



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2019

CASE NUMBER: 2018OPA-0890

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.

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 (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis	Not Sustained (Lawful and Proper)
# 4	16.110 - Crisis Intervention 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis	Not Sustained (Training Referral)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)
# 6	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)
# 7	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained

Imposed Discipline

Written Reprimand

EXECUTIVE SUMMARY:

It was alleged that the Named Employee violated a number of Department policies during his response to the Complainant’s report of damage to his vehicle.

ADMINISTRATIVE NOTE:

OPA initially recommended that both Allegation #6, which concerns the requirement of officers to conduct a thorough and complete search for evidence during a primary investigation, and Allegation #7, which requires that such investigations be properly documented in a General Offense Report, be Sustained. At the discipline meeting in this matter, OPA agreed that it was unnecessary to sustain both allegation as the Named Employee’s conduct was predominantly captured by Allegation #7. As such, OPA reverses the Sustained finding for Allegation #6 and changes it to a Training Referral.



STATEMENT OF FACTS:

Employees of a Macy's store reported that a woman, who was later identified as the Subject, was engaging in various criminal conduct. The call was updated to reflect that the Complainant reported that the Subject was "messaging" with his vehicle and trying to get inside. He stated that officers had been to the scene several other times but "didn't do shit." The Complainant further reported that the Subject was asking for a bat in order to hit people.

NE#1 was dispatched to the scene. He spoke with the Complainant, whose truck was parked on the sidewalk by the store loading dock. The Complainant began to tell NE#1 what had occurred and, while he was doing so, NE#1 asked him why his truck was parked on the sidewalk. The Complainant stated that he had permission to do so from the dock master. NE#1 stated that the dock master did not have the authority to permit that. NE#1 asked the Complainant whether the Subject broke the vehicle door "or did you actually pull that off?" The Complainant stated that he saw the Subject pull his door handle and then observed a piece of the door on the ground. The Complainant told NE#1 that a security guard, who was standing nearby, had seen this occur. NE#1 spoke to the security guard, who said that he observed the Subject try to open the door but could not confirm that she broke it.

NE#1 and the Complainant engaged in a further interaction during which the Complainant asserted that the officers had been to the scene on three previous occasions that day in response to the Complainant but "haven't done shit." NE#1 responded that it was not as easy as the Complainant suggested and that he could not just violate the Subject's rights. The Complainant disagreed but stated that he was not trying to get into a screaming match with NE#1. NE#1 replied: "that's what it sounds like you're trying to do." The Complainant stated that it had been reported that the Subject was pushing the security guards and threatening people with bats, but that the police still did not do anything. NE#1 said that this was not reported earlier. The Complainant then stated to NE#1: "no offense" but police are "all jokes." NE#1 said: "What's that supposed to mean? I'm a joke?" The Complainant referenced slow response times and a lack of law enforcement action taken regarding ongoing public drug use.

NE#1 explained that this was the fourth time he had dealt with the Subject. He stated that he understood the Complainant's frustration, but that there was insufficient evidence supporting the Subject's arrest, including a lack of witnesses. He stated that this was the case even though "she probably did it." NE#1 suggested to the Complainant that he move his car. He further apologized to the Complainant and they appeared to engage in a pleasant back and forth to conclude their interaction.

NE#1 then walked over to the security guards and spoke with them. None of them observed the Subject damage the Complainant's vehicle. NE#1 next made contact with the Subject. She was calm at that time; however, she also made statements that appeared to be nonsensical. She stated that she tried the handle of the Complainant's door to see if it was locked. NE#1 told her that if she tried the handle of another vehicle or building, she would be arrested. NE#1 again spoke with the security guards and told them to stop giving the Subject an audience. Two of the four security guards went inside. The other two continued to make their rounds.

NE#1 then returned to where the Complainant was standing and said that if he could definitively state that the Subject damaged his vehicle, he would remove her from the area. He again apologized to the Complainant and the Complainant responded that it was okay. NE#1 then left the scene.



The Complainant later initiated this complaint with OPA. The Complainant again expressed his concern that no law enforcement action was taken towards the Complainant, including that she was not removed from the scene or arrested.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

At the outset of their interaction, NE#1 and the Complainant began to engage in a negative back and forth. This included NE#1 quickly admonishing the Complainant for parking on the sidewalk. The Complainant was irritated at the lack of law enforcement taken towards the Subject and NE#1 was defensive regarding that issue. The Complainant, at one point, said that police officers were all jokes, and NE#1 grew frustrated by that comment. Ultimately, NE#1 and the Complainant appeared to resolve their issues after NE#1 apologized to him twice and explained why he took no action.

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.*)

While NE#1’s interaction with the Complainant was, at times, argumentative, NE#1 did not violate the Department’s policy concerning professionalism. NE#1 was justified in being frustrated by some of the Complainant’s comments. Notably, he did not yell at the Complainant, swear at him, or use any other contemptuous or derogatory terms towards him. Moreover, while NE#1 was clearly irritated, he later calmed down and, indeed, twice apologized. I find that this was commendable on NE#1’s part.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

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 “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)



While OPA has concerns with NE#1's actions that are discussed more fully below, OPA finds that he did not abuse his discretion when he made the decision not to arrest the Subject. During his multiple responses to the calls concerning her conduct, he tried to offer her services and attempted to reason with her. During those interactions, the Subject did not seem clearly mentally unstable and was largely calm and compliant; however, her statements did not, at times, make sense. NE#1 ultimately found that there was insufficient probable cause to support arresting her or removing her from the vicinity. From OPA's review of the evidence, I cannot find that this was an improper decision. Stated differently, I cannot find that a reasonable officer in NE#1's place would not have made the same decision.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis

SPD Policy 16.110-POL-5 concerns the response by SPD officers to subjects believed to be in behavioral crisis. The policy discusses the expectations for how officers are to approach such situations and includes guidance on arresting individuals in crisis, as well as on how and when to facilitate a hospitalization.

NE#1 confirmed that he had received the 40-hour crisis training. The video further established that he took the lead in interacting with the Subject and attempted to develop a rapport with her, which included offering her services that she rejected. NE#1 determined that, based on the evidence available to him and from his analysis of the Subject's demeanor, he did not have a basis to involuntarily hospitalize her. Moreover, she was not interested in a voluntary hospitalization. Lastly, NE#1 found that there was insufficient evidence to arrest her. As discussed in the context of Allegation #2, I cannot find that any of these decisions were unreasonable. I further do not conclude that these decisions and the course of action he ultimately chose were inconsistent with the requirements of this policy and the Department's expectations concerning how its officers will handle crisis situations.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

16.110 - Crisis Intervention 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis

SPD Policy 16.110-POL-9 states that officers shall document all contacts with subjects who are in any type of behavioral crisis. Officers are expected to do so using a Crisis Template.

As discussed above, NE#1 had multiple contacts with the Complainant. He documented the first in both a General Offense Report and a Crisis Template. However, NE#1 did not generate a Crisis Template for any of the other contacts, even though the Subject continued to engage in the same concerning behavior.



At his OPA interview, NE#1 stated that he viewed all of the interactions with the Subject to be part of one overarching incident. However, he did not electronically link the cases to ensure that any officers who responded to the subsequent calls were aware of what had previously occurred.

OPA reads the policy to require documentation of “all” contacts with subjects in crisis. OPA disagrees with NE#1 that he was permitted to simply document the first contact and then not generate further reporting. Moreover, even if this was the case, NE#1 should have, at the very least, updated the initial Crisis Template to reflect the subsequent conducts.

This being said, I find that this is minor misconduct that it better remedied by additional training rather than a Sustained finding. As such, I recommend the below Training Referral.

- **Training Referral:** NE#1 should be retrained as to SPD Policy 16.110-POL-9 and, specifically, the requirement in that policy that “all” contacts with individuals in crisis be documented. NE#1 should be counseled concerning his failure to document all of his interactions with the Subject and should be reminded to do so in the future. 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 #5

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that officers document all *Terry* stops using a *Terry* Template. Within the *Terry* Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

Here, NE#1 generated a *Terry* Template for his first contact with the Subject; however, he did not do for the subsequent interactions. As with Allegation #4, NE#1 stated that this was one overarching incident and that the *Terry* Template that he generated covered all of the stops. Applying the same reasoning as above, I find that SPD policy required that NE#1 generated a *Terry* Template for each stop of the Subject. When he failed to do so, he technically acted contrary for policy. However, I recommend that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be retrained as to SPD Policy 6.220-POL-10 and, specifically, the requirement in that policy that all detentions be documented in a *Terry* Template. NE#1 should be counseled concerning his failure to comply with this policy here and should be reminded to do so in the future. 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 #6

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

SPD Policy 15.180-POL-1 states that officers involved in a primary investigation are required to 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, NE#1 was aware that the Complainant was alleging that his car was damaged by the Subject. Further, the Complainant pointed out the broken piece to NE#1. However, NE#1 did not photograph the damage to the vehicle or the broken piece. While he spoke with several of the security guards, as discussed below, he did not memorialize those statements in a report. Moreover, NE#1 was also informed that the Subject was threatening individuals, including stating that she was going to hit people with a bat. However, he did not look for any evidence, including, but not limited to, third party video or other civilian witnesses, concerning these alleged acts.

Based on the above, I find that NE#1 failed to comply with this policy. This informed OPA's initial decision to sustain this allegation. However, after further consideration, and given that OPA already recommends that Allegation #7 be Sustained and because this allegation captures largely the same conduct as discussed above, OPA now recommends that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should be retrained as to the requirement that he conduct a thorough and complete search for evidence. He should further be counseled concerning his failure to do so here and instructed to more closely comply with this policy moving forward. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegations #7

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

SPD Policy 15.180-POL-5 requires that officers document all primary investigations using a General Offense Report. This policy further requires that such reports be complete, thorough, and accurate. (SPD Policy 15.180-POL-5.) The policy instructs that: "If a General Offense Number already exists and there are no new charges, officers shall use the existing number. If there are new charges, officers shall obtain a new number." (*Id.*) Lastly, the policy states that: "Officers shall document whether victims of non-custody incidents want to pursue charges, as feasible." (*Id.*)

As discussed above, NE#1 completed a General Offense Report for his first interaction with the Complainant; however, he did not do so for any of the subsequent contacts. This was specifically problematic in the context of his later investigation of the alleged damage to the Complainant's car. There, he had a complaining victim who alleged that the Subject committed property damage and pointed to evidence of her criminality. While I do not necessarily fault NE#1's decision to not arrest the Subject, he should have documented the crime, the action he took, and why he chose not to effectuate the arrest. Moreover, while he interviewed the security guards, he should have documented their statements in the General Offense Report. In addition, to the extent the Complainant later sought compensation and insurance coverage for the vehicle damage, he could have been limited in his attempts given the



lack of a report. SPD policy required NE#1 to complete this documentation and, when he failed to do so, he acted inconsistent with policy. As such, I recommend that this allegation be Sustained.

Similarly, it was problematic that NE#1 did not document in any respect the Subject's threats to harm individuals. Even if he did not believe the threats to have been legitimate, he made no record of the Subject's acts.

SPD policy required NE#1 to complete this documentation and, when he failed to do so, he acted inconsistent with policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**