



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 15, 2019

CASE NUMBER: 2018OPA-0797

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Allegation Removed

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 #1 and Named Employee #2 stole drugs from him during a previous interaction. It was further alleged that Named Employee #3, their Sergeant, failed to identify and take action on this allegation of misconduct and to facilitate the filing of an OPA complaint on the Complainant’s behalf.

ADMINISTRATIVE NOTE:

This case was designated as a partial Expedited Investigation with regard to the allegations of theft against Named Employee #1 and Named Employee #2. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing these Named Employees. As such, Named Employee #1 and Named Employee #2 were not interviewed as part of this case. The allegations against Named Employee #3 were subject to a full investigation.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As discussed more fully below, the Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) stole his “stones.”

Based on OPA’s review of the totality of the evidence, there is no support for the allegation that NE#1 and NE#2 stole the Complainant’s property. Notably, OPA tried to contact the Complainant on multiple occasions to allow him to provide evidence proving this allegation. However, he chose not to respond to OPA and, thus, failed to proffer any evidence other than his unsubstantiated statement. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

At the time of his arrest, the Complainant stated to NE#1 and NE#2: “you guys stole my stones last time...I made a report.” NE#1 and NE#2 asked the Complainant whether he wanted to speak with a supervisor and informed him that their Sergeant, Named Employee #3 (NE#3), was there. NE#2 then told NE#3: “he wants to talk to you about us stealing his stones.” NE#3 spoke to the Complainant and, during that conversation, the Complainant stated that he was injured. NE#3’s discussion with the Complainant centered around that injury and the force that was used on him. NE#3 did not ask the Complainant any questions concerning the theft of his “stones.” NE#3 further did not ask the Complainant whether he wanted to file an OPA complaint or refer the Complainant’s allegations of theft to OPA.

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as theft or other criminal acts – must be referred to OPA. (SPD Policy 5.002-POL-5.)

At his OPA interview, NE#3 acknowledged that he did not ask any questions of the Complainant concerning the alleged theft. In explaining why he did not do so, he stated: “I don’t think I was processing the information they had



given me. I had a lot on my plate.” NE#3 said that, prior to his screening of this incident, his ICV system was malfunctioning and he was trying to troubleshoot it. He further characterized the scene he was supervising as complex, with multiple subjects, injuries to both the detainees and officers, the potential that the detainees had swallowed drugs, and a Type II use of force that needed to be investigated. He explained that the ongoing ICV malfunction, when combined with the significant responsibilities on his shoulders as the supervisor on scene and the complexity of this incident, was overwhelming. He stated: “I can multitask, like the best of them. There reaches a saturation point where you don’t process like you need to. I think that’s pretty human.”

The BWV of this incident corroborates NE#3’s statements at his OPA interview. The video established that NE#3 was dealing with multiple different responsibilities at the time the alleged theft was mentioned to him. He first spoke to NE#1, including regarding NE#1’s injuries. Virtually immediately thereafter, another officer got NE#3’s attention and informed him that the Complainant had reportedly swallowed narcotics and was not feeling well. NE#3 began walking towards the Complainant and NE#2 told him about the allegation of the theft of “stones.” NE#3, apparently not following the conversation, replied: “stole what?” NE#2 stated: “stones or something, I’m not sure...” NE#2’s response to NE#3 was interrupted by another officer who told NE#3 that the female subject (who was taken into custody with the Complainant) had also swallowed narcotics and asked for guidance on how to handle the situation. 16 seconds after he was briefly informed of the theft of “stones,” and with interruptions throughout, NE#3 began speaking with the Complainant and quickly moved to a discussion of the Complainant’s injuries. Notably, at his OPA interview, NE#1 stated that the first time he recognized that this allegation was made was the date of the interview.

Given how quickly this situation unfolded and given the fact that NE#3 genuinely did not appear to recognize the nature of what NE#2 told him, I find that he did not violate Department policy in this instance, even though he failed to investigate and report an allegation of criminal activity on the part of NE#1 and NE#2.

As is clear from his OPA interview, NE#3 is passionate about his work and wants to perform his job competently. He further expressed significant frustration with this incident and, in his opinion, the unrealistic expectations placed on him as a supervisor. I agree that officers and sergeants are expected to perform numerous very difficult tasks, sometimes simultaneously, and are often under pressure when doing so. They are then held to a high standard by the Department and OPA. I imagine that this can be overwhelming and, at times, disheartening. Perfection is impossible, particularly in a job as fast-evolving, uncertain, and reliant on human nature as policing. Moreover, the goal of the disciplinary system is not, and should not be, to punish officers for failing to be infallible. Instead, it is to identify mistakes and to address situations that could have been handled better and to try to fix them in the future. This is done by teaching and supporting officers and by putting them in a place where they can succeed. At times, this may include pointing out small deficiencies or Monday morning quarterbacking; however, this is done with the interests of the officers, the Department, and the community in mind, and is purposed to constantly improve the Department.

To that end, I recommend that NE#3 receive a Training Referral rather than a Sustained finding. This is the case even though, as NE#3 recognized at his OPA interview, there is likely no training that could have made NE#3 multi-task better in this instance. However, I hope NE#3 is committed to improving, even though he has been a SPD employee for approximately 23 years, and takes this opportunity to do so.

- **Training Referral:** NE#3 should be counseled by his chain of command concerning this incident. NE#3’s supervisor should discuss some techniques NE#3 could potentially have utilized to identify and investigate



the allegation of theft made by the Complainant. No additional retraining is required unless NE#3's chain of command deems it appropriate. This counseling and any retraining provided should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

I find that this allegation is duplicative of Allegation #1, above. As such, I recommend that it be removed.

Recommended Finding: **Allegation Removed**