



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 20, 2019

CASE NUMBER: 2019OPA-0361

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)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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, who was arrested after being trespassed from a QFC parking lot, alleges that he was arrested without probable cause and that officers used excessive force, causing a dislocated shoulder and whiplash.

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.

In his complaint, the Complainant alleged that his property was disposed of by SPD contrary to policy. OPA’s intake investigation identified minor discrepancies between SPD policy and NE#3’s handling of the Complainant’s personal property. Because these discrepancies did not affect the outcome of this case and constituted minor performance issues rather than misconduct, OPA classified them for handling by the chain of command via a Supervisor Action.



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 May 26, 2019, QFC employees reported that an individual – who was later identified as the Complainant – was refusing to leave the premises. Named Employee #2 and Named Employee #3 (NE#3) responded. On arriving, they spoke to QFC employees, including a security guard, who identified the Complainant as the suspect. The security guard stated that the Complainant had been trespassed from the QFC property before.

NE#2 and NE#3 located the Complainant outside of the store. NE#2 then spoke to QFC employees, who provided her QFC trespass paperwork and two attached SPD business cards from prior incidents. NE#2 reviewed the paperwork and SPD cards, which were clearly visible on her Body Worn Video (BWV). The QFC employees told NE#2 that they saw the Complainant in the parking lot selling Real Change newspapers.

After reviewing the documentation, NE#2 informed the Complainant that the trespass from QFC included the QFC parking lot. The Complainant said that he had never been told the trespass included the parking lot and refused to identify himself as the individual named in the trespass. NE#2 went to her patrol vehicle to run the Complainant's name. The Complainant also requested that a supervisor respond to the incident. While in her vehicle, NE#2 verified the Complainant's identity using a photograph from a prior incident.

Named Employee #1 (NE#1), a sergeant, arrived and spoke to the Complainant. NE#1 had responded to one of the prior trespass incidents and was familiar with the Complainant. NE#1 explained that, according to his memory of the prior incident, QFC staff had clearly explained to the Complainant that the trespass included the parking lot. NE#1 asked if the Complainant was willing to sign a new trespass and voluntarily leave the property. The Complainant said that he would not sign anything. As a result, NE#1 made the determination to arrest the Complainant for trespass.

NE#2 told the Complainant to stand and handcuffed him. The Complainant then offered to sign the form; however, this offer was not accepted by the officers. NE#2 and NE#3 walked the Complainant to their car, and he grew increasingly upset. NE#2 and NE#3 pressed the Complainant against the car and told that him he did not need to yell. The Complainant did not complain of any pain and appeared to lay against the hood of the car voluntarily. NE#2 and NE#3 then started to search him. The Complainant became distraught and continued to lay against the hood during the search. BWV showed that the officers did not apply additional pressure at that time. NE#2 and NE#3 walked the Complainant to the rear of the police vehicle, and NE#2 told the Complainant "watch your head" as he sat down. The BWV established that, at the time the Complainant was being seated in the vehicle, NE#2 was the only officer touching him. The video also showed that NE#2's hand was on his left elbow and that she did not push the Complainant.

NE#1 asked if the Complainant was injured while screening the arrest. The Complainant leaned forward and said NE#2 pushed him into the vehicle, which caused NE#2's hand to press against his chest as she belted him in. The Complainant said that NE#2 had injured him. NE#1 went back to his vehicle to report the alleged injury and to retrieve a camera. The Complainant said he had bruising on his abdomen, which NE#1 photographed. No bruising was visible on NE#1's BWV. NE#2 and NE#3 began transporting the Complainant to the King County Jail and asked



him if he wanted Seattle Fire Department (SFD) to check his injuries. When the Complainant said yes, they returned to the parking lot. SFD responded, took the Complainant's vitals, and noted some sensitivity in his chest but no marks.

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.

At the time of the 911 call, the Complainant was reported as being in the QFC parking lot in violation of prior trespass orders. When NE#2 and NE#3 located the Complainant, he admitted to being in the parking lot but denied that the trespass order extended there. However, the paperwork establishes that the Complainant is barred from the QFC property, including the parking lot. Moreover, while the Complainant may have been confused about the trespass order's scope when he first spoke to NE#2 and NE#3, he was offered the opportunity to voluntarily depart after having it explained to him and chose not to. As such, there was probable cause supporting the

Lastly, while a novel argument, OPA knows of no caselaw supporting the Complainant's belief that QFC lacked legal authority to trespass him because they were a tenant in their building.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Based on a review of the BWV, OPA concludes that the force used by NE#2 and NE#3 was appropriate. NE#2 used low-level force to handcuff the Complainant and to move him towards the patrol vehicle. When the Complainant grew upset, NE#2 and NE#3 held him by his arms to prevent him from breaking free. The Complainant did not appear to be in pain or complain of pain at this time. Indeed, the Complainant only complained of pain when he alleged that he was pushed in the patrol vehicle by NE#2. However, the video does not support this allegation. Instead, the video indicates that the Complainant sat down voluntarily and that NE#2 did not touch him when he did so. Further, the contact that NE#2 did make with the Complainant in the rear of the patrol vehicle was minimal and was caused when he leaned forward. This did not appear to be sufficient force to cause any injury. Lastly, while the Complainant later alleged to OPA that he suffered from whiplash and the dislocation of his shoulder relating to his incident, he did not make those complaints to SFD and they are unsupported by the video.



For these reasons, and with regard to the force that NE#2 and NE#3 used as documented by the video, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both officers.

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

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 #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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