



CLOSED CASE SUMMARY

ISSUED DATE: MAY 9, 2019

CASE NUMBER: 2018OPA-1107

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |
| # 2 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement e. Search Incident-to-Arrest/Custodial Search | Not Sustained (Management Action) |

Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |
| # 2 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement e. Search Incident-to-Arrest/Custodial Search | Not Sustained (Management Action) |

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 she was improperly touched by one or both of the Named Employees during a custodial search following her arrest. It was further alleged that the Named Employees may have violated SPD policy when they searched the Complainant, who was an arrestee of the opposite gender, without having a permissible reason for doing so after learning that female officer was unavailable to conduct the search.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a report of property destruction. As they arrived, they observed the Complainant standing in the street trying to wave cars down and causing traffic to stop. NE#1 and NE#2 subsequently placed the Complainant under arrest for pedestrian interference. During their investigation, the officers determined that the Complainant was also the individual who was alleged to have destroyed property; however, as the property belonged to the Complainant, this conduct did not factor into her arrest.

After the Complainant was taken into custody and handcuffed, NE#1 and NE#2 called for the assistance of a female officer to conduct a search incident to arrest. They did so because the Complainant identified as female. However, no female officers were available at that time. As such, NE#2, who is male, searched the Complainant.

During the search, the Complainant alleged that she was inappropriately touched. She specifically claimed that NE#2's flashlight made contact with one of her breasts. The Complainant stated that she felt this alleged physical contact with her breast constituted a sexual assault. The Named Employees informed their supervisor of the allegation. During that conversation, both of the Named Employees denied sexually assaulting the Complainant. When the supervisor spoke to the Complainant concerning this matter, she alleged that both of the Named Employees were involved in the sexual assault. The supervisor referred the Complainant's allegation to OPA and this investigation ensued.

As part of this investigation, OPA attempted to interview the Complainant, but those attempts went unanswered.

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. If the Named Employees engaged in the conduct that the Complainant alleged, that behavior would have constituted a violation of this policy.

Based on OPA's review of this case, including the Department video that fully captured the interaction between the Named Employees and the Complainant, OPA found no evidence supporting the Complainant's allegation that she was sexually assaulted. Indeed, there is no support in the record.

There is Body Worn Video (BWV) evidence, and OPA reviewed it as part of this investigation. Based on that review, OPA found no indication that NE#1 or NE#2 engaged in any actions that could be objectively viewed as inappropriate or unprofessional. Even if NE#2's flashlight did make contact with the Complainant's breasts, which was not established by the video, such contact would have been unintentional and did not constitute a sexual assault. As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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



Named Employee #1 - Allegation #2

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement e. Search Incident-to-Arrest/Custodial Search

As discussed above, NE#2 conducted a search of the Complainant after calling for a female officer and being notified that there was no such officer available. It was alleged that, under the circumstances of this case, his decision to then move forward the search was potentially contrary to policy.

SPD Policy 6.180-POL-2(e) concerns searches incident to a custodial search. The policy instructs that:

- “Officers shall thoroughly search the persons of all arrestees who are taken into custody.”
- “This search shall be conducted as soon as possible after the arrest and before transporting the prisoner(s). Evidence of any crime which is discovered in the course of a valid custodial search may be used to support whatever subsequent charge is appropriate.”
- “Suspects will not be searched by officers of the opposite gender unless there is a reasonable likelihood that the suspect possesses a weapon or other object capable of causing injury or which could facilitate escape, or the officer believes that the suspect possesses objects which constitute evidence, which if not seized immediately could be destroyed, lost, or lose their value as evidence, and there is no officer of the same gender readily available to conduct the search.”

This case exemplifies several issues with this policy. As a starting point, the third prong of the policy appears to be in conflict with the first two. Most notably, the first two prongs instruct that all arrestees be searched and that the search occur prior to transport, while the third prohibits cross-gender searches except in certain delineated circumstances. As such, in many cases, if officers comply with the third prong, they will violate the first two. Moreover, as has recently been explained to OPA, due to staffing levels it is common that female officers may not be available. Accordingly, there are more and more occasions where, if the letter of the policy is followed, arrestees are being transported without being properly searched. This practice is problematic as it increases the risk of harm to officers. In addition, it often puts officers in the difficult position of choosing whether to either verify that an arrestee has no weapons, needles, or other potentially dangerous contraband or to knowingly violate policy.

Based on the above and on the practical limitations of SPD staffing, OPA recommends that this allegation be Not Sustained and issues the below Management Action Recommendation.

- **Management Action Recommendation:** OPA recommends that the Department revise the language of SPD Policy 6.180-2(e) to include an exception from the requirement of a cross-gender search where no officers that shares the arrestee’s gender will be able to respond to the scene within a reasonable amount of time. In those cases, officers should be permitted to search the arrestee incident to arrest, regardless of whether there is a reasonable likelihood that the arrestee is armed or possesses evidence that could immediately be destroyed, lost, or could lose its evidentiary value.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #2 - Allegations #1

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

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 #2 - Allegation #2

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement e. Search Incident-to-Arrest/Custodial Search

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**