



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 14, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0396

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Unfounded)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 failed to complete a thorough investigation and was unprofessional. OPA further added an allegation that the Named Employee's report was not thorough and complete.

SUMMARY OF INVESTIGATION

The Complainant submitted a web complaint to OPA expressing concerns regarding how Named Employee #1 (NE#1) treated him during an investigation. The Complainant said that NE#1 was very abrupt and that, at one point, NE#1 told the Complainant that he was lucky not to be arrested. The Complainant felt that this was unprofessional. The Complainant also asserted that NE#1 did not adequately investigate the case and assumed that the Complainant was the perpetrator even though he was the victim in the incident. This investigation ensued.

As part of its investigation, OPA reviewed the report generated by NE#1 concerning this incident, the 911 call audio, and Body Worn Video (BWV). OPA further interviewed the Complainant.

In the initial 911 call, the Complainant reported that an individual who worked at a 7-Eleven store – referred to here as the Subject – kicked him in the head and attempted to strangle him. The 911 call was updated to indicate that the Subject reported that the Complainant was the primary aggressor when he swung at the Subject. The Subject said that he used physical force to defend himself. A subsequent update stated that the Complainant went to the 7-Eleven to confront the Subject about a text the Subject sent to the Complainant. The Complainant characterized the texts as containing threats to kill. The Complainant was asked by the 911 dispatcher whether he needed medical



assistance and he declined. The Complainant asserted that the Subject was high. The Subject contrarily alleged that the Complainant was intoxicated.

The BWV indicated that NE#1 arrived at the 7-Eleven and contacted the Subject first. The Subject reported that the Complainant, who was his neighbor, came into the 7-Eleven where he worked and wanted to fight him. The Subject reported no injuries to himself or his mother, who also worked at the 7-Eleven, and declined NE#1's offer to summon medical assistance. The Subject stated that he defended himself by placing the Complainant in a "chokehold" and then released the Subject. The Subject described the Complainant as intoxicated. The Subject told NE#1 that he was not interested in pursuing charges and that there is surveillance footage available. NE#1 then left the store to contact the Complainant. NE#1 asked another officer to remain with the Subject to access the surveillance footage.

NE#1 walked towards the Complainant's apartment and the Complainant came out to speak with him. NE#1 asked the Complainant what happened. The Complainant described the Subject as being "on meth" and admitted that he had texted the Subject calling him a derogatory name. The Complainant also admitted that he went to the 7-Eleven to confront the Subject for unknown reasons. NE#1 viewed the text message exchange on the Complainant's phone and commented that it did not seem like the Subject and the Complainant were friends. NE#1 also told the Complainant that he already viewed the surveillance footage. The Complainant kept repeating that the Subject was on meth. NE#1 told the Complainant that there were no signs the Subject was on meth, but that the Complainant appeared intoxicated. The Complainant admitted having a drink. NE#1 then told the Complainant that he was lucky that he was not the one going to jail. NE#1 further stated that the Complainant was the one who shoved past an old lady (the Subject's mother) to get at Subject. The Complainant then stated he was going to call his lawyer and went inside his apartment and the contact ended.

NE#1 returned to the store and spoke briefly with the officer who had remained there and the Subject. NE#1 shut off his BWV, so it was unclear whether he ever reviewed the security video. NE#1 later documented this incident in a report. The report indicated that the Subject did not want to press charges and that the Complainant accused the Subject of being on "meth." The report did not, however, memorialize either the Subject or the Complainant's account, detail whether anyone was injured, or describe what was seen on the surveillance footage.

ANALYSIS AND CONCLUSIONS:

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

SPD Policy 15.180-POL-1 requires officers to conduct a thorough and complete search for evidence as part of a primary investigation.

Here, NE#1's investigation included interviewing the Complainant, the Subject, and the Subject's mother. While he also may have reviewed the security video, it is unclear as he turned his BWV off and he did not reference its contents in his report. However, OPA finds that, even independent of the security video, there was sufficient evidence supporting the conclusion that the Complainant was the primary aggressor. This was based on the comparison of the statements, the content of the text message sent by the Complainant, and NE#1's perception that the Complainant was intoxicated.



As OPA finds that NE#1 conducted a sufficiently thorough investigation and search for evidence, OPA recommends that this allegation be Not Sustained - Unfounded.

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

Named Employee #1 – Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires reports completed during primary investigations to be thorough, accurate, and complete.

NE#1's report here lacked details concerning the accounts provided by both the Subject and the Complainant, it did not set forth what injuries, if any, these individuals suffered, and it did not describe what transpired on the surveillance video. While NE#1 may have determined that criminal charges were not merited and thus truncated his report, this caused it to fall below the standard of what is expected under policy.

OPA believes that this is an issue that is better addressed by retraining than by discipline. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement to complete thorough and accurate reports for all incidents and he should be counseled to more closely comply with this policy in the future. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 – Allegation #3

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

The Complainant alleged that NE#1 treated him unprofessionally during this incident by making the Complainant feel like the suspect and dismissing the Complainant's account.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (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.*)

Based on a review of the BWV, OPA agrees with the Complainant that NE#1 treated him like a suspect. However, this was because NE#1 reasonably believed that this was the case, not due to unprofessionalism on NE#1's part. In addition, while NE#1 was curt and direct with the Complainant, he did not use any language that was derogatory, contemptuous, or disrespectful. OPA notes that, at one point, NE#1 told the Complainant that he had watched the surveillance video when this was not true. It appears that this was a ruse. OPA struggles to understand why this ruse



was needed and, for that matter, why NE#1 did not watch the surveillance video when initially offered by the Subject. However, standing alone, this does not constitute unprofessionalism.

Ultimately, there is no indication that NE#1's statements, conduct, or demeanor towards the Complainant were unprofessional. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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