



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2018

CASE NUMBER: 2017OPA-1102

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 13. Retaliation is prohibited	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 Named Employee #1 and Named Employee #2 engaged in an unlawful arrest of his girlfriend without probable cause, and that, after calling the non-emergency line several times, Named Employee #3 was unprofessional and threatening when he told the Complainant that, if he called back, Named Employee #3 would file charges of harassment against him.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) unlawfully arrested his girlfriend.

On the date in question, NE#1 and NE#2 responded to a call of a possible domestic disturbance. The call was placed by the Complainant’s girlfriend, who told the 911 dispatcher that the Complainant was claiming that she hit him in the head with a phone but that she did not do that. She stated that she tossed the phone to the Complainant and that he was now claiming that it struck him in the head. In the background, the Complainant could be heard stating:



“you hit me in the head with the phone.” The Complainant’s girlfriend called 911 a second time and stated that the Complainant had left the area and that the police no longer needed to come to her location, which was later determined to be untrue. The 911 dispatcher informed her that the police were going to respond regardless.

When NE#1 and NE#2 arrived at the residence, the Complainant’s girlfriend said that everything was fine and that the Complainant had left. When the officers asked if they could check the apartment, she said no. NE#1 and NE#2 told her that, given the report that someone had been hurt, they were required to verify that fact. She again told them that they could not enter the apartment, but the officers repeated that they were required to enter, asked her to stand aside, and walked into the apartment. Inside they found the Complainant. Both the Complainant and his girlfriend appeared to be intoxicated to the officers.

At that point, the Complainant’s girlfriend told the officers that she had tossed the phone to the Complainant and it hit him in the nose, causing a “nick.” She stated that she was expecting the Complainant to catch the phone, but he did not and it hit him in the nose. The officers then spoke to the Complainant who stated that the phone was “thrown” at him by his girlfriend and hit him in the face. From my review of the video, it appeared that the Complainant had a small red mark on the bridge of his nose. The Complainant stated that his girlfriend called the police because she knew he was going to. After further conversation with the officers and after apparently realizing that his girlfriend could be arrested, the Complainant attempted to recant his account.

I note that the entirety of this interaction was captured on the officers’ Body-Worn Video.

NE#1 and NE#2 explained that, based on both parties’ statements and on the evidence of the injury to the Complainant’s nose, they had probable cause to believe that his girlfriend had committed a domestic violence assault. As such, pursuant to law and SPD policy, they were required to place her under arrest.

I agree with NE#1 and NE#2 that there was probable cause to place the Complainant’s girlfriend under arrest. She admitted to tossing the phone at the Complainant and that the phone hit his nose. The Complainant alleged that she purposefully threw the phone at him hitting him in the face. Moreover, the Complainant had an injury to his nose, even if minor. Moreover, I further agree that, based on SPD policy and Washington State law, NE#1 and NE#2 were required to place the Complainant’s girlfriend under arrest at that point and had no discretion in that regard.

Lastly, while not classified in this case for investigation, the Complainant alleged that the officers inaccurately characterized the nature and extent of his injury in their General Offense Report. In his report, NE#1 noted that the Complainant “had a small injury to the bridge of his nose.” Based on my review of the video, I find this description to be consistent with the injury the Complainant appeared to have. As such, I find that any allegations that the officers inaccurately reported the Complainant’s injury lack merit.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #2 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

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

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

Named Employee #3 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant alleged that Named Employee #3 (NE#3) was unprofessional towards him, including that he cursed at him, threatened him, and screamed and yelled at him.

At his OPA interview, NE#3 denied engaging in such conduct and stated that he was professional at all times during his conversation with the Complainant.

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.)

The conversation between NE#3 and the Complainant was not recorded. However, the Complainant’s numerous calls to 911 were recorded. The Complainant called 911 six times over the span of less than one hour. From listening to those recordings, he was apparently intoxicated, and he complained that the officers had engaged in an unlawful arrest. He was further rude and insulting to the dispatchers, used curse words, and threatened to call repeatedly and tie up Department resources until he was connected with a sergeant.

As I have no record of the conversation between the Complainant and NE#3, I cannot conclusively determine whether or not NE#3 was unprofessional in this instance. I note, however, from my review of the 911 calls that the Complainant, himself, was extremely unprofessional and disrespectful in his conversations with 911 dispatchers and should be embarrassed by his conduct. I further state that I have no reason to disbelieve NE#3’s account of their conversation, which appeared to me to be credible. That being said, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 13. Retaliation is prohibited

SPD Policy 5.001-POL-13 prohibits officers from engaging in retaliation.



Here, this allegation was classified based on the Complainant's allegations that NE#3 told him that, if he continued to call 911, he would be arrested for harassment, as well as that NE#3 reportedly tried to intimidate the Complainant from filing a complaint.

At his OPA interview, NE#3 denied threatening that he would arrest the Complainant for harassment or trying to intimidate him from filing a complaint. To the contrary, NE#3 recounted that he was polite and attempted to listen to the Complainant and then explain the law to him. NE#3 noted that, at one point, his call with the Complainant cut off and he called the Complainant back in order to finish their conversation.

Again, as indicated above, there is no recording of the conversation between NE#3 and the Complainant. As such, I cannot conclusively determine what was and was not said between them. While I tend to credit NE#3's account over that conveyed by the Complainant given his conduct during the 911 calls, I recommend that this allegation be Not Sustained – Inconclusive.

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