



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 25, 2019

CASE NUMBER: 2019OPA-0227

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	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 claimed that the Named Employee failed to properly use discretion when he chose not to arrest the person who allegedly assaulted him and did not attempt to obtain available video evidence.

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.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 6. Employees May Use Discretion

Named Employee #1 (NE#1) and other officers were dispatched to a residential burglary call. The call information indicated that a male had broken into the building’s utility room and shut off the water line, and that video evidence existed. Follow-up remarks stated that a male (who was later identified as the Complainant) called and said that another individual (referred to here as Resident #1) punched him in the face. The follow-up remarks also indicated that the Complainant would be waiting in the garage with a person who witnessed the assault (referred to here as Resident #2) and that the Complainant had only been performing maintenance in the utility room. Another remark to the call noted that Resident #1 reported that the Complainant had assaulted him. Lastly, the call was updated to reflect that Resident #1 was a protected party in an anti-harassment order and that the Complainant was the respondent.

Upon arrival, NE#1 and the other officers contacted the Complainant, who stated that he was having plumbing work done in his apartment and needed to shut the water off. The Complainant claimed that he shut the water off and was returning to the utility room to turn it back on when he encountered Resident #1 and Resident #2. The Complainant alleged that Resident #1 pushed him several times causing him to trip and run into a wall. The



Complainant further alleged that Resident #1 punched him. The Complainant asserted that, at that time, Resident #1 was yelling that the Complainant was violating a court order. The Complainant called for Resident #2 to help and Resident #2 intervened.

Resident #2 told the officers that he saw the Complainant walking toward himself and Resident #1. Resident #2 told the officers that he saw Resident #1 push the Complainant several times; however, he stated that he never saw Resident #1 hit the Complainant.

Resident #1 claimed that the Complainant “came at him in an aggressive manner.” While Resident #1 acknowledged that there was a physical encounter, he denied pushing or hitting the Complainant.

After the officers completed their investigation, which included assessing a minor abrasion injury to the Complainant’s hand, NE#1 determined that the assault would be classified as a misdemeanor. Ultimately, NE#1 decided not to make an arrest but submitted a report to allow prosecutors to determine charges based on the facts gathered and reported.

OPA reviewed the relevant body worn video (BWV) for this incident. The BWV supported the report generated by the officers and their recitations of the facts. The BWV also showed that officers were at the scene for over an hour and spoke with all parties several times in an attempt to discern exactly what occurred and who was at fault. The BWV established that the officers attempted to locate and view third-party video of the incident. The video indicated that the officers told the Complainant how to get an order of protection against Resident #1, and also that the officers explained to Resident #1 why he was characterized as a suspect in the investigation and that the evidence indicated that he could be seen as instigating a confrontation despite the fact that the Complainant was the respondent in an anti-harassment order associated with Resident #1. Lastly, the BWV showed that the officers explained to both the Complainant and Resident #1 what would happen next in the investigation.

The Complainant later alleged to OPA that NE#1 abused his discretion when he failed to arrest Resident #1. The Complainant stated that he does not feel that he received protection by police in this matter and he asserted his belief that officers were trying to come up with reasons not to arrest Resident #1.

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

Based on OPA’s review of the evidence, including the BWV, OPA concludes that NE#1 conducted a thorough and complete investigation of this case before determining that no arrest would be made. Notably, even though he made this decision, he still completed a report to permit prosecutors the opportunity to file criminal charges if it was deemed appropriate. While OPA understands the Complainant’s frustration with the lack of an arrest, OPA finds that NE#1 used his discretion appropriately during this incident and given the facts available to him at the time. Most notably, at the time and due to the information provided by Resident #2, there was not conclusive evidence establishing that the assault occurred as the Complainant alleged. Ultimately, NE#1 had significant discretion in whether or not to make an arrest given that this was not a domestic violence situation and no mandatory arrest was



required. Given this, OPA cannot find that NE#1's decision-making during this case abused that discretion or was inconsistent with the expectations of the Department.

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

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