



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2020

CASE NUMBER: 2019OPA-0646

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)
# 2	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	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 alleged that that he was unlawfully detained and falsely arrested by the Named Employee. The Complainant also asserted that the Named Employee did not read him Miranda warnings. Lastly, the Complainant contended that the Named Employee included false information in the report documenting his arrest.

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

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1), responded to a domestic violence (DV) incident that involved a physical dispute between two brothers. The caller reported that the brothers were arguing and throwing items. One of the brothers was later identified as the Complainant.

When they arrived at the location, the officers observed indication of a struggle, including money and clothes strewn in the hallway leading to the apartment. The apartment door was ajar, and officers witnessed the Complainant and his brother on the floor. The Complainant was holding his brother down and had him in a chokehold position. Officers separated the two combatants and handcuffed them for safety.

NE#1 spoke separately to each individual to determine what occurred and who the primary aggressor was. During this time, the Complainant disclosed that he had a concealed carry permit. In addition, after he was interviewed, the Complainant asked for a lawyer. He was then read his Miranda warnings.

Based on the totality of the facts learned during the investigation, NE#1 determined that there was probable cause to arrest the Complainant for DV assault. The Complainant was taken into custody.

The Complainant later initiated this complaint with OPA. He made multiple allegations. First, he contended that his initial detention was improper and that his arrest was not supported by probable cause. He claimed that he was taken into custody because the officers were “targeting” him based on his prior interactions with SPD. Second, the Complainant asserted that he was not read Miranda warnings. Third, the Complainant alleged that there were numerous false and incorrect statements included in NE#1’s report. Specifically, in addition to unspecific false information in the report, he claimed that he was improperly labeled a “threat” and that NE#1 incorrectly wrote that he told officers that he was going to “kill a police officer.” This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee – 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 defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) 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.

As discussed above, when officers arrived at the residence shared by the Complainant and his brother, they saw an ongoing physical altercation between them. Their observations of the fight, coupled with the reports from the 911 caller and the detritus in the hallway, gave them abundant reasonable suspicion to detain both combatants to determine whether there was an ongoing crime and to investigate the involved parties’ culpability.

Moreover, as a result of the thorough investigation conducted, which included interviews of the involved parties, NE#1 developed probable cause to believe that the Complainant was the primary aggressor and arrested him for DV assault. NE#1 also relied heavily on the fact that, at the time first observed by the officers, the Complainant appeared to have his brother in a chokehold and was the more assaultive of the two combatants. Based on OPA’s review of the video, this was a reasonable conclusion.

Lastly, contrary to the Complainant’s assertions, there is no evidence in the record supporting a finding that he was targeted by officers. While they were aware of his identity at the time, the BWV reflects that NE#1 conducted a full and fair investigation prior to taking him into custody.

For these reasons, OPA finds that the Complainant’s detention and arrest were legally supported and, as such, recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 – Allegation #2

6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights

SPD Policy 6.010-POL-3 states that officer shall advise all arrestees of their Miranda rights and directs that they do so “as soon as practical.”

The BWV for this incident conclusively establishes that the Complainant was read his Miranda warnings. As such, this claim is clearly disproved by the evidence and OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 – Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

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 #1 – Allegations #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 instructs officers to document all primary investigations on a report. Such reports must be “complete, thorough and accurate.” (SPD Policy 15.180-POL-5.)

The Complainant alleged that NE#1 violated this policy by including false information. Specifically, the Complainant referenced general inaccuracies, being identified as a “threat,” and the inclusion of a purported statement he made threatening to kill a police officer. He asserted that this false information had negative consequences for him, including being used to support the revocation of his concealed carry permit.

Based on OPA’s review of the report, it did not contain inaccurate information as the Complainant contended. To the contrary, it appeared to be consistent with the BWV for this incident. In addition, the report did not identify the Complainant as a “threat,” and it is unclear what the basis for this allegation is. Lastly, none of the reports generated for this incident referenced any threat made by the Complainant to kill a police officer. In addition, while one of the officers referenced the Complainant’s concealed carry permit, it was in connection with a direct quote made by the Complainant and did not advocate for the permit to be revoked.

For the above reasons, OPA finds no support for the Complainant’s claim that NE#1’s report was deficient and concludes that this was not the case. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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