



## **CLOSED CASE SUMMARY**

ISSUED DATE:      AUGUST 15, 2019

CASE NUMBER:     2019OPA-0131

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 2	6.181 - Performing Inventory Searches 3. Vehicle Inventory Searches Do Not Include the Trunk, Closed Containers, or Locked Vehicles.	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 made unprofessional comments and illegally searched the Complainant’s vehicle.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

The Complainant was a passenger in a vehicle during a DUI stop that was effectuated by Named Employee #1 (NE#1). Early on, the Complainant was told that he was free to leave, but he stayed on the sidewalk to observe the scene. After the arrest of the driver was completed, NE#1 began to search the vehicle. The Complainant began to protest the search and stated that the vehicle belonged to him and not the person who had been driving. NE#1 explained that if the vehicle belonged to the Complainant, the Complainant would be held responsible for any items found inside. As NE#1 continued to search the vehicle, he located a closed blue container. NE#1 opened this container and discovered narcotics inside. The Complainant was then placed under arrest for Violation of the Uniform Controlled Substance Act. The Complainant later opined that the search of his vehicle and his subsequent arrest were both unlawful.

The Complainant was transported to the North Precinct and placed in a holding cell. At one point, NE#1 came into the holding cell to give the Complainant a copy of an infraction for not wearing a seatbelt. The Complainant alleged that, at this time, NE#1 told him: “I’ll take off my badge and gun belt, we can go to the street right now, I’ll beat your ass.”



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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.)

During his OPA interview, NE#1 stated that he did not recall making the statement attributed to him by the Complainant. NE#1 recounted that, while in the holding cell, the Complainant threatened him with possible gang retaliation. NE#1 told OPA that, in response, he let the Complainant know that he would “take the proper course of action necessary” and “use a proper force” to protect himself if the Complainant or any gang member tried to cause him physical harm. NE#1 acknowledged that he “may have said something that was not seen as professional” by SPD, but he defended his response to the Complainant as warranted given the threat that was made. Virtually all of NE#1’s interaction with the Complainant was audio and video recorded. However, the video of the holding cell, which depicted a back and forth between NE#1 and the Complainant, did not have audio. The Complainant alleged that NE#1 threatened him. NE#1 denied threatening the Complainant and told OPA that he responded to the Complainant’s threat against him. While NE#1 stated that his statement could possibly have been construed as unprofessional by the Department, he felt that what he said was appropriate under the circumstances.

If NE#1 was threatened with gang violence by the Complainant, it would not necessarily have been unprofessional to have responded that such a threat would be met with commensurate force. On the other hand, making a threat to a detainee, without any such justification, would clearly have been inappropriate. However, given the lack of evidence conclusively establishing what NE#1 said and the context in which he said it, there is an insufficient basis upon which to conclude that he violated Department policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

#### **Named Employee #1 - Allegation #2**

##### ***6.181 - Performing Inventory Searches 3. Vehicle Inventory Searches Do Not Include the Trunk, Closed Containers, or Locked Vehicles.***

SPD Policy 6.181-POL-3 concerns vehicle inventory searches and which items or locations in a vehicle are exempt from being searched. The policy instructs that: “[O]fficers may not enter or access the trunk or closed containers inside of the vehicle in an effort to perform an inventory search.” (SPD Policy 6.181-POL-3) The exception to this is “if there is a reasonable belief that items inside may pose a danger to the officer or police facility. Officers must be able to articulate supporting facts.” (SPD Policy 6.181-POL-3(e).)

Based on OPA’s review of the video, it appears that NE#1’s decision to conduct a warrantless search the car and the closed container that he located therein was based on his belief that he could do so as part of an inventory search. NE#1 did not articulate on video his belief that anything within the closed container represented a potential threat of harm to officers or others. Moreover, he did not provide any articulation in his report to that effect.

During his OPA interview, NE#1 confirmed that, at the time of the incident, he was not familiar with this policy or the case law governing this type of situation. He told OPA that, since this incident, he reviewed relevant caselaw and now understood the parameters of inventory searches.



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While OPA finds that the inventory search of the vehicle was appropriate, OPA concludes that, based policy and caselaw, the search of the closed container was improper. That being said, and even though NE#1 acted contrary to SPD policy and law, I find that a Training Referral is warranted in this case. I primarily base this determination on the fact that NE#1 recognized that the search was invalid and has taken affirmative steps to avoid making a similar mistake in the future. For these reasons, I recommend that this case be Not Sustained and refer to the below Training Referral.

- **Training Referral:** NE#1's chain of command should counsel him concerning his search of the closed container during this incident. The chain of command should ensure that NE#1 now fully understands the policy and caselaw in this area. NE#1's chain of command should also work with NE#1 to draft a memo outlining the policy and caselaw at issue that can be circulated to NE#1's squad and used as a resource. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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