



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0084

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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)
# 2	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Lawful and Proper)

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	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained (Unfounded)

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 Employees violated a number of policies when they arrested her after a domestic incident at her residence.

SUMMARY OF INVESTIGATION:

The Complainant sent an email to OPA in which she made several allegations of misconduct against SPD employees. She stated that officers responded to her residence because of a report of domestic violence and suicidal threats. Her husband and an officer prevented her from leaving the residence prior to arresting her. While she acknowledged "blacking out" at some point during the incident, she recalled that she was questioned prior to being read her Miranda



warnings. She further alleged that she was standing on an icy patch, and she warned an officer of this. However, the officer failed to exercise due care for her safety, and she fell, hitting her head and shoulder on a wall. She further asserted that the officers did not provide her with medical attention. Lastly, the Complainant asserted that she was arrested based on bias and that, after her arrest, items were missing from her purse and may have been taken by officers. After receiving this complaint, OPA commenced an investigation.

As part of its investigation, OPA reviewed the CAD Call Report. It confirmed that officers were dispatched to a report that the Complainant was suicidal and had threatened to shoot herself with a gun. The call was later updated to indicate that the Complainant was intoxicated and was trying to leave the residence with keys. Her husband was preventing her from doing so. The call was further updated to note that the Complainant had locked herself in the bathroom and that she had pepper spray.

The reports generated by the responding officers – which are confirmed by their Body Worn Video (BWV) – indicated that they arrived at the location and spoke with both the Complainant and her husband. During that time, the Complainant left the residence. Named Employee #3 (NE#3) spoke with her and told her where she could spend the night if she did not want to remain with the husband. After providing her with resources, the officers left.

The officers were again dispatched to the residence based on a report that the Complainant was trying to leave with the husband's keys. The officers spoke to both parties, and, at that time, the Complainant retrieved a knife and entered the bathroom. The officers were ultimately able to convince her to exit without the knife. When she did so, the officers made the decision to take the Complainant into custody based on the Involuntary Treatment Act and due to their belief that she presented a threat of harm to herself.

The officers tried to handcuff the Complainant and she kicked Named Employee #2 (NE#2), striking him several times. The officers ultimately moved the Complainant onto the floor to control her and to stop her from further assaulting them. She was lifted up once the handcuffs were applied.

After the Complainant was handcuffed, the officers learned that she may have threatened her husband. They then read her Miranda warnings. There was no indication from the BWV that the officers ever questioned the Complainant after she was taken into custody and prior to her Miranda warnings being read.

The Complainant was then transported from the scene. Prior to this occurring, she asked a female officer to remove some items from her purse. The female officer lifted up the purse but then put it down without removing anything from inside. The Complainant then asked her roommate to take the purse. No other officers were captured touching the purse.

Lastly, BWV indicated that, when the Complainant was taken out of her residence, she told Named Employee #1 (NE#1) not to push her. He told her that he was not pushing her and that she needed to walk. She continued to assert that NE#1 was pushing her, and he continued to tell her to walk forward. As they exited the residence, she slipped on snow/ice and fell to the ground. After she fell, she told NE#1: "That is why I said don't push." An EMT, who had been watching what occurred, told the Complainant: "You pushed back on that Ma'am." The officers tried to lift the Complainant off of the ground but were unable to do so. EMTs also told the Complainant to walk to the ambulance. She refused to do so, and the officers ultimately carried her to the ambulance. There was no indication that she suffered any injuries from falling down and none of the EMTs identified that she had broken bones, as she later contended.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 – 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.*)

From a review of the BWV, the Named Employees used force to take the Complainant into custody and to handcuff her. During this time, the Complainant kicked NE#2 multiple times. They then took her down to the ground to control her and to prevent her from further physically resisting. This force was clearly consistent with policy under the circumstances and was not excessive.

The Complainant further alleged that she was pushed to the ground by an officer. OPA’s review of the BWV did not support this claim. There was no indication that NE#3 pushed the Complainant to the ground. Moreover, as indicated by the EMT, the Complainant may have been the one who caused her own fall when she pushed back against NE#3. Based on the BWV, the EMT clearly believed that this was the case.

Ultimately, OPA finds no evidence that any of the Named Employees engaged in excessive or out of policy force and, accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, and NE#3.

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

Named Employee #2 – Allegation #1

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

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

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

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 #2

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

SPD Policy 6.010-POL-3 requires officers to provide Miranda warnings to arrestees and to do so as soon as practical. Here, the Complainant alleged that she was questioned prior to being read her Miranda warnings.

As indicated above, the BWV confirmed that the Complainant was read Miranda warnings. It further confirmed that the Complainant was not questioned prior to this occurring or, for that matter, after Miranda warnings were provided.

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

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

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 she was taken into custody due to racial profiling.

The BWV and other evidence in this case conclusively disproves her allegation. The evidence clearly indicates that the Complainant was taken into custody based on her actions during the incident, not based on her race and/or gender.

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

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

Named Employee #4 – Allegation #2

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

SPD Policy 6.180-POL-1 governs searches and when such searches are permissible. The Complainant asserted that an officer improperly removed items from her purse, thus violating this policy.

As discussed above, the BWV indicated that no officer ever opened the Complainant’s purse, let alone removed items from inside. Moreover, the BWV confirmed that the Complainant requested that her roommate keep the purse. No officers touched the purse after that point.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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