



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 29, 2018

CASE NUMBER: 2017OPA-1080

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 2	15.120 - Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report	Sustained
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.120 - Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 15.120–TSK–1 Responsibilities of the Patrol Sergeant When Responding to a Malicious Harassment Incident	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 Named Employee #1 accused her of being homophobic and a racist, as well as that he was abrasive and rude during their interaction. The Complainant also alleged that Named Employee #1 rolled his eyes at her, dismissed what she had to say, and called her crazy to the other officers at the scene. The Complainant further alleged that a proper investigation into the assault was not conducted because she was a white female. Lastly, based on OPA’s review, it appeared that Named Employee #2, who was the sergeant that approved the report, failed to correct the General Offense Report to reflect that it was an investigation into a malicious harassment incident as required by policy and failed to ensure that the report and the investigation conducted were thorough and complete.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) and other officers responded to a report of an assault. The individual who called 911 claimed that he had been punched in the face by an individual who was with three other men. He stated that he was punched when he tried to defend a woman (the Complainant) who had also been assaulted by the three men. He told the dispatcher that he was following the three individuals down the street and gave their location. Multiple officers, including NE#1, went to that location and located the 911 caller and the three individuals. The caller told the responding officers that he had been punched and identified one of the three individuals as the perpetrator. The three



individuals told the officers that the premise of their interaction with the Complainant was that she had referred to them using racial and homophobic slurs and that this evolved into a physical altercation. They reported that they turned around and approached the Complainant and she grabbed onto one of the individual's wrists. One of the other individuals stated that he then grabbed the Complainant by her hair in order to get her to let go of his friend. The subject whose wrist was grabbed suffered some broken nails with associated bleeding. The individual who grabbed the Complainant's hair admitted that he punched the man who had called 911; however, he stated that this was done in self-defense.

Simultaneously, other officers responded to the scene of the altercation. At that time, the Complainant was receiving medical treatment in an ambulance. She had also called 911 to report an assault. Those officers interviewed the Complainant and her friends and received a different recounting of the incident. The Complainant alleged that she was sitting on a mobile scissor lift table with a friend, when the three individuals walked by her. One of those individuals stated "look at that bitch." The Complainant reported responding "you're the bitch," or something similar. The individuals then turned around and assaulted her, grabbing her by her hair and pulling her backwards on the lift. This caused injuries to her head, right arm, and legs. Another male intervened to try to defend her and he was punched. The three individuals then fled the scene. The Complainant's account was corroborated by her companions from that evening.

The officers at both scenes communicated with each other via the radio and determined that the two cases were related. The officers identified and then released the three individuals and walked over to the Complainant's location. At this point, NE#1, who appeared to take on the role as the primary officer, spoke with the Complainant. Much of their conversation was recorded on two other officers' Body Worn Video (BWV) systems. As discussed more fully below, this interaction quickly turned negative and unproductive. It resulted in NE#1 becoming argumentative and apparently aggravated. He further referred to the Complainant as "crazy," which escalated the situation. The Complainant ultimately requested that a supervisor come to the scene and a sergeant responded. The Complainant alleged to this sergeant that NE#1 engaged in unprofessional behavior. The sergeant asked whether the Complainant wanted an OPA complaint filed on her behalf and the Complainant stated that she would file the complaint herself. The sergeant forwarded the complaint to OPA on October 16, 2017. Named Employee #2 (NE#2) also responded to the scene and took supervisory responsibility over the investigation.

The Complainant made an in-person complaint to OPA on October 23, 2017. The Complainant was interviewed at that time. OPA also interviewed two of the Complainant's friends who she identified as witnesses. OPA additionally interviewed both Named Employees, three other SPD employees, and the two AMR crew members who observed NE#1's interaction with the subject. Lastly, OPA reviewed the BWV and In-Car Video (ICV) from the incident, the documentation generated during the investigation, and the AMR report.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to Be Professional at All Times

The Complainant alleged that NE#1 was rude and abrasive during his interaction with her. She further alleged that he rolled his eyes at her, dismissed her account of the incident, and accused her of being racist and homophobic. Lastly, the Complainant contended that NE#1 called her "crazy" in front of other officers and civilian witnesses.



Portions of this interaction were captured by BWV. The BWV reflected that, at the time of her interaction with NE#1, the Complainant was in the back of an ambulance and was clearly upset. NE#1 was discussing with her the state of their investigation and was telling her that the other involved parties were alleging that she made racist and homophobic statements. The Complainant denied doing so and grew even more upset. She attempted to explain her side of the story and, during that time, NE#1 treated her dismissively. He would turn away from her, react to her statements as if he was annoyed, and spoke over her. He was accusatory and clearly appeared not to believe the Complainant's account that she did not use racial and homophobic slurs against the three individuals. I note that this was a significant departure from his much calmer demeanor towards the three individuals. NE#1's statements and conduct escalated the Complainant and resulted in an argument between them. At one point, he said something along the lines of "bye bye, I'm done," and he walked away.

This argument continued when NE#1 appeared reluctant to interview the Complainant's friends, who had also witnessed the incident. NE#1 engaged in a back and forth with one of the Complainant's friends and, after that conversation, referred to the Complainant as "crazy" in front of civilian witnesses and other officers. This made the Complainant grow even more agitated.

SPD Policy 5.001-POL-9 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-9.) Lastly, the policy states that: "Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force."

It is unclear to me why NE#1 approached this situation as he did. He appeared not to believe the Complainant from the outset and was dismissive and rude to her virtually immediately. I note that this is not just my and the Complainant's view of the incident, the two AMR crew members both agreed that NE#1 behaved unprofessionally. One stated that NE#1 appeared to immediately place blame for the incident on the Complainant, and that he did not appear to listen to her. He further stated that NE#1 was clearly angry and frustrated and used an abrasive tone. He reported hearing NE#1 refer to the Complainant as "crazy." The other crew member indicated that NE#1 was abrasive and rude towards the Complainant, and that he grew increasingly frustrated with her during their interaction. He also recounted that NE#1 called the Complainant "crazy."

The AMR crew members indicated their perception of the incident and NE#1's behavior in the AMR report. I note that I have never seen this occur previously in any case that I have reviewed. This suggested to me how disturbed these individuals were by NE#1's conduct.

I further do not understand why NE#1 placed significantly more credence in the accounts of the three individuals than the Complainant's account. It seems unlikely that the Complainant and her friends would have, out of the blue, accosted the three individuals with racial and homophobic slurs. This is particularly the case given that one of the individuals who was with the Complainant at that time (and was the boyfriend of her friend) was African-American. Moreover, had this occurred, it would have followed that other people in the near vicinity not associated with the Complainant would have heard the slurs. However, no one else reported this. The officers, and especially NE#1, do not appear to have considered the possibility that the three individuals were making up these allegations. They did not run the criminal histories of anyone at the scene, including the Complainant and the individual who had pulled her hair and assaulted the intervening male. It seems like this would have been germane to their investigation, particularly if one of the involved parties had an extensive arrest history. Indeed, the Complainant, herself, engaged



in this inquiry after the fact and determined that the other individual had been arrested for assault on several occasions. Certainly, this would have been an important fact for the officers to have been aware of. These investigatory deficiencies are addressed more fully below.

NE#1's statements and demeanor towards the Complainant were unprofessional. In this regard, NE#1 engaged in behavior that undermined public trust in himself, his fellow officers, and the Department as a whole. I further find that NE#1 improperly escalated this matter. His statements to the Complainant and his aggressive, abrasive, and accusatory manner escalated this situation beyond what was appropriate.

Lastly, I am especially concerned with his calling the Complainant "crazy." As discussed above, this pejorative statement was made in the presence of a number of other people, as well as the Complainant. This greatly upset the Complainant and was simply unacceptable conduct, regardless of how emotional the Complainant was. I note that, at the time, she perceived herself as the victim of a crime and was sitting in an ambulance receiving medical treatment. Even if NE#1 was not accusing her of being racist or homophobic, it was not unreasonable for her to feel as if she was being disbelieved and maligned. As such, her emotional condition was understandable. It was NE#1's responsibility as a law enforcement officer to maintain his composure regardless of the circumstances. He failed to do so here and, thus, acted contrary to policy.

For these reasons, I recommended that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

15.120 – Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 3. Cases of Malicious Harassment and Bias Incidents Shall Be Documented on a General Offense Report

SPD Policy 15.120-POL-3 concerns primary investigations into allegations of malicious harassment and bias crimes. It requires that each such case be documented on a General Offense Report. (SPD Policy 15.120-POL-3.) The policy states that: "The offense of malicious harassment and any and all auxiliary offenses shall be listed." (*Id.*) It further requires that: "The type of bias shall be indicated in the bias field of the GO report." (*Id.*) Lastly, this policy mandates that where the crime at issue is a bias incident that does not rise to the level of malicious harassment, the "routing offense of 'bias crimes routing' shall be used." (*Id.*) The Department's expectation is that investigations into these crimes will be thorough and that there will be "special emphasis placed on preserving physical evidence." (*See* SPD Policy 15.120-POL-2.)

While I note that this was a complex case to investigate given the dueling accounts by the involved parties and the nature of the allegations, NE#1's General Offense Report was not in compliance with SPD Policy 15.120-POL-3 and his overall investigation into this incident was not thorough.

First, NE#1 did not use the bias crimes routing in the General Offense Report. Instead, he used "disturbance – other." This was the case even though the three other individuals clearly indicated that racial and homophobic slurs were used against them in conjunction with an assault. This was inconsistent with policy.



Second, NE#1's General Offense Report lacked sufficient detail concerning his investigation and, particularly, contained little to no information concerning the accounts of the Complainant and her friends. Moreover, the report failed to include information concerning whether the three individuals actually believed that they were targeted because of their races and sexual orientations, which is a fundamental element of malicious harassment.

Third, NE#1's investigation was not thorough and he did not collect any physical evidence. Notably, NE#1 failed to conduct comprehensive interviews with the Complainant's friends who observed the incident and to outline with any detail the substance of their statements. NE#1 failed to collect, photograph, or document with any specificity the physical evidence that was at the scene and/or the injuries suffered by the Complainant. NE#1 also did not appear to conduct any meaningful canvas of the scene in order to determine whether there were other witnesses who had observed the incidents.

For these reasons, I find that NE#1's General Offense Report and overall investigation were in violation of this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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

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.*)

While I find that NE#1 was unprofessional in his interaction with the Complainant and while I think that there were deficiencies in his investigation and reporting, I do not see sufficient evidence in the record to suggest that he treated her differently or declined to investigate her case because of her race. I further cannot prove, as the Complainant contends, that NE#1's status as an African-American male caused him to believe the account of the three individuals, who were people of color, over the Complainant.

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

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

Named Employee #2 - Allegation #1

15.120 – Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 15.120-TSK-1 Responsibilities of the Patrol Sergeant When Responding to a Malicious Harassment Incident

SPD Policy 15.120-TSK-1 sets forth the responsibilities of a patrol sergeant when responding to a malicious harassment or bias incident.

Here, based on the allegations made by the three individuals, this matter rose to the level of malicious harassment. The Complainant allegedly used racial and homophobic slurs towards the individuals and assaulted one of them by



grabbing that person's wrists. Indeed, NE#2 told OPA that when he arrived at the scene, he treated this incident as an investigation into malicious harassment.

As such, NE#2, who was the sergeant ultimately responsible for overseeing the investigation, was required to "make sure that the officers conduct a thorough investigation at the scene of the incident, with special emphasis placed on preserving physical evidence" and to direct the "officers to conduct a thorough investigation." However, this was not done. He was also required to review NE#1's General Offense Report "to make sure that the incident is properly documented and routed." This was not done either. Lastly, he was required to "send a Vmail entitled "Alert Packet" with the GO number" to several individuals delineated in the policy. He did not recall whether he did this.

During his OPA interview, NE#2 reviewed NE#1's General Offense Report and identified the shortcomings therein. He stated that he was at fault for not catching these deficiencies and ensuring that the report was properly titled and routed, as well as ensuring that the investigation was more thorough and complete and asking NE#1 to add any additional information that was needed.

While NE#1 was responsible for the thoroughness of his investigation, NE#2 was tasked with supervising and ensuring that the investigation and associated reporting were satisfactory. His failure to do so in this case violated policy. NE#2 told OPA that he had learned several lessons from this case. I take NE#2 at his word and, as such, recommend that he receive a Training Referral rather than a Sustained Finding. I counsel him to make sure that he more closely and carefully supervises and reviews such cases in the future.

- **Training Referral:** NE#2 should receive re-training from his chain of command concerning his responsibilities when called to the scene of a malicious harassment investigation. He should be counseled concerning his failure to supervise the investigation in this case and to critically review the General Offense Report. He should endeavor to perform his supervisory duties consistent with policy in the future. This re-training and associated counseling should be memorialized in a PAS entry.

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