



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 9, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0349

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	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
Imposed Discipline		
Written Reprimand		

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, a caseworker at the Downtown Emergency Services Center, alleged that Named Employee #1 (NE#1) was unprofessional and dismissive when he stopped the Subject, who was the Complainant's former client.

SUMMARY OF INVESTIGATIONS:

The Complainant initiated this complaint in which he alleged that Named Employee #1 (NE#1) stared him in the eyes in an aggressive manner for approximately seven minutes. During a follow up interview with OPA, the Complainant contended that NE#1 also made derogatory remarks concerning the Complainant, including with regard to the Complainant's use of narcotics.

OPA reviewed the Body Worn Video (BWV) recorded by NE#1. This incident occurred on the second night of widespread demonstrations following the killing of George Floyd. The video showed officers, including NE#1, responding to a store that had been damaged. One man – the Complainant – was engaged with a number of individuals outside of the store. NE#1 walked towards them and one of the individuals who was arguing with the Complainant called out to NE#1: did you hear what he just said? He said you all are not going to hit him because he's white! He said because he's white!" NE#1 responded: "What's that got to do with us? Why you yelling at us? Yell at him! What the fuck's that got to do with us? We didn't say it!" NE#1 continued, saying: "you yelling at the wrong folks, man!" The individual said "my bad" and "alright, I'm going to leave it alone." The individual then said to NE#1: "But guess what though sergeant; you know what he said when he came up? Don't talk too much because they might hit you; know what he said? They ain't going to hit me cause I'm white." NE#1 responded as follows:



And that's fucked up, and it ain't true. But also, just so you know, he's a methed out crazy dude; you getting mad at a crazy dude right now. I know him...I've been telling him to go home all night. Like seriously, you getting mad at a crazy dude right now. He doesn't, he - all the shit that comes out of his mouth, just so you know, that's on you. You decide what you want to do with that, but just so you know, he - he's a lunatic.

At the time NE#1 made these comments, the Complainant was standing in the immediate vicinity. The comments were further made loudly enough that they could be easily heard by the Complainant and, for that matter, anyone else in the immediate vicinity. The individual continued to engage with the Complainant." NE#1 remained at that location for approximately three minutes prior to leaving to assist other officers. It did not appear from a review of the BWV that NE#1 ever stared directly at the Complainant and NE#1 was not at the scene for seven minutes as the Complainant initially described.

NE#1 interacted with the Complainant again later that morning. BWV captured the Complainant saying to officers:

This doesn't just hurt the credibility of the police, if it doesn't make you guys look specifically stupid. Cause I'm here using you guys as a backdrop for something that's really important, which is a retail theft program which needs to be examined and overhauled. That's why I'm out here, that's why I've been out here all day with one goal in mind, and I've been clear about that

NE#1 responded: "And you think we're in a position to do anything about what you care about the retail theft program?" They briefly spoke over each other until the Complainant stated: "you guys aren't going to actively help me." NE#1 replied: "No, we're not. And you're not going to change it either." NE#1 further remarked: "What, you think the city council and the people who write the laws are going to think, 'oh look, here's a mental guy that smokes meth, let's get his input'? Come on...go home, man."

OPA interviewed NE#1 to obtain his account of what occurred. NE#1 noted that, even before this date, he had previously interacted with the Complainant and was aware of numerous other contacts that the Complainant had with SPD. During those interactions, the Complainant engaged in behavior that indicated mental health crisis - including climbing up a tree and refusing to come down and running away from a treatment center - and also engaged in behavior consistent with methamphetamine usage.

NE#1 said that, during the first interaction, he did not believe that his statements were unprofessional or constituted biased policing. He explained that he used profanity when talking to the individual to connect with him on a human level and that he did not use the profanity as an insult. NE#1 stated that he used the terms "methed out," "crazy," and "lunatic" when referring to the Complainant because he wanted to clearly convey to the individual the reasons why it was not advisable to engage with the Complainant. This was purposed to avoid a physical confrontation between them and to, thus, de-escalate the situation. He denied that he meant the language to be insulting or derogatory towards the Complainant, that he perceived the Complainant to be within a protected class, or that he took disparate law enforcement action towards the Complainant.

With regard to his second interaction with the Complainant, NE#1 explained that, at that time, officers had been responding to protests for hours and were guarding looted and vandalized buildings. NE#1 told OPA that he felt it was "absurd" that the Complainant wanted officers to engage with him on this issue given what was going on. As



such, he attempted to get the Complainant to leave the scene and to end the conversation because he did not think it would be fruitful. He denied that this was unprofessional or biased under the circumstances.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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.*)

Based on a review of the evidence, OPA concludes that NE#1’s statements during the first interaction were purposed to de-escalate a potentially volatile situation and to convince the individuals and others to not engage with the Complainant. OPA also concludes that NE#1’s statements during the second interaction were purposed to end his conversation with the Complainant, which NE#1 reasonably felt was not appropriate under the circumstances and which he believed would not be fruitful given his past experience with the Complainant.

However, OPA finds that the specific words used by NE#1 and the manner in which he said them were unacceptable. Specifically, referring to someone as “methed out,” “crazy,” and a “lunatic” is improper regardless of whether NE#1 did not intend them to be insults and used them to further the legitimate goal of preventing a physical altercation. Similarly, even if NE#1 was correct that the City Council would not consider the Complainant’s concerns in evaluating the retail theft program and had a right and reason to end the contact, the manner in which he did so was rude, dismissive, and improper.

OPA is also concerned that NE#1 did not recognize the problem with his statements at his OPA interview. There is not a scenario that OPA can envision in which the manner in which he spoke to the individual and the Complainant would not constitute unprofessionalism. NE#1, as an experienced and well respected supervisor, should know this.

For the above reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

While there is no question in OPA’s mind that NE#1’s comments were unprofessional, whether they constituted biased policing is a much closer call. SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*) The policy further states that: “Employees shall not express—verbally, in



writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.” (*Id.*)

OPA finds no evidence that NE#1 took any law enforcement action towards the Complainant based on bias in either interaction. The question here is whether NE#1’s statements constituted “derogatory comments concerning discernible personal characteristics.” When viewed without context, OPA believes the answer to this question is yes. However, when evaluated further, OPA does not believe that bias is established. In reaching this finding, OPA considered whether, if said in a less abrasive and insensitive fashion, NE#1’s caution to the individual would have constituted bias. For example, had NE#1 taken the individual aside and told him that, based on past experience, the Complainant was potentially high on drugs and suffered from mental illness and, as such, the individual should not engage with the Complainant, OPA does not believe that this would be biased. Given this and from OPA’s perspective, the issue is less concerning what NE#1 said and more how he said it. That, however, is better covered by the professionalism policy and, as discussed above, warrants a sustained finding. OPA reaches a similar conclusion with regard to NE#1 statements during the second interaction. While rude and unacceptable, OPA does not believe that the statements demonstrate bias.

Even though OPA does not find a violation of the biased policing policy, this case was a close call and a situation that NE#1 should never have placed himself in. NE#1 should know better than to use this type of terminology and should recognize that a future similar case could, under slightly different facts, result in a Sustained bias finding. However, based on the record here, OPA recommends that this allegation be Not Sustained – Unfounded.

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