



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 12, 2018

CASE NUMBER: 2018OPA-0230

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving an Arrest	Not Sustained (Training Referral)

***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:

It was alleged that the Named Employee, who was a supervisor during the incident in question, failed to conduct a thorough review and screening of an arrest. It was further alleged that the Named Employee approved an arrest that lacked probable cause.

#### STATEMENT OF FACTS:

The subject, who was renting an apartment through AirBnB, was contacted by police when the owner of the residence reported that the subject had stayed past her reservation and was refusing to leave. When officers responded to the residence, they found the subject in the back yard. They contacted the subject and detained her pursuant to a Terry stop. During that Terry stop, the officers demanded the subject’s identification and one of the officers threatened to arrest the subject if she did not provide it. The subject was told that she would be arrested for obstruction. When the subject refused to provide her identification and began to leave the scene, she was arrested by the officers.

The officers screened the arrest with Named Employee #1 (NE#1), who was their supervisor. NE#1 also reviewed and approved the General Offense Report that was submitted by the officers setting forth what had occurred, the basis for the subject’s arrest, and the charges of arrest. As the arrest also involved a use of force, NE#1 further completed a Type II use of force review. In that review he wrote the following: “Officers has reasonable suspicion to detain the suspect for the crime of trespass. Officers developed probable cause to arrest the suspect for trespass, then assault, and burglary.” NE#1 did not articulate any concerns regarding whether there was sufficient probable cause for the subject’s arrest or the officers’ assertion that the arrest was for obstruction premised on the subject’s failure to provide her identification. NE#1 noted in that review that he watched portions of the officers’ Body Worn Video and identified that the officers demanded the subject’s identification. NE#1 wrote that: “This was determined to be a miscommunication, in which the officers already had reasonable suspicion to detain the suspect for trespass, developed probable cause for trespass, and were attempting to gather the suspect’s versions of events.” He memorialized that he provided retraining and counseling to both officers and generated PAS entries for them.

The incident and the reporting that was generated was then reviewed by the officers’ and NE#1’s chain of command. An Administrative Lieutenant identified several concerns with the incident, including that the officers demanded



identification during a Terry stop and that there may have been insufficient probable cause for the subject's arrest. The Administrative Lieutenant also critiqued NE#1's review. The Administrative Lieutenant noted the following: NE#1's review was "very short and does not have much detail"; NE#1 did not identify that there was insufficient probable cause for the arrest; NE#1 did not ask clarifying questions of the officers; and NE#1 did not identify the subject's complaint of pain or the swelling to her cheek in his review. The Administrative Lieutenant recommended that NE#1 receive "training, PAS or Frontline on these issues." As such, the Administrative Lieutenant did not refer this matter to OPA at that time.

This case was later reviewed by the Department's Force Review Board (FRB). As part of that review, the FRB discussed the Administrative Lieutenant's comments concerning the alleged shortcomings of NE#1's review. The FRB made the decision to refer this matter to OPA.

OPA initiated two investigations. The first, under case number 2018OPA-0079, concerned the Terry stop, the demand for identification, the arrest, and the use of force against the subject by the two officers. OPA found that the initial Terry stop was supported by reasonable suspicion; however, OPA concluded that the officers did improperly demand identification during the detention and that there was no probable cause for the subject's arrest. As such, OPA recommended that these allegations be Sustained as against the officers.

This separate investigation was initiated against NE#1 based on the identification of the issues with his screening, review, and approval of the arrest, which were, as discussed above, flagged by both the Administrative Lieutenant and the FRB.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

##### ***6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving an Arrest***

SPD Policy 6.010-TSK-1 concerns the responsibilities of a sergeant when screening and approving an arrest. Relevant to the allegation in this case, the policy requires that the sergeant does the following: "reviews the circumstances surrounding the incident and the physical condition of the person arrested or detained"; "determines the appropriateness of the offense charged and the disposition of the person arrested or detained"; and "reviews the reports for completeness." (SPD Policy 6.010-TSK-1.)

As discussed above, I concluded that there was no probable cause for the subject's arrest. NE#1 should have identified this deficiency. This is particularly the case given that he reviewed the portions of the officers' BWV during which her identification was demanded and an arrest for obstruction was threatened if she did not provide it. I concur with the Administrative Lieutenant that there were several other deficiencies with NE#1's review of this matter. These deficiencies, when coupled with the failure of NE#1 to identify that the arrest was not supported by probable cause, constitute, in my opinion, a violation of this policy. That being said, and as posited by the Administrative Lieutenant, I agree that the appropriate remedy here is a Training Referral rather than a Sustained finding. Influencing my decision in this regard is that NE#1 did recognize the officers' error in demanding identification during the Terry stop – even though he referred to it as a "miscommunication" without any further detailed explanation – and that he provided appropriate and thoughtful training to the officers and documented this issue in PAS entries.



- 
- **Training Referral:** NE#1 should receive retraining concerning the elements of SPD Policy 6.010-TSK-1 and, specifically, the Department's expectations of the scope and nature of the review he conducts of arrests. NE#1's chain of command should discuss this incident with him and explain how his review fell below these expectations. NE#1's chain of command should discuss with him the findings set forth in 2018OPA-0079 concerning the lack of probable cause for the subject's arrest. The chain of command should further go through the issues with NE#1's review that were identified by the Administrative Lieutenant and the FRB, ensure that NE#1 understands these concerns, and verify that NE#1 will take steps to prevent this from happening again in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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