




CLOSED CASE SUMMARY

ISSUED DATE: MARCH 26, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0309

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 6.180 - 5 Pat-Down / Frisk.	Not Sustained - Unfounded (Expedited)
# 2	5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy.	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 6.180 - 5 Pat-Down / Frisk.	Not Sustained - Unfounded (Expedited)
# 2	5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Unfounded (Expedited)

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:

It was alleged, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a domestic violence (DV) assault call and arrested the Complainant. The Complainant alleged NE#1 and NE#2 inappropriately touched her while searching.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

OPA reviewed the unsubstantiated misconduct screening,¹ incident report, and body-worn video (BWV). OPA attempted to interview the Complainant, who did not respond to attempts to reach her.

¹ See OPA Internal Operations and Training Manual, section 8.1 – Unsubstantiated Misconduct Screening.



A. Body-Worn Video (BWV):

OPA reviewed NE#1's and NE#2's BWV. OPA also checked BWV for a third officer, Witness Employee #1 (WE#1), and a supervisor (WE#2). In summary, BWV showed:

WE#1 arrived at the incident location and contacted Community Members #1 & #2 (CM#1; CM#2). CM#1 and CM#2 stated they and the Complainant drank at a bar before returning to an Airbnb. CM#1 and the Complainant are married. CM#1 noted the Complainant had several tequila shots at a bar and suddenly became irate when they returned to the Airbnb. CM#1 stated the Complainant threatened to leave. CM#1 said they stepped in front of the Complainant, asked her not to go, and the Complainant threw CM#1 to the ground. CM#1 stated she landed on her wrist and reported pain and bruising. CM#2 corroborated CM#1's account.

NE#1 and NE#2 searched the area for the Complainant. They found the Complainant hiding in a nearby garden. The Complainant spoke with the Named Employees about her distrust of police and feared being arrested. NE#1 told the Complainant he had probable cause to arrest her but wanted to hear her account. The Complainant denied being at the Airbnb and stated she was in the garden because her wife left her there. The Complainant appeared confused and did not understand she was several houses from the Airbnb. WE#1 arrived shortly after that. NE#2 walked behind the Complainant while NE#1 and WE#1 approached the Complainant from the front to handcuff her. The Complainant was noncompliant and initially resisted, stating she needed a reason for the arrest. NE#2 explained she was under arrest for DV assault.

NE#1, NE#2, and WE#1 handcuffed the Complainant and escorted her to a patrol car. As they escorted her, the Complainant refused to walk and dropped to the ground. The Complainant argued the merits of the arrest. NE#1 and NE#2 lifted the Complainant to her feet and walked her to the front of a patrol car, where she was searched. NE#2 searched the Complainant's pocket, waistline, and chest with the back of her hand. The Complainant exclaimed, "Don't touch my tits!" The Complainant repeated that, and NE#2 replied she was lowering the Complainant's shirt to keep it from riding up.

As NE#2 checked the Complainant's handcuffs, she saw the Complainant's left hand was free. NE#2 told NE#1 they should use two handcuffs. As they applied a second pair of handcuffs, the Complainant pulled her left arm away from NE#1. As NE#1 and NE#2 used their bodies to pin the Complainant against the patrol vehicle, the Complainant exclaimed, "Stop putting your cock on my ass!"

NE#1 reported the Complainant's allegation of sexual assault to WE#2. WE#2 interviewed the Complainant, who alleged a male officer touched her vagina, and an officer lifted her breasts and touched them.

B. General Offense (GO) Incident Reports:

WE#1 wrote an incident report that was generally consistent with BWV.

Unsubstantiated Misconduct Screening:

On September 20, 2022, WE#2 sent OPA an unsubstantiated misconduct screening. WE#2 detailed the Complainant's sexual assault allegations against NE#1 and NE#2. WE#2 spoke with NE#1 and NE#2. NE#1 reported the Complainant



exclaimed, "Stop putting your cock in my ass!" NE#2 explained she used the back of her hand to search the Complainant's breasts and denied touching the Complainant's vagina.

WE#2 detailed his review of the Named Employees' BWV:

I reviewed NE#2's body-worn video for possible misconduct, and I noted that NE#2 completed the search professionally and used the back of her hand during the search around the woman's breasts. NE#2 did not touch the subject's vagina but did sweep her waistline during the search, as per standard training and procedure. No other officer searched the subject.

NE#1 was the cover officer during NE#2's search. NE#1 used his left leg to pin the subject's right leg, and then his right leg to pin her left leg while NE#2 completed the search. This is a common tactic used by officers to better control a subject officers verbal and physical resistance, as was the case in this incident when the subject was refusing to follow commands, would not get up off the ground, and made it difficult for officers to handcuff her. Based on reviewing NE#2's video, you can see that NE#1 was clearly not attempting to or intentionally placing his genitals onto the subject's buttocks. He is off to the side on either leg when NE#2 completed the search, and he did a good job in keeping the suspect from moving too much despite her larger size and strength.

Based on the total review of the incident, including talking to the officers, the subject, and reviewing relevant video, I believe the inappropriate sexual touching claims made by the subject are unsubstantiated as the officers used approved and appropriate procedures to safely search the arrested subject.

OPA requested the incident be referred for further review.

C. OPA Criminal Referral and Criminal Investigations Bureau (CIB) Return:

On September 27, 2022, OPA referred the complaint to SPD CIB for the Complainant's sexual assault allegation. On October 21, 2022, SPD CIB returned the criminal referral to OPA for further investigation, stating there was "no information to suggest any evidence of criminal conduct by any of the Seattle Police Employees in this incident."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 - Searches-General 6.180 - 5 Pat-Down / Frisk.

The Complainant alleged that NE#1 touched her vagina during a search incident to arrest.

The purpose and scope of a frisk is to discover weapons or other items which pose a danger to the officer or those nearby. SPD Policy 6.180 – POL – 5 Pat-Down / Frisk. It is not a generalized search of the entire person. *Id.* The decision to conduct a frisk is based upon the totality of the circumstances and the reasonable conclusions drawn from the



officer's training and experience. *Id.* Generally, the frisk will be limited to a pat-down of outer clothing. *Id.* Once the officer ascertains that no weapon is present after the frisk is completed, the officer's limited authority to frisk is completed (i.e., the frisk will stop).² *Id.*

Here, OPA did not observe NE#1 frisk the Complainant. Instead, NE#1 acted as a cover officer and assisted NE#2 by pinning the Complainant against the front of their patrol car as NE#2 searched and frisked the arrestee.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited).

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

Named Employee #1 – Allegation #2

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

The Complainant alleged NE#1 sexually assaulted her. Specifically, the Complainant exclaimed, "Stop putting your cock in my ass!"

Employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2.

Here, NE#1, NE#2, and WE#1's BWV captured the Complainant's arrest. OPA did not observe any officer sexually contact the Complainant. Instead, NE#1's positioned his body to control the resisting Complainant. WE#2 reviewed NE#1's BWV and described NE#1's positioning as "...a common tactic used by officers to better control a subject's verbal and physical resistance." NE#2 searched the Complainant incident to a lawful arrest by policy and training. Further, the incident was reviewed by SPD's Criminal Investigations Bureau and was returned to OPA, noting no evidence of a sexual assault.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited).

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

Named Employee #2 - Allegation #1

6.180 - Searches-General 6.180 - 5 Pat-Down / Frisk.

During a search, the Complainant alleged that NE#2 inappropriately touched her vagina and breasts.

Here, NE#2's BWV showed NE#2 searching the Complainant's pocket, waistline, and breasts. NE#2 did not contact the Complainant's vagina. NE#2 appeared to use the back of her hand to pat down the Complainant's breasts, an action she later explained to WE#2. See SPD Policy 6.180-POL-7(2) ("Generally, officers will not search suspects of the opposite gender"). OPA did not observe an inappropriate search. WE#2 further noted NE#2's search was consistent with policy and training.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited).

² On review, OPA notes as a technical matter the Complainant was searched incident to a lawful arrest. Accordingly, the search was governed by the "thorough" search required under SPD Policies 6.180-POL-6 – Search Incident-to-Arrest/Custodial Search and 6.180-POL-7 – Custodial Searches, not the more limited search permitted under SPD Policy 6.180-POL-5.



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

Named Employee #2 - Allegation #2

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

For the reasons at Named Employee #2, Allegation #1, OPA recommends this allegation be Not Sustained - Unfounded (Expedited).

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