



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 25, 2018

CASE NUMBER: 2018OPA-0115

### Allegations of Misconduct & Director's Findings

**Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

**Named Employee #3**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

**Named Employee #4**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

**Named Employee #5**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition by Either Photographing the Property and Using the Detainee Property Form	Not Sustained (Training Referral)

**Named Employee #6**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition by Either Photographing the Property and Using the Detainee Property Form	Not Sustained (Training Referral)

**Named Employee #7**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)



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***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 he was “assaulted” by the Named Employees. The Complainant further alleged that the Named Employees left his property at the scene of his arrest and that it was “lost.”

**STATEMENT OF FACTS:**

The Complainant submitted a complaint to OPA in which he alleged that he had been assaulted by police officers. He further claimed that a variety of his property was left at the scene of the arrest and that it was lost. Apparently, the Complainant was alleging that this property was not properly safeguarded and inventoried by the officers. This investigation ensued.

After conducting its intake, OPA classified the use of force allegation for expedited investigation with the approval of the OPA Auditor. This meant that the Named Employees were not interviewed with regard to this allegation because OPA believed that it could reach recommended findings based on its intake investigation. OPA conducted a full investigation on the question of whether the officers failed to properly document and record the disposition of the Complainant’s property, as required by policy.

OPA’s investigation into this matter yielded that officers, including the Named Employees, responded to a call of a fight disturbance. When they arrived at the scene, the officers made contact with the Complainant and another male. The Complainant told the officers that he had been in a confrontation with the other male and that this individual had his property and would not give it back. The other male told the officers that he was walking down the street when the Complainant began to verbally harass him, including using slurs towards him. He told the officers that the Complainant then began following him down the street with a metal pipe. An independent witness confirmed the other male’s account. The officers then placed the Complainant under arrest and took possession of the pipe.

The Complainant was handcuffed and walked to a patrol vehicle. Named Employee #6 (NE#6) asked the Complainant to get inside and he stated: “you’re going to have to beat my ass.” While officers were holding his arms, they continued to tell him to get inside the patrol vehicle. He did not do so and repeatedly argued with the officers concerning his arrest. The Complainant was finally placed in the back of the patrol vehicle. Notably, no physical force higher than de minimis force was used on him.

At the time of his arrest, the Complainant had a shopping cart that contained a number of his possessions. The cart was in the Complainant’s and the officers’ vicinity and could be seen on the officers’ Body Worn Video (BWV). A review of the BWV revealed that NE#6 was informed by a witness to the incident that the Complainant had a shopping cart with him. Specifically, a witness said of the Complainant: “he was pushing his cart down the street.” There was no indication that NE#6 ever asked any follow-up questions concerning the shopping cart or investigated it or its contents. During his OPA interview, Named Employee #5 (NE#5) confirmed that he was aware that the cart belonged to the Complainant. There was no indication from the BWV that he ever investigated the shopping car or its contents, as well as no discussion between NE#5 and NE#6 concerning the shopping cart. The contents of the shopping cart were not



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itemized and documented, they were not recorded on BWV or photographed, and they were not reported on a detainee property form.

NE#5 conducted a search incident to arrest of the Complainant. At his OPA interview, NE#5 was asked whether he complied with SPD policy by inventorying and documenting the search and generating a detainee property form. NE#5 stated that he interpreted policy as not requiring him to complete the form so long as he documented the search on BWV. NE#5 was asked whether he identified himself and the Complainant on BWV during the search and provided a narrative as to each item that was recovered. NE#5 stated that he did not.

**ANALYSIS AND CONCLUSIONS:**

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

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

As discussed above, there is no evidence that any force was used on the Complainant that was excessive or that was otherwise in violation of SPD policy. Indeed, the only force used was de minimis and was reasonable, necessary, and proportional to effectuate the arrest of the Complainant. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

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

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

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

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

**Named Employee #3 - Allegation #1**

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

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

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

**Named Employee #4 - Allegation #1**

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

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

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



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**Named Employee #5 – Allegation #1**

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

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

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

**Named Employee #5 – Allegation #2**

***11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition by Either Photographing the Property and Using the Detainee Property Form (form 26.4) or by Using Body Worn Video (BWV)***

SPD Policy 11.050-POL-2 requires that officers record detainee property and its disposition. In complying with this policy, officers have two options: they can photograph the property and use a detainee property form; or do so using BWV. (SPD Policy 11.050-POL-2.) If the officers choose to use BWV, they are not required to complete a detainee property form. (See SPD Policy 11.050-PRO-1.) They do, however, need to take additional steps, including: identifying themselves and the arrestee; giving a description of each item; and indicating the disposition of each item, to the extent it is being taken somewhere other than the detention facility. (SPD Policy 11.050-PRO-1(2)(b).)

NE#5 conducted the search of the Complainant, but he did not complete a detainee property form and did not photograph the property that he secured. He stated that he used his BWV to record the search and inventorying. However, when he did so, NE#5 did not comply with the totality of the policy. Specifically, he failed to identify himself and the Complainant on video and did not describe each item that was recovered during the search. When asked by OPA why he did not do so, NE#5 stated that he did not take these steps because he “was not under the impression that there was a change in the policy at the time.” However, he was clearly aware that the policy now allowed him to conduct the property inventory on BWV, which was a significant change to the policy that was put in place less than a month before the incident. Notably, to the extent NE#5 was relying on the prior policy, he clearly would have engaged in misconduct in this case given that the previous version required that a detainee property form be created and the property was photographed, which were indisputably not done here. It did not allow for the use of BWV.

That being said, I believe that a Training Referral, rather than a Sustained finding, is the appropriate result in this case for two main reasons. First, I recognize that this was a relatively new policy at the time and it is unclear whether NE#5 had received training concerning the nuances of the revisions prior to the incident. Second, the Complainant was combative towards the officers and was uncooperative, which caused the situation to be more complex and may have potentially impacted NE#5’s ability to fully comply with this policy.

- **Training Referral:** NE#5 should receive retraining on SPD Policy 11.050 generally, and, specifically, SPD Policy 11.050-PRO-1. NE#5 should be reminded by his chain of command of the importance of this policy and the requirement that he comply with its terms. He should be counseled concerning the circumstances of this case and his chain of command should ensure that he understands that, to the extent he deals with a similar case in the future and uses BWV, he is required to comply with all of the elements set forth in SPD Policy 11.050-PRO-1. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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

**Named Employee #6 – Allegation #1**

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

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

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

**Named Employee #6 – Allegation #2**

***11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition by Either Photographing the Property and Using the Detainee Property Form***

The Complainant asserted that he had a shopping cart with him during the incident that contained his possessions. He stated that he told the officers about the shopping cart and the items therein five times. He further told OPA that these items were left at the scene, were not secured by the police, and that he never recovered them. He contended that in the cart were the following items: four laptops, three phones, tools, and two backpacks full of legal documents. He estimated that these items were valued at \$3,000.

NE#6 was the arresting officer in this case. As such, she was ultimately responsible for the Complainant and his property once he was formally taken into custody. NE#6 contended that no one, including the Complainant, ever told her about the shopping cart and, if he had, she would have documented its contents. However, NE#6, and other officers, were aware that the Complainant had a shopping cart in his possession during the incident and that this cart was at the scene at the time of his arrest. This is established by the BWV. She did not, however, investigate the cart and its contents or inventory those items. Moreover, even though the BWV proves, as NE#1 asserted, that the Complainant never directly communicated to her that the shopping cart was his and that he was concerned with the items therein, this should not have to be a trigger for an officer to comply with Department policy. While I doubt that the Complainant had \$3,000 worth of items in the shopping cart, this assertion cannot be proved or disproved because such steps were not taken. This is exactly the purpose of this policy. The failure to take those steps was contrary to policy.

However, given that the Complainant did not expressly tell NE#6 about his ownership of the shopping cart and given the specific circumstances of this case (including the Complainant's aggressive demeanor), I find that a Training Referral, rather than a Sustained finding, is the appropriate disposition.

- **Training Referral:** NE#6 should receive retraining on SPD Policy 11.050 generally, and, specifically, SPD Policy 11.050-PRO-1. NE#6 should be reminded by her chain of command of the importance of this policy and the requirement that she comply with its terms. She should be counseled concerning the circumstances of this case and her chain of command should ensure that she understands that, to the extent she deals with a similar case in the future, she is required to document and inventory property, even if contained in a shopping cart. This retaining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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

**Named Employee #7 – Allegation #1**

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

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

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