




CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 30, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0238

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 Will Strive to be Professional	Not Sustained - Unfounded (Expedited)
# 2	15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Unfounded (Expedited)
# 3	5.001-POL 6. Employees May Use Discretion	Not Sustained - Lawful and Proper (Expedited)

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 Named Employee #1 (NE#1) was unprofessional, failed to conduct a thorough and complete search for evidence, and improperly exercised discretion.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach, and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employee in this case.

SUMMARY OF INVESTIGATION:

The Complainant alleged, while she was reporting an assault, NE#1 repeatedly told her to "stay away from the area," rather than questioning her about the incident. It is further alleged the person who assaulted and pepper-sprayed the Complainant was not arrested.

During its investigation, OPA reviewed the emailed complaint, CAD records, BWV, the incident report, and the Complainant's OPA interview. NE#1's entire response to this incident was recorded on BWV.

On July 28, 2022, at 20:59, SPD officers, including NE#1, responded to an alleged assault. Upon arrival, NE#1 contacted the Complainant and interviewed her about the incident. The Complainant alleged she observed an unidentified female arguing with two males, Community Member #1 (CM#1) and Community Member #2 (CM#2), who lived in a nearby inoperable vehicle. She stated she approached the group and CM#2 flipped her glasses off her face and pepper



sprayed her. NE#1 subsequently interviewed CM#1, who stated the Complainant and Community Member #3 (CM#3) confronted them and accused them of stealing. A witness, Community Member #4 (CM#4), approached NE#1 and corroborated CM#1's account that the Complainant and CM#3 were the aggressors. A witness officer (WO#1) interviewed the Complainant's friend (CM#3) who confirmed she initiated the incident with CM#1 and CM#2. NE#1 documented both accounts and advised the parties to stay away from each other. CM#2 was not present, and no arrests were made.

On July 28, 2022, at 22:34, SPD officers, including NE#1, returned to the scene in response to several emergency calls regarding a fight. Upon arrival, NE#1 contacted CM#1 and CM#4, who advised the Complainant's husband, Community Member #5 (CM#5), approached and threatened CM#1, believing he was the individual who pepper sprayed the Complainant. CM#4 stated he observed CM#5 punch CM#1. He also stated he observed CM#5 and the Complainant kick CM#1 while he was on the ground. CM#4 stated he punched CM#5. NE#1 spoke with CM#5, who stated CM#4 hit him with a stick, which caused a gash on his head. NE#1 determined CM#5 was the aggressor. However, no arrests were made, and NE#1 again told both parties to stay away from each other.

On July 30, 2022, the Complainant called 9-1-1 and reported she saw CM#2, the individual who pepper sprayed her. A witness officer (WO#2) arrived and contacted CM#2, who admitted to pepper spraying the Complainant. However, CM#2 alleged the Complainant was the aggressor. No arrest was made.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 was unprofessional in the course of his duties.

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.*

Here, OPA reviewed CAD records, the incident report, BWV, and the Complainant's OPA interview. During the Complainant's OPA interview, she was primarily concerned about NE#1 making her feel like she did something wrong, when she was the "victim." The Complainant also noted she was told to stay away from the other party. BWV showed NE#1 and WO#1 interview the involved parties and a witness. The incident report documented both accounts of the altercation. Furthermore, NE#1 told both parties involved to stay clear of each other. Although, NE#1 prepared a report which listed the Complainant as a suspect, that description was supported by evidence. Despite, the Complainant being identified as an aggressor in the incident, she was not arrested.

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

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



Named Employee #1 - Allegation #2

15.180 - Primary Investigations 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

The Complainant alleged NE#1 did not properly investigate when he failed to ask her any questions about the incident.

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. SPD Policy 15.180-POL-1. Such evidence should be photographed. *Id.*

Here, BWV and the incident report proved, NE#1 and WO#1 took statements from the Complainant, CM#3 (her friend), CM#1, and CM#4 (an independent witness). After the second incident, NE#1 took statements from CM#5, CM#1, and the witness CM#4. It should be noted, the Complainant was present when her husband CM#5 provided a statement to NE#1. The information obtained from those statements suggested the Complainant and her husband were the primary aggressors.

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

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

Named Employee #1 - Allegation #3

5.001-POL 6. Employees May Use Discretion

The Complainant alleged NE#1 erred in his discretion by not arresting the individual who pepper sprayed her.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” SPD Policy 5.001-POL-6.

Here, BWV and the incident report suggested the Complainant instigated the initial dispute. NE#1 interviewed CM#1, who did not know where CM#2 was. Both parties were told to stay away from each other. Subsequently, the Complainant’s husband, CM#5, initiated an altercation with CM#1. The Complainant also participated in that assault. Officers determined CM#5 was the aggressor. Thereafter, CM#2 was located and interviewed. CM#2 told officers the Complainant initiated the initial dispute. NE#1 utilized discretion and decide not to arrest the instigating parties.

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

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