



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0086

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)
# 2	6.180 – POL - 3- Exigent Circumstance Searches 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless there is Both	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)
# 2	6.180 – POL - 3- Exigent Circumstance Searches 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless there is Both	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)

Named Employee #4

Allegation(s):		Director's Findings
# 1	6.180 – POL - 3- Exigent Circumstance Searches 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless there is Both	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 making entry into her home.



SUMMARY OF INVESTIGATION:

The Complainant alleged that officers, including the Named Employees, entered her residence, threw her to the ground, and arrested her. The Complainant stated that this occurred after she had forced entry into her own home. She said that she did not have keys and was intoxicated. She stated that, while not the best decision, this did not provide a basis for the officers to enter her residence. The Complainant further alleged that she was subjected to excessive force, including when an officer put a knee in her face, and was sexually harassed. This investigation ensued.

OPA confirmed that the Named Employees were dispatched to a call of a potential in-progress residential burglary. The 911 call was placed by a neighbor. The call provided the following information: "Ground floor. Female seen kicking a window to get inside a unit. Appears to be inside now. No wpns [weapons] seen." The 911 caller did not identify the woman making entry as the Complainant.

Officers responded to the residence and observed the broken window and clothes on the ground outside. They knocked on the door and the Complainant answered. At the time, she was wearing a shirt and underwear. She also had a fairly significant cut with bleeding to the side of her head. She stated: "What the fuck are you doing in here?" She also said: "What are you doing in here?" and "Do you have a right to come in here?" Named Employee #1 (NE#1) told her that they were investigating a reported burglary. The officers handcuffed the Complainant while they conducted their investigation.

The Complainant grew increasingly upset at the officers. They asked her to sit down, and she refused to do so. An officer ultimately pushed her back and down onto the couch and into a seated position. She told the officers that this was her home and yelled at them. The officers asked for the Complainant's name, but she did not initially provide it. The officers tried to hold the Complainant's legs down, but she kicked Named Employee #2 (NE#2). The officers crossed her legs over each other and asked her not to kick. They released her legs temporarily, but she began to kick again. Multiple officers continued to control her legs after that point.

The officers made the decision to detain her pursuant to the Involuntary Treatment Act and to transport the Complainant to a hospital for an evaluation. They based this on her apparent condition and injuries, which indicated to the officers that she was unable to care for herself at that time.

EMTs arrived and officers seated the Complainant on a gurney against her resistance. She complained of pain from her handcuffs at that time. The officers tried to find pants for the Complainant and, ultimately, she was covered by a blanket. The Complainant was then transported from the scene.

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.*)

In OPA’s perspective, whether the force used by NE#1, NE#2, and Named Employee #3 (NE#3) was permissible depends on whether they had a legal basis to enter the Complainant’s residence and detain her. Based on the totality of the evidence, OPA believes that they did. OPA’s conclusion rests on several factors.

First, the officers were responding to a burglary report in which a female subject was reported making forced entry into the residence. The call was made by a neighbor who presumably would have been familiar with the Complainant but did not disclose that she was the person who made entry. When the officers arrived, they viewed clothes outside of the residence. From the officers’ perspective, it would have been unlikely that the owner of the residence would have broken a window to gain entry and then tossed clothing outside. To the contrary, this would have been consistent with an ongoing burglary.

Second, when the Complainant opened the door, she was intoxicated and hostile towards officers. While neither was evidence of criminality standing alone, the officers were unable to definitively determine whether or not she was the resident. This was exacerbated by the fact that she did not provide her name when asked. They reasonably decided to conduct more investigation prior to making a conclusive determination as to the Complainant’s identity.

Third, even when they determined that the Complainant was the resident, they still had a legal basis to be inside of the residence due to the community caretaking exception to the warrant requirement. The Complainant’s conduct, demeanor, and fairly significant injury suggested to the officers that she was unable to care for herself and, if left alone, presented a threat to herself.

Given the above, the Named Employees had the right to detain the Complainant while they initially investigated the potential burglary, and then to keep her in handcuffs when she became physically resistive and assaultive and after they made the decision to involuntarily transport her to the hospital. The force they used to do so was no more than was required to effectuate their lawful goals. This consisted of applying the handcuffs, pushing her into a seated position on the couch, and then holding her legs to prevent her from kicking. When evaluated under the circumstances of this case, OPA finds that this force was reasonable, necessary, and proportional, and, thus, consistent with policy.

Lastly, while the Complainant asserted that an officer put a knee in her face, this was not substantiated by the Body Worn Video (BWV). The video provided no evidence of an officer kneeling the Complainant in the face or otherwise striking her with a knee.

For these reasons, 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 #1 – Allegation #2

6.180 – POL - 3- Exigent Circumstance Searches 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless there is Both



SPD Policy 6.180-POL-3 prohibits warrantless entries into a residence unless an exception to the warrant requirement applies. Two such exceptions are exigent circumstances and community caretaking.

For the reasons set forth above, OPA finds that the initial entry into the residence was supported by exigent circumstances. Again, the officers reasonably believed that there was an ongoing burglary and their initial observations of the Complainant indicated that she could be the perpetrator. As such, they were permitted to enter and conduct further investigation.

Moreover, while inside, the officers developed the belief that the Complainant presented a threat of harm to herself if left in the residence and that she needed to be involuntarily committed. This permitted them to remain in the residence pursuant to the community caretaking exception to the warrant requirement.

In reaching this finding, OPA empathizes with the Complainant and recognizes her anger and upset at having officers enter her residence and then involuntarily detain her. However, OPA cannot say that this was improper or inconsistent with policy under the circumstances of this case. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, and Named Employee #4 (NE#4).

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 #2 – Allegation #2

6.180 – POL - 3- Exigent Circumstance Searches 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless there is Both

For the same reasons as stated above (see Named Employee #1 – Allegation #2), 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 #4 – Allegation #1



6.180 – POL - 3- Exigent Circumstance Searches 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless there is Both

For the same reasons as stated above (see Named Employee #1 – 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

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. This allegation was added based on the Complainant's assertion that she was sexually harassed by an unidentified SPD officer.

Based on a review of BWV, OPA found no indication that any SPD officer sexually harassed the Complainant. To the contrary, the video showed that, as soon as the scene was under control, the officers tried to find the Complainant pants and she was subsequently covered with a blanket.

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

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