



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 2, 2019

CASE NUMBER: 2018OPA-0812

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Allegation Removed
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Inconclusive)

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 Employees subjected him to excessive force. He further alleged that Named Employee #1 was unprofessional when she purportedly lied to him. Lastly, it was alleged that both Named Employees may have failed to report allegations of serious misconduct to a supervisor as required by policy.

SUMMARY OF INVESTIGATION:

A community member called 911 to a disturbance. The Named Employees were dispatched the call. When they arrived at the location, a witness directed them to two men who were loudly arguing. It appeared, from the officers’ perspective, that one of the men was about the assault the other (his hands were raised and he was yelling). The officers detained both males and told them to sit down. The individual who was believed to be the primary assailant is the Complainant in this case. The other male, who was determined to be the victim, told the officers that the Complainant had hit him several times but that he did not want to report that conduct. He further stated that the Complainant had been following and harassing him and tried to steal his suitcase.

Named Employee #1 (NE#1) asked the Complainant what his name was. The Complainant initially refused to provide that information and said to NE#1: “Please don’t do this to me.” NE#1 stated: “What is your first name? I have to write a report. I’m not gonna arrest you dude. I just need to know.” The Complainant provided unclear information



concerning his identity and NE#1 told the Complainant that she was not going to arrest him unless he had a “20-thousand-million-dollar felony warrant.” NE#1 further clarified that he would not be arrested unless he had a “crazy big warrant,” as compared to a “SMC warrant.” The Complainant subsequently provided his full name and birthdate.

NE#1 ran a check on the Complainant’s name and determined that he had an open no-bail felony warrant. They returned to where the Complainant was sitting and took hold of his arms in order to place him into custody. The Complainant grew upset and called NE#1 “dishonest and disingenuous.” The Complainant slid down to the ground and told the officers that he “ingested.” The officers tried to stand him back up and were able to do so; however, he physically resisted them. They then took the Complainant to the ground in a soft takedown and held him there until they were able to place him into handcuffs.

The Complainant talked incessantly through his handcuffing. At one point, while the handcuffs were being applied, he stated: “why are you still using excessive force.” Neither officer responded to that statement and they finished handcuffing him. He continued to talk and asked the officers if they were “raping” him. He told the officers that they were putting weight on his shoulder and NE#1 responded: “I don’t care.” The officers then lifted the Complainant up and walked him to the patrol vehicle.

A supervisor responded to the scene and spoke with both the officers and the Complainant. Neither of the officers informed the supervisor of the Complainant’s reference to “excessive force.” The Complainant told the supervisor that NE#1 was “dry humping him” while he was “inert and lifeless.” The officers completed a Type I use of force report and the force was reviewed by the chain of command.

While reviewed the use of force, a Department Administrative Lieutenant heard the Complainant’s statements concerning excessive force and sexual assault. The Administrative Lieutenant identified that these allegations suggested potential serious misconduct and made an OPA referral. The Administrative Lieutenant further identified that the Named Employees failed to report the Complainant’s reference to excessive force to a supervisor. This investigation ensued. OPA notes that the claims of sexual assault and excessive force against NE#1, which were deemed meritless, were evaluated in a separate OPA case under 2018OPA-0776.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

This allegation was classified against NE#1 and Named Employee #2 (NE#2) based on their failure to report claims of potential misconduct to their supervisor. From OPA’s review of the video, NE#1 informed her supervisor that the Complainant accused her of lying. However, it does not appear that either officer reported to a supervisor the Complainant’s query concerning whether the officers were “raping” him or the Complainant’s claim of “excessive force.”

With regard to the former statement, at time of his arrest, the Complainant asked the officers whether they were raping him; however, he did not explicitly allege that they were, in fact, actively doing so. As such, I do not find that the officers violated policy when they failed to report this statement.



Their failure to report the claim of excessive force is a closer question. NE#1 told OPA that she did not hear the allegation of excessive force and, thus, did not report. She further stated that the Complainant never asked for her assistance in filing a complaint and that she did not think that he would be receptive to such a conversation given his agitated condition. NE#2 also told OPA that he did not hear the statement. He confirmed that, had he heard what the Complainant said, he would have reported the allegation to a supervisor.

Based on OPA's review of the video, it is not implausible that NE#1 and NE#2 did not hear the allegation of excessive force. At the time the statement was made, the Complainant was talking nonstop and his statements were generally incoherent. When he said "excessive force," he did so at a fairly low volume. Moreover, his diction was unclear.

As OPA's investigation and evaluation of the evidence cannot prove or disprove whether the officers heard and failed to report the claim of excessive force, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

The question of whether NE#1 used excessive force on the Complainant was already evaluated in 2018OPA-0776 and the force was deemed consistent with policy. As such, this allegation should not have also been alleged against her in this case and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

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 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.*)

This allegation was classified for investigation against NE#1 based on the Complainant claim that she was dishonest towards him. Specifically, the Complainant referred to the fact that NE#1 arrested him even though she stated that she would not do unless he had a "20-thousand-million-dollar felony warrant."

NE#1 denied that her statement to the Complainant was unprofessional. She explained that her statement constituted a ruse, which she was permitted to use as a law enforcement officer.



I agree that NE#1's statement to the Complainant was not unprofessional. First, NE#1 is correct that she was permitted to use a ruse. Second, NE#1's statement was arguably not even inaccurate. She told the Complainant that he would not be arrested if he had, for example, a SMC warrant, and would only be taken into custody if he had a "crazy big warrant." He did, in fact, have a significant warrant – a felony no-bail warrant that necessitated his arrest. It may very well have been the case that NE#1 would not have arrested the Complainant had he had only a misdemeanor warrant.

I do not believe this statement, even if a ruse, was unprofessional. Indeed, I have more concern with NE#1 telling the Complainant that she did not care when he complained that she was placing weight on his shoulder. While this does not warrant a Sustained finding, I believe that it was unnecessary and served no legitimate law enforcement purpose. I counsel NE#1 to avoid making such statements in the future.

That being said, for the reasons stated above, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

NE#2 used force to hold on to the Complainant's arm and to attempt to lift him from a seated position. When the Complainant slid to the ground on his own power, additional force was used by NE#2 to try to stand the Complainant up. Given the physical resistance posed by the Complainant at that time, the officers made the decision to take the Complainant down to the ground using a soft takedown. He did not appear to suffer any injuries from that force and did not make any complaints of pain at that time. NE#2 then used force to assist in handcuffing the Complainant.

All of the force used by NE#2 was de minimis. Moreover, the force was reasonable, necessary, and proportional under the circumstances. The officers had probable cause to arrest the Complainant for a no-bail felony warrant. To do so, they were permitted to use force if needed. When the Complainant physically resisted them, the minor force that was used was justified. Notably, no force other than that needed to facilitate the officers' efforts to take the Complainant into custody was used and, as soon as he was secured, the officers ceased applying force.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2.

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

Named Employee #2 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

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



Seattle
Office of Police
Accountability

CLOSE CASE SUMMARY

OPA CASE NUMBER: 2018OPA-0812
