



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 4, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0442

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Lawful and Proper)
# 4	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 5	11.050 - Detainee Property 1. Officers Secure Detainee Property	Not Sustained (Unfounded)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Lawful and Proper)
# 4	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 5	11.050 - Detainee Property 1. Officers Secure Detainee Property	Not Sustained (Unfounded)

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

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)



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***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 Named Employee #2 and Named Employee #3 improperly pointed firearms at her, did not adequately investigate an incident involving her, and were unprofessional towards her. OPA further alleged that Named Employee #2 and Named Employee #3 may have failed to report force. Lastly, the Complainant alleged that Named Employee #1 made a retaliatory statement to her and that Named Employee #4 improperly approved her arrest.

**SUMMARY OF INVESTIGATION:**

Named Employee #2 (NE#2) and Named Employee #3 (NE#3) observed two cars that appeared to be racing and that pulled into a garage. While waiting to enter the garage after the vehicles, the officers were approached by a woman, who they learned was a passenger in one of the vehicles. She told them that the Complainant – who was driving the other vehicle – had hit her son with a brick. NE#2 and NE#3 entered the garage with firearms drawn where they made contact with the Complainant. They also observed the son, who had an injury to his head consistent with a brick strike. After their investigation, the decision was made to arrest the Complainant. This decision was based largely on input that the officers received from Named Employee #4 (NE#4), who is assigned as a Robbery Unit detective. Named Employee #1 (NE#1), the officers' supervisor, responded to the scene and screened the arrest.

The Complainant later initiated this OPA complaint in which she alleged that NE#2 and NE#3 used excessive force when they approached her with their firearms drawn. She further alleged that her arrest was based on retaliation because NE#1 told her that "you have been warned" as she was taken into custody. She also contended that she should not have been arrested and that, as such, it was unlawful. The Complainant additionally alleged that her arrest would not have occurred but for the failure of NE#2 and NE#3 to properly investigate this matter and that this amounted to unprofessional behavior on their part. Lastly, she asserted that the officers failed to safeguard her property - a brown Coach Purse valued at \$200 - that she left in the front passenger seat of her Chrysler 300.

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 14. Retaliation is Prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

OPA's investigation indicated that, NE#1 made the statement attributed to him by the Complainant. However, when evaluated in context, it was clearly not in violation of policy. Indeed, NE#1 was referring to SPD reports concerning prior incidents involving the Complainant and the son that he was aware of. As documented in one such report, the



Complainant had been expressly warned by another officer to stay away from the son. As such, NE#1's comment was a statement of fact and did not constitute retaliation.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

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

The Complainant alleged that NE#2 and NE#3 subjected her to excessive force when they improperly pointed their firearms at her.

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.*)

Both NE#2 and NE#3 denied that they pointed their firearms at the Complainant. As discussed below, OPA finds this question to be inconclusive. However, even presupposing that they did do so, this did not constitute excessive force.

The officers were responding to a potential ongoing violent assault. Drawing their firearms and even pointing them at the suspect(s) would have been permissible given the nature and level of the offense and would have been consistent with the officers' training.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#2 and NE#3.

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

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

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. Under SPD policy, the intentional pointing of a firearm at a person constitutes a Type I use of force.

OPA's investigation yielded the conclusion that it was possible that NE#2 and NE#3 pointed their firearms at the Complainant. OPA notes that this may have been due, in part, to their being at a higher elevation than her and then walking down towards her. Ultimately, however, OPA cannot conclusively say that they did so and, thus, whether they were required to report and document this force. This is particularly the case given that both officers denied that they pointed their firearms, and they would not have had any discernable motive to not report this force under the circumstances.



For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive as against both NE#2 and NE#3.

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

**Named Employee #2 - Allegation #3**

***15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

OPA's investigation indicated that NE#2 and NE#3 completed a full investigation into this matter. This included observing the damage to the cars, documenting the son's injuries, and interviewing the involved parties. They further consulted with both NE#1 and NE#4 prior to making their final determination. In OPA's perspective, there is no evidence supporting a finding that they failed to fully evaluate and consider all of the evidence.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#2 and NE#3.

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

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

***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.*)

OPA found no evidence supporting the conclusion that NE#2 or NE#3 made any unprofessional statements towards the Complainant or used any language in her presence that was contemptuous, disrespectful, or derogatory. Moreover, to the extent the Complainant asserted that her arrest and the officers' investigation constituted unprofessional conduct, OPA finds that this lacks merit given the findings in Allegation #3 and Allegation #5.

As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

**Named Employee #2 - Allegation #5**

***11.050 - Detainee Property 1. Officers Secure Detainee Property***

SPD Policy 11.050-POL-1 requires that officers secure detainee property. The Complainant alleged that NE#2 and NE#3 failed to safeguard her purse, which was left in her vehicle when she was transported from the scene.



OPA's review of BWV indicated that there was an item in the Complainant's vehicle that could plausibly have been the purse. However, there was no evidence from the BWV that NE#2, NE#3, or any other individual employed by SPD removed that item from the vehicle. Moreover, once the Complainant was taken into custody, the video conclusively established that no one entered her car until it was towed from the scene. To the extent the purse was removed at that time, the vehicle was no longer in SPD's possession, custody, or control. As such, NE#2 and NE#3 was not responsible for the purse at the time it was purportedly taken.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

**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), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force***

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Not Sustained – Inconclusive.

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

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

***15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

For the same reasons as stated above (see Named Employee #2 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #4**

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

For the same reasons as stated above (see Named Employee #2 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

**Named Employee #3 - Allegation #5**



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**11.050 - Detainee Property 1. Officers Secure Detainee Property**

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

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

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

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

As noted above, the Complainant asserted that she was improperly arrested. OPA classified this allegation against NE#4 as he ultimately approved the 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.

OPA concludes that there was sufficient evidence supporting probable cause to believe that the Complainant had committed a robbery. Notably, she admitted following the son's vehicle and then driving in the garage after him, both of their vehicles had damage to them, and the son suffered an injury to his head, presumably from a brick. While the Complainant asserted that she did not know what the cause of that injury was, OPA deems this unlikely and finds that the evidence indicated that she caused the injury. Lastly, the Complainant admitted that she was seeking the return of \$800 that the son had purportedly taken from her on a past occasion and that she took custody of his keys to prevent him from driving away from the garage.

The standard for probable cause is well below that required to establish guilt beyond a reasonable doubt. If the Complainant believes that she is innocent, she has the right to seek vindication via a criminal trial. However, with regard to the decision made by NE#4 in real-time and based on evidence available to him, OPA finds that it was lawful and consistent with policy.

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

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