



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2019

CASE NUMBER: 2018OPA-0751

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	11.020 - Transportation of Detainees 10. Officers Will Use the Transport Vehicle’s Seat Belts to Secure Detainees	Not Sustained (Training Referral)
# 3	11.010 - Detainee Management in Department Facilities 2. Officers Will Assist Detainees with Reasonable Requests for Water and Restroom Access	Not Sustained (Inconclusive)
# 4	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 6	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 7	11.010-TSK-1 Securing a Detainee in a Department Holding Cell 6. Visually checks the detainee every 30 minutes and records the check on the appropriate log sheet.	Not Sustained (Management Action)

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:

Named Employee #1 (NE#1) effectuated a traffic stop of the Complainant’s car. NE#1 believed that the Complainant was impaired. The Complainant argued with NE#1 concerning the validity of the stop. He asked NE#1 how fast he was going and NE#1 responded: “above the posted speed limit...I don’t have to know exactly what it was.” Early on in the stop, NE#1 asked the Complainant whether he had diagnosed mental illness. The Complainant reacted angrily, yelling at NE#1 that he did not have to provide that information. NE#1 stated that he asked the question as part of his DUI investigation. Another officer approached the other side of the Complainant’s vehicle. When the Complainant saw that second officer, he stated: “oh, no, no, no, no.” He appeared to attempt to put his keys back into the ignition of his car. NE#1 grabbed the Complainant’s left arm and pulled it outside of the car’s window. He told the Complainant: “I’m going to break this arm off if you put those keys in the ignition.” NE#1 told the Complainant that he was under arrest. NE#1 again told the Complainant that he was under arrest and the other officer repeated that statement. The Complainant asked him what he was being arrested for and NE#1 told him that it was for DUI and obstruction.

NE#1 opened the driver’s door and told the Complainant to get out. The Complainant responded by stating: “Come get me. I’m going limp, I’m going limp. Don’t use excessive force, please.” NE#1 asked the other officer whether he



had a knife and the other officer provided a knife to NE#1. NE#1 then cut the Complainant's seat belt off of him, to which the Complainant responded: "you cut my shit?" NE#1 pulled the Complainant out of the car and into a standing position. NE#1 told the Complainant not to fight the officers and the Complainant replied: "I'm not at all you fucktards." NE#1 then handcuffed the Complainant. The Complainant was searched incident to arrest and a small quantity of marijuana was recovered. The Complainant told NE#1 twice that he wanted to talk to a lawyer, and NE#1 responded "all right" both times. The Complainant was seated in the rear of the patrol vehicle and was transported to the East Precinct. Prior to the transport, the Complainant asked to be seat belted in; however, NE#1 did not do so and stated: "Sir, I don't want to reach in there with the way you're acting."

During the transport, the Complainant accused NE#1 of using excessive force. He also again requested to speak with a lawyer and NE#1 replied that it was "not going to happen." The Complainant told NE#1 that he wanted a drink of water and to use the restroom. NE#1 did not have the Complainant do either upon arrival at the precinct. The Complainant was not allowed to do so until approximately 24 minutes after he was first placed into the holding cell. When he was taken out of the holding cell, the Complainant had bleeding to one of his fingers. NE#1 asked him where he got that injury and the Complainant responded: "I didn't put myself in handcuffs, man. I'm just being a gentleman, but that's the truth." NE#1 later told his supervisor that the injury was there when the Complainant was initially stopped. The Complainant overheard this and accused NE#1 of lying. NE#1 ultimately completed reports concerning this incident; however, he did not document the decision to not seat belt the Complainant.

From a review of video. The Complainant was placed into the holding cell at 0044 hours. The video showed that NE#1 removed the Complainant from the holding cell on three occasions: once at 0108 hours, when he allowed the Complainant to use the restroom; once at 0200 hours, when he again allowed the Complainant to use the restroom; and once at 0211 hours, when he removed the Complainant from the holding cell and transported him from the precinct. The detainee log initially generated by NE#1 indicated that the Complainant was put into the cell at 0045 hours and further indicated that NE#1 performed 30 minute checks at 0202 hours, 0210 hours, and 0212 hours. These times were later crossed out by NE#1 and he replaced 0202 hours with 0115 hours and the 0210 hours with 0145 hours. He did not note the reason for why he made those changes anywhere on the log.

After he was released from custody later that day, the Complainant came to OPA's office and initiated this complaint. The Complainant alleged that NE#1 violated a number of Department policies during his arrest. The Complainant further contended that NE#1 treated him improperly while he was detained at the precinct. Lastly, OPA added allegations concerning apparent discrepancies with NE#1's notations on the detainee log sheet.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See id.) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (Id.) Lastly, the force used must be proportional to the threat posed to the



officer. (Id.)

As discussed more fully below (see Named Employee #1, Allegation #4), when applying a preponderance of the evidence standard, it appears that there was sufficient reasonable suspicion to stop the Complainant's car and, then, probable cause to arrest him for DUI based on NE#1's investigation. This probable cause was strengthened when it appeared that the Complainant began acting as if he was going to start his car.

When the Complainant did so, he presented a fairly significant threat of harm to both NE#1 and the other officer at the scene. Had he fled from the stop, he could have harmed both officers, as well as other community members. As such, it was appropriate to use force to prevent him from doing so.

NE#1 used the following force: he grabbed the Complainant's left arm; he pulled the Complainant out of his car and into a standing position; and he handcuffed the Complainant. All of this force was de minimis and all of it was reasonable, necessary, and proportional under the circumstances of this case and given the threat that NE#1 reasonably perceived from the Complainant's behavior, even if the Complainant had no subjective intent to harm the officers.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

11.020 - Transportation of Detainees 10. Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees

SPD Policy 11.020-POL-10 states that officers will use the seatbelt in a patrol vehicle to secure a detainee prior to transport. The policy further states the following: "If the circumstances do not allow the officer to safely secure the detainee, then the officer will transport the detainee unsecured. The officer must document the specific reason for the unsecured transport in the GO report." (SPD Policy 11.020-POL-10.)

The Complainant was placed into the rear of NE#1's patrol vehicle. Based on a review the BWV, he was compliant and cooperative at that time. NE#1 did not apply a seat belt to the Complainant. NE#1 told OPA that he did not do so because he was concerned by the Complainant's "severe mood swings" and was concerned that he could get bitten or spit on if he went into the car. When asked why he did not document the lack of a seat belt in his General Offense Report, NE#1 stated that he did not know that he was supposed to do so. When informed by the OPA investigator that this was required by policy, NE#1 admitted that he was unaware of that requirement and that he made a mistake in this regard.

Based on the circumstances of this case, NE#1's failure to seat belt the Complainant and to report this in the General Offense Report represented a violation of policy. However, I do not recommend a Sustained finding for two main reasons. First, the Complainant was aggressive at the inception of this incident and I cannot say that it was unreasonable that NE#1 was concerned that he would become so again. Second, the Complainant was not injured due to the lack of a seatbelt, which suggests to OPA that he misconduct was minor.

Instead of a Sustained finding, I recommend that NE#1 receive a Training Referral.



- **Training Referral:** NE#1 should receive additional training concerning SPD Policy 11.020-POL-10 and should be reminded of the requirements that he seat belt detainees and that, when he does not do so, he document the specific reason for that action in his report. NE#1 should be counseled concerning his failure to do so here and should be instructed to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

11.010 - Detainee Management in Department Facilities 2. Officers Will Assist Detainees with Reasonable Requests for Water and Restroom Access

As part of his complaint, the Complainant stated that he asked for a drink of water and to use the restroom, but that he was treated terribly by NE#1.

Department video indicated that the Complainant requested to use the bathroom and to have a drink of water while in the rear of the patrol vehicle. NE#1 stated that he did not recall this statement. NE#1 acknowledged that it would have been reasonable to allow the Complainant to use the bathroom and get water when they got to the precinct, but NE#1 did not remember the Complainant asking to do so at that time (based on a review of video, the Complainant did not).

The detainee log indicated that NE#1 did take the Complainant to the restroom on two later occasions; however, the first time was not until approximately 24 minutes after the Complainant was placed into the holding cell.

SPD Policy 11.010-POL-2 requires that officers assist detainees with reasonable requests for water and restroom access.

Based on OPA's review of the evidence, it is unclear whether NE#1 heard the Complainant's initial request for water and the bathroom while he was in the patrol vehicle. If he did hear that, which he denied was the case, NE#1 would have been required to facilitate a drink of water and the bathroom when they arrived at the precinct. Ultimately, however, there is insufficient evidence to establish the above and, as such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegations #4

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.



NE#1 told OPA (and documented in his report) that he observed the Complainant's car serve into the center lane of travel in front of another car. He also stated that he believed that the Complainant was driving in excess of the posted speed limit. He stated that he based this determination on a visual speed gauge and his experience.

NE#1 asserted that, in his training and experience, he believed that the Complainant was impaired. In support of his belief of impairment, NE#1 identified that the Complainant: was fidgeting; had eye redness; had poor self-care, which suggested to NE#1 mental illness or other impairment; and had mood swings, which he stated was a sign of possible stimulant use when combined with his other observations. NE#1 noted that he is a DUI expert and has made approximately 1,600 DUI arrests.

NE#1 further stated that, once the Complainant moved towards the ignition and appeared to be seeking to start the car, he had probable cause to arrest the Complainant for obstruction.

Based on OPA's review of the record, it is difficult to discern whether NE#1 had sufficient evidence to establish probable cause to arrest for DUI. However, OPA recognizes that NE#1 has significant experience and expertise in this area and defers to his well-documented observations in this regard.

With regard to the obstruction offense, OPA also interprets the video as indicating that the Complainant moved towards the ignition. When he did so, a reasonable officer in NE#1's place could have believed that the Complainant was planning on leaving the scene. This was particularly the case when viewed in concert with the Complainant's heightened emotional state at the time. As such, I find that NE#1 had probable cause to arrest him.

While not specifically alleged, I note that, once NE#1 had probable cause and once the Complainant became uncooperative and went "limp," it was not unreasonable for NE#1 to cut the Complainant's seat belt. Had he not done so, he likely would have been required to use a higher level of force than actually applied to remove the Complainant from the car.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #5

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

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.)

NE#1 denied that his comment to the Complainant concerning breaking the Complainant's arm was unprofessional. He told OPA that he made that statement in order to prevent the Complainant from attempting to drive from the



scene. NE#1 was worried that, if the Complainant did so, it could cause NE#1, other officers, and the public to be at risk of harm. NE#1 believed that the statement worked tactically as it caused the Complainant to stop reaching for the ignition.

Under the circumstances of this case, OPA does not believe that this statement was unprofessional. OPA agrees that this was a potentially dangerous situation and that this threat was calculated to prevent it from becoming even more so.

OPA's concern lies more with NE#1's general approach to this incident, his demeanor, and the way he interacted with the Complainant. Indeed, this is not the first time that OPA has had such concerns. NE#1 has had numerous cases over the last two years in which it was alleged that he was unprofessional. NE#1's defense is likely that he is a proactive officer and, is thus, subject to more frequent complaints. That is true, in part. NE#1 is proactive and proactive officers are more likely to receive use of force and biased policing complaints; however, the predominant allegation that has been classified against NE#1 is professionalism. Moreover, while these allegations have most often been Not Sustained, there has been one Sustained finding and several other close cases. It is further unclear, from a reading of NE#1's OPA interviews, that he has any understanding of how he is perceived at times by those he interacts with. For these reasons, OPA believes that it would be helpful to issue NE#1 the below Training Referral.

- **Training Referral:** I recommend that NE#1 be required to meet with OPA to discuss several cases in which it was alleged that NE#1 was unprofessional. This meeting should last approximately one to two hours and will consist of reviewing video from this case and some of NE#1's prior cases, as well as include a discussion of NE#1's approach, demeanor, and professionalism. OPA will coordinate directly with NE#1 to schedule this training.

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

Named Employee #1 - Allegation #6

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

This allegation was classified against NE#1 for two reasons. First, the Complainant asserted that NE#1 lied when he stated that the Complainant had an injury to his finger at the time of the stop. Second, it was alleged that NE#1's alteration of the detainee log was purposefully inaccurate and was done to make it appear that NE#1 conducted appropriate 30 minute checks on the Complainant when he did not actually do so.

NE#1 denied that he caused an injury to the Complainant's finger. He told OPA that he noticed that the Complainant had scabs in that area at the time of the stop. He stated that he observed this when inspecting the Complainant for signs of drug use, which was part of his DUI investigation. Based on OPA's review of the record, there is insufficient evidence to disprove that NE#1 made that observation. Moreover, there is no indication from the Department video that the Complainant was bleeding from his finger at any time prior to his being placed into the holding cell.

With regard to the modifications to the detainee log, NE#1 acknowledged that he modified the times but he denied that this constituted dishonesty. He stated that the revised times were accurate because he was consistently



monitoring the Complainant via the video feed of the holding cell.

OPA cannot disprove that this is the case. However, it certainly looks suspicious that NE#1 altered the times to exactly account for 30 minute intervals. This is particularly the case when the video shows that NE#1 was not physically present at the holding cells for at least one of those times (0145 hours). I further note that it would have been advisable for NE#1 to have provided some context on the log itself as to why he modified the times. Just changing the times, without any explanation, only leads to questions and necessitated, at least in part, this investigation. That being said, the evidence is insufficient to resolve whether NE#1 was either honest or dishonest in this respect.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegations #7

11.010-TSK-1 Securing a Detainee in a Department Holding Cell 6. Visually checks the detainee every 30 minutes and records the check on the appropriate log sheet.

SPD Policy 11.010-TSK-1 requires that officers visually check detainees every 30 minutes while detainees are being held in Department holding cells and that the officers document the checks on the appropriate log sheet.

NE#1 stated that he complied with this policy because he visually inspected the Complainant by viewing his image and condition on the holding cell camera. He stated that this was his usual practice. He explained that when officers check on detainees by going up to the holding cell in person, it can cause them to get agitated and aggressive. NE#1 contended that he looked at the video feed on multiple occasions and, in any event, more frequently than the 30 minutes required by the policy. Lastly, NE#1 stated that it was the practice of officers assigned to the East Precinct to monitor detainees via the video feed rather than by conducting in-person visual screenings.

It may be the case that it was the practice of officers assigned to the East Precinct to observe the condition of detainees by viewing video feeds; however, I do not think this is what is contemplated by the visual checks referenced in the policy. I interpret the policy to require visual, in-person checks. That being said, NE#1's interpretation of the plain language of the policy is technically accurate as it does not specify what it means to "visually check" a detainee. I conclude that the Department should clarify this policy and I issue the following Management Action Recommendation.

- **Management Action Recommendation:** The Department should clarify this policy to clarify whether the "visual" check of the policy includes checking on the detainee via a holding cell video feed or, in the alternative, whether in-person checks are always required.

Recommended Finding: **Not Sustained (Management Action)**