



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 3, 2020

CASE NUMBER: 2019OPA-0475

### **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	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 #3**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

#### **Named Employee #4**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.000 - Use of Force Core Principles 4. An Officer Shall Use Only the Degree of Force That Is Objectively Reasonable, Necessary and Proportional to the Threat or Resistance of a Subject	Not Sustained (Lawful and Proper)

#### **Named Employee #5**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.000 - Use of Force Core Principles 4. An Officer Shall Use Only the Degree of Force That Is Objectively Reasonable, Necessary and Proportional to the Threat or Resistance of a Subject	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 once in connection with a residential burglary and again for failure to appear in court and for narcotics violations, alleged that he was subjected to excessive force in the first arrest and that he was arrested without probable cause in the second. He further contended that he was subjected to biased policing and that one of the officers was unprofessional towards him.



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**ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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.

**SUMMARY OF INVESTIGATION:**

This complaint concerns conduct by the Named Employees that took place over two arrests of the same individual, the Complainant. The first arrest occurred at a residence on August 14, 2018. The second arrest occurred on August 20, 2018 at Cal Anderson Park. The August 20 arrest was made pursuant to a warrant issued for failure to appear in court regarding a previous arrest for a separate residential burglary that allegedly occurred on August 10, 2018. As the Complainant makes no allegations of misconduct regarding his arrest on August 10 and only references his August 14 and August 20 arrests, the August 10 arrest is not summarized below.

**A. August 14 Arrest**

Named Employee #3 (NE#3) was on uniformed patrol when he responded to reports of a possible burglary in progress at a residence. The 911 caller, who was housesitting for the owner, reported seeing three unknown people on security cameras inside the house. NE#3 and other officers arrived at the residence and formed a perimeter. NE#3 obtained a key to the front door from the 911 caller. NE#3 and another officer, backed by Named Employee #4 (NE#4) and Named Employee #5 (NE#5), went to the front door of the residence. NE#3 unlocked the door and, with the other officer, announced their presence and entered the residence.

NE#3 and the other officer encountered two individuals in the front room. The other officer ordered them to get on the floor. NE#3 and the other officer called out to see if anyone else was in the house and the Complainant answered. The Complainant was in a restroom, which opened into a hallway next to the front area where the other two individuals were being detained. A significant amount of property lined the hallway wall, restricting passage. The Complainant began to exit the bathroom in a state of undress. The other officer told him to get dressed and to come out of the restroom. It took several minutes for the Complainant to dress, and the officer told him to "get dressed" multiple times. Once he was fully clothed, the Complainant exited the bathroom. The officer told him to lie down on the ground in the hallway. Once the Complainant was on the floor, the officers began handcuffing the individuals in the front room.

NE#4 and NE#5 cleared the areas immediately adjacent to the front room where the two individuals were in custody. NE#4 and NE#5 then took custody of the Complainant. NE#4 stood by with a rifle pointed into the uncleared areas of the house while NE#5 gave the Complainant directions. This interaction was captured on both officers' Body Worn Video (BWV). NE#5 told the Complainant to listen carefully and gave him the following directions: "crawl out. Do not get up. I want you to Army crawl on your belly right here into this threshold." The Complainant replied that his hands were behind his back. NE#5 repeated his instructions. BWV showed that NE#5 spoke in a clear, direct, and loud tone. NE#5 was not shouting and did not become noticeably escalated. The Complainant asked about his shoes, and NE#5 said that he did not care about the Complainant's shoes. NE#5 directed the Complainant to Army crawl, and the Complainant crawled toward NE#5 until he reached the doorway into the front room. NE#5 told him to stop and



directed him to stick his “arms out like an airplane.” NE#5 told the Complainant to “get [his] hands away from [his] waistband.”

NE#5 knelt down to take the Complainant into custody. The Complainant said he was cooperating and NE#5 replied: “I know you are.” NE#5 told the Complainant to relax and began to handcuff the Complainant. BWV did not record the Complainant struggling or resisting arrest. The Complainant complained about shoulder discomfort and NE#5 said he would “go easy” on the Complainant’s shoulders and to go “as slowly as you need to go.” NE#5 told the Complainant not to move while he double locked the handcuffs. The Complainant asked about his eyeglasses and shoes, and NE#5 said he would get them for the Complainant. BWV did not record NE#5 or any other officer using an “arm bar” technique or otherwise applying direct pressure to the Complainant’s body. NE#4 did not make physical contact with or point his firearm at the Complainant.

NE#5 directed the complainant to stand. The Complainant stated that he might have a needle in his pocket, and NE#5 said he would do the search outside. He walked the Complainant outside and leaned him against the front bumper of a patrol vehicle, telling the Complainant not to move to ensure that the needle would not accidentally injure him. During the search, NE#5 discovered a large amount of money in the Complainant’s pocket. In addition to the money, NE#5 discovered a set of keys associated with a Geo car parked in front of the residence, and a credit card. NE#5 asked the Complainant where the money was from, but the Complainant did not provide any responsive information. During the search, NE#3 brought the Complainant his glasses and shirt. NE#5 put the Complainant’s shirt on him and placed the glasses on his face. NE#5 guided the Complainant to the rear of the patrol vehicle and seated him inside for transport to the precinct.

At the precinct, NE#5 inventoried the property recovered from the Complainant during the search incident to arrest. He counted the money while NE#4 looked on, determining that the money totaled \$1174.69. BWV recorded the count as well as the inventory. Other officers were present during the count, including NE#3. They discussed what to do with the money, and NE#3 said that there was no reason the Complainant would have such a large amount of cash on him. Given the presence of the credit card, which was not in the Complainant’s name, and the keys to the car, which was owned by the homeowner, NE#3 said he believed the money was stolen and that it should be entered as evidence. He stated that they should make it “hard for [the Complainant] to get it back.”

## **B. August 20 Arrest**

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were on uniformed patrol when they observed the Complainant sitting on a wall. The officers, who were familiar with the Complainant from prior incidents, conducted a check for warrants and determined that the Complainant had an outstanding warrant for his arrest for failure to appear in court. The warrant was associated with the Complainant’s arrest on August 10. NE#1 exited his patrol vehicle and informed the Complainant that he had an outstanding warrant. The Complainant said that he had been to court recently and had been released without bail pending trial. The Complainant asserted that, accordingly, there should not be a warrant. NE#1 replied that he would check into it and asked the Complainant to go to the front of his vehicle.

NE#1 entered his patrol vehicle and went over the radio to request verification of the warrant. The Complainant reiterated that he had been released pending trial. NE#1 hypothesized that the Complainant might have missed a court date associated with another violation. The Complainant and the officers discussed other trespass and burglary incidents involving the Complainant. NE#1 explained that the Complainant could still be wanted for one crime even if he had been released for another pending trial. He told the Complainant: “I saw you and said hey, that’s [the



Complainant], I'm going to run him and make sure he's clear. A felony warrant came up, so that's why I'm going to see if they can verify it." While conversing with the Complainant, NE#1 received a call over the radio informing him that the warrant was verified. NE#1 subsequently informed the Complainant that he was under arrest. The Complainant placed his hands behind his back, and NE#1 and NE#2 handcuffed him.

### **C. Complainant's Allegations**

In July of 2019, the Complainant sent a letter to OPA alleging policy violations by the Named Employees connected to his two arrests. He alleged that officers in the August 14 arrest were biased and unprofessional. With regards to the officers' purported unprofessionalism, the Complainant stated that they "barked" at him and were sarcastic and mocking towards him. The Complainant also alleged that he was subjected to excessive force when an "armbar" technique was used against him. He further alleged that NE#3 and the other officers conspired to prevent him from recovering the \$1174.69, which he alleged rightfully belonged to him. Finally, he alleged that on August 20, officers arrested him without probable cause. This OPA investigation ensued.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

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

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.

The Complainant alleged that NE#1 and NE#2 lacked probable cause to arrest him on August 20. He argued that he could not have been arrested on a warrant issued for failure to appear in court, because he had, in fact, recently appeared in court to be charged with residential burglary and was released without bail pending trial.

OPA's investigation yielded two significant facts supporting a finding that there was probable cause supporting the Complainant's August 20 arrest. First, NE#1 ran the Complainant's name and identified an active felony warrant. The law permits officers to rely on facially valid arrest warrants signed by a judge to effectuate arrest. Second, while the Complainant indeed went to court regarding the August 14 arrest, the Complainant's August 20 arrest concerned the residential burglary on August 10, not the August 14 burglary as suggested by the Complainant. As such, this does not vitiate the probable cause for the August 20 arrest. As there was a sufficient legal basis to arrest the Complainant on August 20, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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



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**Named Employee #2 - Allegation #1**

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #1**

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

SPD Policy 5.001-POL-10 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.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

The Complainant stated that the officers, including NE#3, barked at him and mocked him during the arrest. He also alleged that NE#3’s comments about the money amounted to evidence that he conspired with the other officers to wrongfully deprive the Complainant of his assets.

OPA finds insufficient evidence to show that NE#3 or any of the other officers engaged in unprofessional conduct. While NE#3 and the other officers issued loud, clear commands to the individuals inside the residence, BWV shows that they did not use derogatory, contemptuous, disrespectful, or profane language. Further, they did not unnecessarily escalate the situation. The officers did give specific directions to the Complainant to get dressed and lie down, but did so because the Complainant was behind a closed door in a room that they had not yet cleared. Moreover, he was taking significantly longer than the other individuals to comply with the officers’ lawful commands. In light of this, OPA declines to find that the officers “barked” unprofessionally at the Complainant. Rather, their commands were intended to gain control of the scene quickly, thus preventing unnecessary escalation.

In addition, OPA does not find that NE#3’s comments about the money were unprofessional. While in isolation NE#3’s statement that they should make it hard for the Complainant to get the money back could raise some questions of propriety, it is insufficient evidence to impute an improper motive to NE#3. Considering the record as a whole, it appears that NE#3 was theorizing that the money had been taken during the course of the burglary and should be entered into evidence rather than returned to the Complainant as personal property. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #4 - Allegation #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainant alleged that NE#4 and the other officers exhibited “bias” in the course of arresting him. However, he did not describe any specific facts or statements in support of this claim.

Based on OPA’s review of the record, there no evidence suggesting that NE#4 or any other officers treated the Complainant differently based on his membership in a protected class or based on any discernible characteristic that he exhibited. Indeed, the Complainant’s conclusory allegation that his treatment was motivated by bias is insufficient for OPA to determine what characteristic(s) he alleges motivated the complained-of treatment. When NE#4 and the other officers arrested the Complainant, they observed him to be improperly inside of a residence they knew belonged to another, providing ample probable cause for them to effect an arrest. For this reason, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegation #2**

***8.000 - Use of Force Core Principles 4. An Officer Shall Use Only the Degree of Force That Is Objectively Reasonable, Necessary and Proportional to the Threat or Resistance of a Subject***

For the same reasons as stated below (see Named Employee #5, Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 – Allegation #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the same reasons as stated above (see Named Employee #4, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 – Allegation #2**

***8.000 - Use of Force Core Principles 4. An Officer Shall Use Only the Degree of Force That Is Objectively Reasonable, Necessary and Proportional to the Threat or Resistance of a Subject***

SPD Policy 8.000(4) outlines the Department’s core principles for the use of force and incorporates SPD Policy 8.200(1) by reference. 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



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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.*)

The Complainant alleged that he was subjected to excessive force during his arrest, including when an “armbar” technique was used on him. BWV conclusively disproves this allegation. Rather, it shows that NE#5 used de-minimis force to obtain control over the Complainant’s arms and place them behind his back for handcuffing.

With regard to the force NE#5 used, it was consistent with policy. At the time NE#5 arrested the Complainant, he had probable cause for the arrest and, thus, possessed the legal right to force, if needed, to take the Complainant into custody. The de-minimis force he used was reasonable and was intended to gain control of the Complainant’s arms and wrists to facilitate handcuffing. It was necessary because the Complainant, while not resisting, responded in a delayed manner at a time when officers were attempting to gain immediate control over an unsecured residence. Finally, it was proportional to the Complainant’s slowness in complying with NE#5’s orders and the attendant risk this posed to officer safety.

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

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