



## **CLOSED CASE SUMMARY**

ISSUED DATE: NOVEMBER 6, 2018

CASE NUMBER: 2018OPA-0431

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

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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:**

The Complainant alleged that the Named Employee was unprofessional towards her and an unknown woman.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

Named Employee #1 (NE#1) responded to a call concerning a woman who was lying in a parking lot. NE#1, who recorded this incident on his Body Worn Video (BWV), asked the woman whether she was okay and whether she needed medical attention. NE#1 shook the woman’s shoulder and again asked her if she was okay and needed medical attention. She told NE#1 and the other officer who initially responded to the scene with NE#1 to leave her alone. NE#1 responded that they could not do so because she was trespassing. The other officer told the woman that she was being audio and video recorded. NE#1 asked her whether she had any injuries and told her to wake up. The other officer moved some of her property with his foot and she stated that this was rude. NE#1 responded by telling her to sit up. He asked her whether she needed medical attention for a third time and also whether she needed detox.

The officers then waited at the scene until the parking lot manager arrived. The manager informed the woman that she was trespassed from the lot. NE#1 told the woman that if she did not leave she would be arrested for trespass. She started yelling at NE#1 and NE#1 yelled “get up” twice. He told her to leave multiple additional times and the woman responded with anger, including calling NE#1 curse words.

At that time, a woman, who is the Complainant in this case, approached NE#1 and asked him if it was necessary to move the woman’s things around. He stated that it was if she would not leave. The officers continued to request that the woman leave the parking lot but she did not do so. NE#1 walked back to his car and he was again contacted by the Complainant. She expressed her displeasure with how NE#1 had interacted with the woman and how he handled this incident. At one point, NE#1 asked her if she saw the whole interaction. The Complainant stated that she did not like NE#1’s attitude and NE#1 responded: “I’m not too crazy about you who didn’t see the whole thing.”



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NE#1 then told the Complainant that he was happy to talk to her further but she did not want to do so. The Complainant later made an OPA complaint and this investigation ensued.

SPD Policy 5.001-POL-9 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-9.) The policy also 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.*)

NE#1 denied that he was unprofessional towards the woman. He explained that his voice was elevated for two main reasons. First, there was construction noise in the area that he needed to speak over. Second, he believed that the woman was high and intoxicated and thought it necessary to speak loudly to keep her engaged in the conversation.

Based on my review of the evidence, I do not believe that NE#1 engaged in unprofessional behavior towards the woman. I credit the explanations provided by NE#1 concerning why he had an elevated tone. I also note that the woman was not responsive to the officers’ repeated requests for her to move, she was angry and agitated, and she repeatedly used curse words towards the officers and, specifically, towards NE#1. I also find that they had a lawful basis to remove her from the parking lot as she was clearly trespassing. Of course, NE#1 could have been more patient and professional towards the woman, but NE#1 is not held to a standard of perfection in this regard.

I find the question of whether NE#1 was unprofessional to the Complainant to be a closer call. NE#1 is correct that he did not use any profanity towards her and did not yell at her. However, OPA fails to see any legitimate law enforcement reason for why he told her: “I’m not too crazy about you who didn’t see the whole thing.” It was unnecessary and, if anything, simply served to escalate the situation and make the interaction even more negative. On the other hand, NE#1 and his fellow officers were dealing with a very difficult situation. They were trying to convince the woman to leave the parking lot, where she was not legally permitted to be, with limited success and while being criticized and called pejorative terms. As discussed above, I do not find that NE#1’s conduct towards the woman violated policy. I further can understand his frustration at being second guessed by a community member who may not have seen the entirety of his actions or understood what he had been faced with.

OPA’s analysis of this case cannot occur in a vacuum. OPA must evaluate NE#1’s actions in the context of the incredibly difficult job he and his fellow officers are required to perform each day. This includes being on the frontlines of homelessness, drug addiction, and mental illness, while often understaffed and, at time, without the support of members of the communities that they serve.

I do not condone NE#1’s statement towards the Complainant and believe that it was both inappropriate and unnecessary. However, under the totality of the circumstances and given OPA’s above analysis, I do not believe that it warrants a Sustained finding. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be counseled by his chain of command concerning this incident and, specifically, concerning the statements he made to the Complainant. NE#1 should be instructed to avoid such commentary moving forward and should be informed that his statements, even if they did not result in



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a Sustained finding, were inappropriate and inconsistent with the Department's expectations of his conduct. This counseling should be documented and this documentation should be memorialized in an appropriate database.

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