



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 26, 2019

CASE NUMBER: 2019OPA-0372

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)

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, respondent to an anti-harassment order, alleged that the Named Employee (NE#1) wrongly arrested him for violating the order because the petitioner “cornered” him, thus causing the incident.

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 Employee. As such, the Named Employee was not interviewed as part of this case.

The Complainant also alleged that Department detective was providing information about the Complainant to his neighbors. The Complainant identified a specific retired detective but could provide no actual evidence indicating that this retired detective actually shared protected information. As such, this allegation was not investigated by OPA.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On January 2, 2019 at approximately 9:00 p.m., SPD received a call from a woman reporting that an individual – the Complainant in this case – was acting in violation of an anti-harassment order. The order was between the woman’s boyfriend and the Complainant. Named Employee #1 (NE#1) and another officer responded to the scene and encountered the Complainant at a 7-11 store. The Complainant, the woman who initially called 911, and the boyfriend all lived in the same apartment building, which was located across the street from the 7-11. The Complainant lived on the third floor, and the woman and her boyfriend lived on the first floor.



The Complainant told the officers that he was aware of the anti-harassment order and that he knew that the order required him to stay 20 feet away from the boyfriend. The Complainant told NE#1 that he had been coming down the stairs to exit the apartment building when he encountered the boyfriend on the first-floor landing. The Complainant said that the boyfriend refused to let him leave the building, blocked his exit, and pushed him. He said that he went into the hallway to escape the boyfriend and knocked on a neighbor's door. However, the neighbor did not answer. The Complainant asserted that the boyfriend then told the woman to get a canister of pepper spray, and that the boyfriend threatened the Complainant while the woman called the police. The Complainant said that, after the woman called the police, he was able to leave the apartment building.

The Complainant further explained the layout of the building to NE#1. He said that there were two sets of stairs; however, the stairway on which he encountered the Complainant was the only one that traveled all the way from the third floor to the outside. The Complainant additionally stated that the building had an elevator. NE#1 inspected the building, and also spoke with the woman and the boyfriend. The other officer remained with the Complainant.

NE#1 entered the building and went to the first floor, where the woman and the boyfriend lived. The outside door to their apartment led to the stairwell where the incident took place. The stairwell opened onto a cross-shaped hallway. The boyfriend and the woman lived at the north end while the neighbor whose door the Complainant mentioned knocking on lived at the south end. The west end of the cross-shaped hallway opened onto the stairwell, while the east end led to a garage.

NE#1 contacted the boyfriend. The boyfriend told NE#1 that he was leaving his apartment to go down the stairs when he encountered the Complainant, who was also walking downstairs. The boyfriend said that the Complainant pushed him and forced his way onto the first floor from the stairwell. The boyfriend said that he did not block the Complainant from exiting the building through the stairwell or otherwise corner him. The boyfriend showed NE#1 videos of the incident taken from a security camera that the boyfriend had placed in the hallway. The video showed the Complainant on the first-floor landing.

NE#1 then interviewed the neighbor. The neighbor said that she knew the Complainant because they had once served on the apartment board together. The neighbor explained that they had not been friendly for many years. The neighbor said that the Complainant had a history of manipulative and verbally abusive behavior, as well as that he had harassed her by email. NE#1 asked the neighbor to explain why she felt the Complainant was manipulative. She claimed the Complainant had falsely accused her of things while they served together on the apartment's board, had befriended older residents to curry favor with them, and was emotionally manipulative. She also said that, during the incident, she heard several thumps coming from outside and heard the Complainant ask for her help. However, she declined to answer because she did not want to get involved. She stated that the thumps appeared to come from the location where the boyfriend reporting being pushed by the Complainant.

At this point, the boyfriend asked what was going to happen and NE#1 stated that the Complainant would be arrested. NE#1 returned to the 7-11 and arrested the Complainant for violating the court order. The Complainant said he did not understand why he was being arrested, because, in his view, the petitioner had initiated the contact. NE#1 replied that, due to the layout of the apartment, the Complainant could not have been cornered by the boyfriend because he had multiple options of travel that would have allowed him to break contact with the boyfriend as the order required. NE#1 pointed out that the Complainant could have returned to his apartment or could have proceeded outside through the exit in the stairwell, rather than pushing past the boyfriend onto the first floor. The Complainant explained that, prior to the incident, he experienced a panic attack in his apartment that



forced him to leave the building as quickly as possible. The Complainant further stated that, when he encountered the boyfriend, he was not thinking rationally.

A supervisor responded to the scene to screen the arrest. NE#1 told the supervisor that he made the decision to arrest the Complainant when he saw the layout of the first-floor hallway. NE#1 explained that this rendered the Complainant's account less credible. NE#1 said that there was no reason for the Complainant to push past the boyfriend onto the first-floor hallway if, as the Complainant claimed, he was trying to exit the building. NE#1 also reasoned that the Complainant was larger than the boyfriend, and, as such, could have broken contact even if the boyfriend had attempted to block him. The supervisor concurred that the arrest was appropriate.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

Based on OPA's review of the totality of the record, NE#1 had probable cause to arrest the Complainant for violating the court order. NE#1's investigation indicated that the Complainant had alternatives to allow him to leave the immediate vicinity of the boyfriend and that these alternatives did not require him to push past the boyfriend. The weight of the evidence, including the statements obtained by the NE#1, his review of the boyfriend's video, and his observations of the building, support a finding by OPA that his decision to arrest the Complainant was a reasonable exercise of his law enforcement authority under the circumstances. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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