



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0332

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	5.001 Standards and Duties 14. Retaliation is Prohibited	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 placed him in handcuffs in retaliation for stating that the Named Employee grabbed the Complainant's penis. It was also alleged that the Named Employee use unprofessional language with the Complainant.

SUMMARY OF INVESTIGATION:

On June 26, 2021, the Named Employee (NE#1) was investigating a report of a suspicious vehicle. During his investigation, NE#1 developed reasonable suspicion that the Complainant was involved in criminal activity and detained him. NE#1 then conducted a justified pat-frisk of the Complainant. During the pat-frisk, the Complainant swatted NE#1's hand away and accused NE#1 of grabbing the Complainant's penis. NE#1 placed the Complainant in handcuffs and completed the frisk. No weapons were found and NE#1 screened the incident with his supervisor. The supervisor then referred the Complainant's retaliation allegation to OPA. OPA commenced this investigation and added a separate allegation for NE#1 using unprofessional language.

As part of this investigation, OPA reviewed the complaint, CAD, GO Report, *Terry Stop* Report, BWV, and ICV. OPA also reviewed NE#1's training records and interviewed NE#1. OPA made multiple attempts to contact the Complainant by phone and text message but was unsuccessful. The entirety of NE#1's interaction with the Complainant is captured on BWV and ICV. Specifically, NE#1's pat-frisk of the Complainant is captured from two different angles, one from NE#1's BWV, another by ICV. NE#1's GO Report, *Terry Stop* Report, and OPA interview were all consistent with the events observed in the BWV and ICV. The facts underlying this incident are not credibly in dispute.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

It was alleged that NE#1 used unprofessional language during his interaction with the Complainant.

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.*)

As NE#1 frisked the Complainant, the Complainant accused NE#1 of grabbing his penis and physically swatted NE#1’s hand away. NE#1 then put the Complainant in handcuffs and completed the frisk. NE#1 did not recover any weapons from the Complainant. As a factual matter, overwhelming evidence contradicts the Complainant’s statement that NE#1 “grabbed” the Complainant’s penis. Both the BWV and ICV depict NE#1 conducting a routine pat frisk, which included the Complainant’s waistband. Because the Complainant wore his pants low on his hips, his waistband ran across his groin area. In the BWV, NE#1 admitted touching the Complainant’s penis. However, at his OPA interview, NE#1 stated that he did not believe he contacted the Complainant’s penis and that he only admitted doing so to the Complainant in an effort to explain why such contact could have occurred during a pat-frisk. In either case, the video is dispositive. As depicted in both the BWV and ICV, the amount of time that NE#1’s hand was anywhere near the Complainant’s groin area was only the fleeting moment necessary to complete the pat-frisk. Any contact between NE#1’s hand and the Complainant’s penis was incidental to NE#1’s lawful pat-frisk and was not an intentional “grab.”

After accusing NE#1 of grabbing his penis, the Complainant became upset and repeated his allegations multiple times. As NE#1 tried to respond to the Complainant’s allegations and explain the nature of the pat-frisk, the Complainant repeatedly interrupted. As the Complainant and NE#1 talked over each other, NE#1 made a series of statements to the Complainant, including: (1) “Let me explain to you what the f*** is going on”; (2) “I’m trying to explain what the f*** is going on man”; and (3) “Where’s your waistband at? Is it close to your f***ing crotch?”

When asked about these statements at his OPA interview, NE#1 explained that his intent was not to escalate the situation with the Complainant, but that he was attempted “to interrupt his, you know, thinking.” NE#1 opined that his use of profanity calmed the Complainant and was not meant to be disrespectful, derogatory, or belittling.

As a general matter, OPA thinks that the utility of NE#1’s use of profanity here as a purported de-escalation tactic was low and is difficult to square with “striv[ing] to be professional.” However, OPA acknowledges that, in rare and imperfect situations, profanity accompanies the effective use of forceful language. This was the case for two of NE#1’s statements concerning “what the f*** is going on.”

The same cannot be said of NE#1’s statement “Where’s your waistband at? Is it close to your f***ing crotch?” As opposed the other statements, this use of profanity was pointed towards the Complainant and was, at a minimum, disrespectful. But OPA also recognizes that this statement was made during a frustrating back-and-forth in which the



Complainant was—falsely and repeatedly—accusing NE#1 of serious misconduct. Under these circumstances, NE#1’s verbal expression of frustration did not amount to a willful violation of policy.

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

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-10 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented and maintained in Blue Team.

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

Named Employee #1 - Allegation #2

5.001 Standards and Duties 14. Retaliation is Prohibited

The Complainant alleged that NE#1 retaliated against him for accusing NE#1 of grabbing the Complainant’s penis.

SPD policy forbids its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) Among other things, SPD employees are specifically prohibited from retaliating against a person who “opposes any practice that is reasonably believed to be unlawful or in violation of Department policy” or who “publicly criticizes an SPD employee.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Here, the great weight of the evidence demonstrates that NE#1 did not put the Complainant in handcuffs in response to his fabricated allegation, but instead placed the Complainant in handcuffs for physically resisting a lawful pat-frisk. This is not retaliation.

As detailed in the GO Report and *Terry Stop* Report, NE#1 detained the Complainant based on reasonable suspicion that the Complainant was involved in a crime. Specifically, NE#1 observed the complainant enter and exit a vehicle that had been reported as suspicious. NE#1 contacted the Complainant, who stated that his battery was dead and he was going to go to the bus. As the Complainant started walking away, a nearby community member stated that the keys were still in the vehicle and that the vehicle’s lights were on. NE#1 confirmed that the vehicle was registered to a female and not the Complainant, who appeared to be male. When NE#1 asked the Complainant for his ID, the Complainant responded that he left it “back in my car.”

Similarly, NE#1 conducted a pat-frisk based on reasonable suspicion that the Complainant could be armed. As NE#1 continued to engage the Complainant in conversation, the Complainant repeatedly put his hands near his pockets—despite orders from NE#1 not to do so—and NE#1 observed that the Complainant’s right jacket pocket appeared to be weighed down. Based on these factors, along with the fact that NE#1 did not have backup present and it was dark out, NE#1 was justified in conducting a pat-frisk of the Complainant. When the Complainant physically resisted the pat-frisk by suddenly swatting NE#1’s hand away, NE#1 was justified in placing the Complainant in handcuffs for his safety.

Additionally, NE#1 began placing the Complainant into handcuffs almost as soon as the Complainant physically resisted. In OPA’s opinion, this seems much more indicative that the decision to place the Complainant into handcuffs was a response to the Complainant’s physical resistance than his false accusation that NE#1 “grabbed” his penis.



Moreover, NE#1 knew that his BWV and ICV recorded the entire interaction—including the Complainant’s false accusation. Given the Complainant’s allegation was already recorded and demonstrably false, it’s unlikely that NE#1 would have been using his handcuffs to discourage, intimidate, or coerce the Complainant from repeating it.

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

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