 9.020-POL-4 requires that: “Any shirt, jacket, etc., worn as the outermost layer of the officer’s uniform will contain a cloth nametag on the right-side chest of the uniform item.” (SPD Policy 9.020-POL-4). In virtually all situations these “proper identifying markings” will be the officers’ last name and serial number.

CM#1 alleged that NE#1 was not wearing a helmet, did not have a “slow/stop” paddle or “the cool green gloves with a stop sign on the palm.” OPA notes that PEO’s are not required to utilize a paddle or wear the gloves described by CM#1. A hard hat is required only if overhead hazards exist. The BWV confirmed that, NE#1 was wearing a high visibility vest that did not have a name tag or his serial number visible.

CM#1 further alleged that NE#1 failed to identify himself when requested to do so. NE#1 denies that he was asked for identification. As such OPA is unable to reach a determination on this aspect of the allegation made. OPA could not identify any recording that captured CM#1 asking NE#1 to identify himself.

PEO’s are required to have a name tag and cloth badge displayed on their traffic vests. These cloth name tags have the PEO’s first initial last name on them. PEO’s also have department issue badges. When questioned about the lack of name tag, NE#1 stated that since this incident occurred in 2019, he questioned whether this incident occurred during the time of transition, when new vests were being issued. BWV however captured NE#1 later acknowledging that the vest was the older style (appearing to negate the transition/new vest argument).

While a police uniform is integral to the identification of police personnel, the commonness of high visibility clothing amongst public workers makes the identification of an officer more difficult. Ensuring that officers identify themselves via name badges assists in people being able to quickly identify law enforcement personnel. BWV confirms that NE#1 was not wearing any name badge.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

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

It was alleged that NE#1 used improper force.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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 8.050.)

The policy lists a number of factors that should be weighed when evaluating reasonableness. The use of force applied in the detention of the complainant was reasonable, necessary, and proportional. On arrival at the CM#1’s car, NE#5 shouted at the complainant to stop and put his vehicle in park, and to get out of the vehicle. Attending NE’s may have assumed that the vehicle was put in park as the complainant then exited the vehicle. On review of the BWV, it appears that the complainant may have been getting back into the vehicle to apply the handbrake, but he did not say this to the NEs as he did so. When the car begins to roll backwards, CM#1 is presumably heard saying, “He...he wouldn’t let



me do that.” On review of BWV it appeared that the complainant was failing to follow orders given, hence his arrest. The use of force applied appeared to be *de minimis* force and within policy and training standards.

Accordingly, this allegation is Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #3 - Allegation #1

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

For the same reasons set forth at Named Employee #2 – Allegation #1, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #4 - Allegation #1

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

For the same reasons set forth at Named Employee #2 – Allegation #1, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #5 - Allegation #1

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

For the same reasons set forth at Named Employee #2 – Allegation #1, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**