



CLOSED CASE SUMMARY

ISSUED DATE: JULY 29, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0027

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)
# 2	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	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 during his response to her report of a threat to assault. The Complainant also contended that the Named Employee did not conduct a thorough and complete investigation into the crime.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety (OIG), believed that it could reach and issue recommended findings based solely on its intake investigation.

During its intake investigation, OPA determined that the Named Employee included information in his report that was contrary to assertions made by the Complainant. OPA classified this issue for handling as a Supervisor Action and returned it to the chain of command.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

At approximately 5:07 a.m. on January 1, 2020, Named Employee #1 (NE#1) was dispatched to a threat call at an apartment building. It was reported that a male subject threatened to slap a woman – the Complainant in this case – and throw her off of the building roof. The incident occurred nearly five hours earlier but NE#1's response was delayed because of staffing shortages and a number of significant incidents that had occurred throughout the City earlier that evening.



When NE#1 responded, he spoke with the front desk concierge, who indicated that there was a rooftop gathering that both the Complainant and the subject attended. NE#1 asked the concierge whether it was a “drunken argument.” The concierge responded: “Yeah...something happened...” The concierge said that two building safety officers witnessed the incident but did not interfere because of the crowd on the rooftop. They later reported what occurred to the concierge.

NE#1 further spoke to the Complainant. She denied drinking alcohol earlier that evening. She stated that the subject threatened to “bitch slap” her and throw her off the roof. She said that building security did not do anything and told her to call SPD. In response to NE#1’s questions, she said that she felt that the threat was real. NE#1 asked whether the subject was “a little drunk.” The Complainant stated that she did not know. The Complainant asked what would happen next. NE#1 told her that he would get the subject’s information from the concierge, write a report, and forward that report to detectives for follow-up investigation.

The Complainant asked whether NE#1 would interview the subject and he said that he would not be doing so at that time. The Complainant again articulated that she had been physically threatened. NE#1 responded that the subject was drunk on New Year’s Eve and said that he did not believe the threat to be serious. NE#1 told the Complainant that he was not going to wake the subject up at 5:00 and explained that there was too much going on in the City at that time. The Complainant stated that she did not care what was going on in the city and criticized NE#1 for “not giving a shit.” When asked again why he would not be interviewing the subject, NE#1 replied that it was a “small issue,” it was 5:00 a.m., the disturbance was over, and the subject was not actively engaging in criminal activity. The Complainant responded that it was not a “small issue” for her. NE#1 said that he understood. She again raised this, and NE#1 said that he had dealt with a strangulation, homicide, and rape earlier that evening. The Complainant said that these things did not have anything to do with her. NE#1 asked her whether she needed anything else from him and she asked to speak with a supervisor.

NE#1’s supervisor came to the scene. He spoke to the Complainant, who repeated her belief that NE#1 had minimized what happened to her and was not conducting sufficient investigation. The supervisor also spoke to the concierge who described the contact as starting professionally but said that the conversation got more “uncomfortable” and the Complainant grew “irate.” The supervisor further spoke with NE#1, who told the supervisor what the Complainant had stated to him. NE#1 and the supervisor attempted to contact the subject but were unable to do so. They spoke with a security officer who said, regarding the earlier incident between the Complainant and the subject, “I’m sure it’s nothing...they were just yelling at each other.” NE#1 remarked that “everyone had been drinking.” The security officer replied: “Yeah...someone said something and now they’re going to have to regret...for one night of drinking for a while.”

Based on the Complainant’s allegations against NE#1, this matter was referred to OPA by the supervisor. As part of its investigation, OPA reviewed the Body Worn Video, which fully captured the interaction, as well as analyzed the reports generated by NE#1.

OPA interviewed the Complainant. She reiterated her belief that NE#1 was unprofessional when he minimized her experience. She further felt that he did not fully investigate the crime. OPA also interview the Complainant’s friend, who was with her at the time of this incident. She stated that, in her perspective, NE#1 brushed the Complainant off and did not take her report seriously.



OPA interviewed NE#1. He stated his belief that the Complainant was intoxicated at the time of their interaction. He acknowledged that some of his comments should have been avoided; however, he explained that he was still decompressing from some of the earlier calls he had gone to, which included a homicide. He also recognized that he could have used a better tone with the Complainant. NE#1 asserted his belief that he thoroughly investigated the incident and explained that he tried to contact the subject without success.

Lastly, OPA interviewed the supervisor. He listened to the Complainant's allegations and told her that they would try to contact the subject. The supervisor further explained to the Complainant that he would discuss NE#1's performance with him. He said that this appeared to satisfy the Complainant. The supervisor said that he later counseled and retrained NE#1 concerning his response to the incident and documented this in PAS.

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.*)

As both NE#1 and his supervisor recognized, this was not an optimal interaction on NE#1's part. His biggest error was telling the Complainant that what she experienced was a smaller issue and pointing to the more serious crimes he had responded to that evening. This caused her to feel that her experience was being minimized. While OPA does not believe that this was necessarily NE#1's intent, this was the result of his words. In reaching this finding, OPA acknowledges that SPD was short-staffed that evening and NE#1 responded to a number of other stressful and traumatic calls. OPA further notes that NE#1 is human and will not handle every interaction perfectly.

Ultimately, while OPA finds that NE#1's approach to this incident could have been better, OPA does not believe that it rises to the level of a violation of policy. OPA concludes that, instead, NE#1's conduct warrants retraining and counseling. As such, OPA issues the below Training Referral rather than a Sustained finding.

- **Training Referral:** OPA requests that the chain of command retrain and counsel NE#1 concerning the Department's expectations of his professionalism. It should be reiterated that this is specifically the case when dealing with victims of crime. OPA notes that the chain of command appears to have already provided thoughtful and comprehensive retraining and counseling to NE#1. As such, so long as the issues set forth herein have been covered and unless the chain of command feels that additional action is needed, no further steps are required by OPA. Any additional retraining or counseling that is completed should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

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. NE#1 should have made an attempt to interview the subject while conducting his initial investigation. While he did ultimately do so with the supervisor, this was not his original intent. As noted by the supervisor, SPD expects that officers will "attempt to contact suspects that could be easily and reasonably located."



However, as with Allegation #1, OPA believes that retraining rather than discipline is the appropriate result. OPA reaches this conclusion for two main reasons. First, NE#1 did eventually try to interview the subject and otherwise conducted complete interviews. Second, NE#1 has already been retrained and counseled by his chain of command.

As such, OPA recommends that this allegation be Not Sustained and refers to the below Training Referral.

- **Training Referral:** OPA requests that the chain of command retrain and counsel NE#1 concerning the Department's expectation that he conduct thorough and complete investigations. It should be reiterated that he should attempt to interview subjects where feasible and, if needed, call for backing units to allow for this to occur. OPA notes that the chain of command appears to have already provided thoughtful and comprehensive retraining and counseling to NE#1. As such, so long as the issues set forth herein have been covered and unless the chain of command feels that additional action is needed, no further steps are required by OPA. Any additional retraining or counseling that is completed should be documented, and this documentation should be maintained in an appropriate database.

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