



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 29, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0445

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)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	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 the Named Employee abused his discretion, was unprofessional, and did not conduct a thorough and complete search for evidence.

SUMMARY OF INVESTIGATION:

On August 17, 2019, The Complainant called 911 to report that a male – referred to here as the Subject – had pointed a gun at her. She stated that the Subject had robbed her home on August 16, 2019 when she was not there. She said that she went to the Subject's home to recover her personal property. She asserted that she was given permission to do so by the Subject's girlfriend on August 16, but she delayed coming to the home because she was busy. She confirmed that she had previously reported the robbery, which occurred in Mountlake Terrace, to the local police. When she arrived at the house, the door was open, and she went inside. She was confronted by the Subject, who was also inside, and he was holding a silver handgun. He told her to "get the fuck out." She left and called 911.

Named Employee #1 (NE#1) responded to the Complainant's location. He spoke to the Complainant, who relayed the above information to him. She contended that the Subject was a convicted felon who was prohibited from owning a gun. NE#1 determined that the Subject had prior arrests but could not verify that he had any felony convictions that would preclude him from owning a firearm. NE#1 learned that the Complainant had also alleged to police in Mountlake Terrace that a firearm had been pointed at her during the robbery on August 16. NE#1 noted that the Complainant did not tell him that this was the second time in two days that a firearm had been pointed at her by the Subject, which NE#1 found significant.



NE#1 could not verify that a crime had been committed based on the fact that the Complainant admittedly entered the Subject's home without his consent. NE#1 told the Complainant that he would document this incident in a report, and he recommended that she allow the criminal proceedings to resolve and not attempt to take it upon herself to recover her possessions. The Complainant was displeased with NE#1's course of action and walked away from him and left the scene.

On August 24, 2019, NE#1 was dispatched to another call of a gun being pulled on the Complainant by the Subject. On this occasion, the Complainant reported that her dog was inside of the Subject's residence and was being withheld from her. When NE#1 arrived, the Complainant informed him that she entered the Subject's residence without permission and, while inside, she was confronted by the Subject. She said that she was locked in the house for a period of time by the Subject and was able to get out after a physical confrontation with him. NE#1 did not notice any injuries on the Subject consistent with being in a struggle.

Based on the Subject's two prior similar claims of having a firearm pointed at her, he felt that she was false reporting and placed her under arrest. NE#1 called a sergeant to the scene to screen the arrest. The sergeant approved the arrest but suggested that the more appropriate charge was obstruction. NE#1 ultimately agreed. In the report that he later generated, NE#1 expressed his concern that the Subject was repeatedly placing herself in danger by entering the Subject's home uninvited, especially if she knew that he possessed a firearm. He also noted that, by engaging in this conduct, she also placed officers in danger. Lastly, he documented that her actions were not only contrary to NE#1's repeated advisement that she allow the legal proceedings against the Subject to play out, but that they also served to undermine any prospective prosecution.

On June 11, 2020, the Complainant initiated this OPA complaint. She alleged that she was improperly arrested by NE#1. She claimed that, instead of arresting her, NE#1 should have helped her get her property back. She also asserted that the officers intentionally delayed her booking so that she would spend more time in jail and that, as a result of her arrest, her truck was towed from the scene and her purse was later stolen from the truck. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 6. Employees May Use Discretion

The Complainant alleged that NE#1 should not have arrested her and that, as a result of her arrest, her purse was stolen from her towed vehicle. OPA construes this as complaints that NE#1 abused his discretion. As indicated in SPD Policy 5.001-POL-6, "[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-6.)

NE#1 ultimately arrested the Complainant for obstruction. To establish that crime, NE#1 needed to show that the Complainant engaged in conduct that subjected officers to the potential risk of harm. NE#1 believed that the Complainant repeatedly entering the Subject's home without permission and while knowing that he was armed and then calling police to the scene presented such a risk. In the alternative, NE#1 felt that the Complainant's repeated



claims that the Subject pointed a firearm at her were potentially false. Accordingly, he felt that it was appropriate to place her under arrest.

OPA, like the screening sergeant, does not believe that NE#1 had a sufficient evidentiary basis to arrest the Complainant for false reporting, as was his original intent. However, OPA agrees that probable cause existed for obstruction. Notably, OPA concurs with NE#1 that the Subject's repeated entry into the Subject's home subjected both her and the officers to harm and could have caused a potentially dangerous situation.

In addition, NE#1 could not have foreseen and was not responsible for the Complainant's purse being stolen from her vehicle. Indeed, the BWV indicated that NE#1 and other officers at the scene took sufficient steps to safeguard the Complainant's property, including locking her vehicle before leaving the scene.

Ultimately, OPA concludes that NE#1's did not abuse his discretion during this incident and acted consistent with policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #1

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

The Complainant claimed that NE#1 was unprofessional by waiting until after midnight to book her into jail, which caused her to spend more time than she should have in custody.

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.)

OPA's investigation yielded no evidence to indicate that NE#1 intentionally delayed the Complainant's booking or otherwise acted to ensure that she would spend more time in custody. The BWV showed that NE#1 processed the Complainant's arrest in a reasonable manner and did not act unprofessionally in any respect.

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

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #1

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 Complainant asserted that NE#1 violated this policy in two main respects. First, she stated that NE#1 should have helped her recover her property but did not do so. Second, she claimed that NE#1 did not complete a sufficient investigation, citing to NE#1's lack of an interview of the Subject.



With regard to her first claim, NE#1 had no legal authority to recover the Complainant's property at that time. All he knew was that the Complainant alleged that the Subject stole from her home in Mountlake Terrace and that the criminal investigation into that matter was ongoing. NE#1 did not have personal knowledge of the facts of that case and, more importantly, he did not have a warrant permitting him to enter the Subject's home to seize property.

With regard to her second claim, the interview of the Subject was irrelevant to establishing whether the Complainant committed obstruction. As discussed above, all NE#1 needed to show was that the Subject's actions placed officers at the potential risk of harm. The conduct at issue was the repeated calls for service and the complainant's continued unconsented entries into the home of someone she knew was armed and her refusal to let the ongoing criminal investigation against the Subject to play out. Again, the Subject's interview would have been immaterial.

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

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