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From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0360

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
2. **Allegation #2:** 6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
 - a. **Finding:** Not Sustained - Lawful and Proper
3. **Allegation #3:** 15.250 – Interpreters and Translators, III. Interview and Interrogation of Non-English-Speaking Persons
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

Named Employee #2

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
2. **Allegation #2:** 6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
 - a. **Finding:** Not Sustained - Lawful and Proper
3. **Allegation #3:** 15.250 – Interpreters and Translators, III. Interview and Interrogation of Non-English-Speaking Persons
 - a. **Finding:** Not Sustained - Lawful and Proper (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:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a domestic dispute between the Complainant and her brother, Community Member #1 (CM#1). The named employees detained the Complainant during their investigation. The Complainant alleged that the named employees used unauthorized force to detain her. The Complainant also alleged she was unlawfully handcuffed. Finally, the Complainant alleged that the named employees failed to obtain a Vietnamese interpreter promptly.

Administrative Note:

During its investigation, OPA noted that Witness Officer #1 (WO#1) failed to notify a supervisor after the Complainant expressed handcuff discomfort. OPA processed this allegation for Supervisor Action. Supervisor Action generally involves a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

The allegations concerning force, interpreters, and translators were approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees about those allegations. As such, OPA did not interview the named employees about those allegations. On September 25, 2023, OIG certified OPA's expedited investigation as thorough, timely, and objective.

The unlawful handcuffing allegation underwent a full investigation. On January 31, 2024, OIG certified OPA's full investigation as thorough, timely, and objective.

Summary of the Investigation:

A. OPA Complaint

On August 23, 2023, a sergeant, Witness Supervisor #1 (WS#1), submitted an OPA complaint on the Complainant's behalf. WS#1 wrote that the Complainant visited the Southwest Precinct to file a complaint. WS#1 documented her complaint as follows:

The Complainant said officers responded to her house after she argued with CM#1. The Complainant said officers used excessive force to remove her from the kitchen and handcuff her. WS#1 wrote that the Complainant showed a red line on her wrist caused by the handcuffs. The Complainant said she felt pain in her right elbow about an hour after her release. The Complainant also said she requested a Vietnamese interpreter but was not provided one for about 10 minutes.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, 9-1-1 recordings, and photographs. OPA interviewed the

named employees. OPA attempted to interview the Complainant, but she indicated her statements to WS#1 did not need to be supplemented or modified.

B. Computer-Aided Dispatch (CAD) Call Report, Body-Worn Video (BWV), and Incident Report

On August 23, 2023, at 6:39 AM, CAD call remarks noted, “MALE AND FEMALE SCREAMING, ASKING FOR VIETNAMESE INTERPRETER, SCREAMING ABOUT A KNIFE. ADDRESS NOT VERIFIED.”

The named employees responded to a house and activated their BWV, which captured the following events:

CM#1 answered the door. CM#1 said the Complainant was crazy, in the kitchen, and threatened him with a knife. The named employees entered the kitchen and encountered the Complainant holding a large spoon. NE#2 asked the Complainant to relocate to the next room, but she refused, saying she was cooking. The Complainant grabbed and moved a pot on the stove. NE#2 grabbed her right arm, while NE#1 grabbed her left. The Complainant freed her left arm, said she was cooking and reached for the pot. NE#1 grabbed her left arm again. The named employees escorted the Complainant to the dining room. The Complainant escalated, cried, and repeatedly shouted, “My father [is] up there!” The Complainant appeared concerned that her sick father was upstairs unattended. The named employees handcuffed her and sat the Complainant on the stairs. NE#1 checked on the Complainant’s father upstairs.

The Complainant spoke with NE#2. The Complainant said she was cooking for her father when she and CM#1 argued about CM#1 failing to cover the oil. The Complainant said she held a knife because she was cooking. The Complainant denied a physical altercation. About four minutes into their conversation, the Complainant asked for a Vietnamese interpreter. NE#1 obtained a Vietnamese interpreter on the phone about six minutes later. The named employees resumed interviewing the Complainant with the interpreter.

An officer interviewed CM#1, who confirmed that he and the Complainant argued about cooking. CM#1 denied seeing the Complainant with a knife. CM#1 said the Complainant threatened to kill him in the heat of the argument but did not believe she would follow through on that threat. CM#1 also denied a physical altercation.

NE#2 screened the incident with a sergeant, telling him there was no probable cause for a crime. NE#2 uncuffed the Complainant. The Complainant left the house for work.

NE#2 wrote an incident report consistent with the events captured on BWV.

C. OPA Interviews

On December 22, 2023, OPA interviewed NE#1. NE#1 said he was the secondary officer when he responded to this domestic violence (DV) call. NE#1 described the situation as escalated and chaotic, preventing officers from investigating the scene. NE#1 expressed concern about CM#1 approaching him and NE#2 as they attempted to control the Complainant. NE#1 said the longer a scene remains uncontrolled, the higher the likelihood it deteriorates. NE#1 approved NE#2's decision to handcuff the Complainant to de-escalate the situation. NE#1 said the Complainant calmed down after being handcuffed, allowing officers to investigate.

On December 22, 2023, OPA interviewed NE#2. NE#2 said officers responding to DV calls must secure the scene before investigating, requiring them to separate the parties and de-escalate the situation. NE#2 said he was uncomfortable in a kitchen where weapons were accessible. NE#2 expressed concern about dispatch noting a knife at the scene, the Complainant's agitation, and a boiling pot on the stove, which the Complainant could throw at officers, so he asked her to move to another room. NE#2 said the Complainant refused, prompting him and NE#1 to force her out. NE#2 described the encounter as chaotic, saying CM#1 was yelling at the Complainant and getting close to her. NE#2 said everyone's safety was his priority, sometimes meant handcuffing someone to de-escalate the situation. NE#2 said handcuffing allows officers to investigate, shield themselves from attack, move the person to a specific location, and create distance between the parties. NE#2 said he felt compelled to handcuff the Complainant because she refused to listen, and her escalated behavior was concerning. NE#2 said officers investigated, concluded no crime occurred, and uncuffed the Complainant.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)

The Complainant alleged that the named employees used excessive force by removing her from the kitchen and handcuffing her.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The reasonableness inquiry in an excessive force case is objective—whether the officers' actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* The policy also identifies several factors that should be weighed when evaluating reasonableness. See *id.* Force is necessary under the totality of the circumstances where a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to effectuate the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective April 24,

2023). A proportional use of force must “reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied.” *Id.*

Here, BWV captured the named employees using—at most—*de minimis* force during this incident. *De minimis* force is physical interaction meant to separate, guide, or control without the use of control techniques that are intended to, or are reasonably likely to, cause any pain or injury. SPD Interim Policy 8.050 (effective April 24, 2023). *De minimis* force includes, among other things, the use of control holds or escorting a person without causing any pain. *Id.* The named employees removed the Complainant from the kitchen, handcuffed her, and sat her at the bottom of the stairs. Under the circumstances, the named employees’ use of force was objectively reasonable, necessary, and proportional. Their use of force was objectively reasonable to separate the parties, prioritize everyone’s safety, prevent the Complainant from using any weapons in the kitchen, and establish scene security. Their use of force reflected de-escalation. When the named employees grabbed the Complainant, NE#2 repeatedly told her he only wanted to talk in the next room and advised her to calm down. NE#1 also repeatedly told the Complainant to relax and complied with her request to check on her father upstairs. Their use of force was necessary when the Complainant refused to comply with police commands, attempted to resume cooking in a location that posed a danger to everyone and escalated. Finally, their use of force was proportional because they applied an appropriate amount of force to overcome the Complainant’s resistance.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #1 – Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

The Complainant alleged that the named employees exceeded the scope of their *Terry* stop by handcuffing her.

Officers must limit a seizure to a reasonable scope. SPD Policy 6.220-POL-2(2). Actions that indicate to a reasonable person that they are being arrested or indefinitely detained may convert a *Terry* stop into an arrest. *Id.* The policy provides a list of possible actions—such as handcuffing the subject—that could indicate to a reasonable person that they are being arrested but specifies that the occurrence of any one of these actions would not necessarily convert a *Terry* stop into an arrest. *See id.* Officers must have additional articulable justification for further limiting a person’s freedom during a *Terry* stop unless the reasons for the initial stop justify it. *Id.*

Here, the named employees suspected the Complainant threatened CM#1 with a knife. Upon encountering the Complainant, the named employees asked her to exit the kitchen for safety concerns. Still, she refused, escalated, and reached for a pot of boiling liquid on the stove. After

the named employees escorted her to the dining room, she remained agitated despite the named employees asking her to calm down. NE#2 handcuffed the Complainant to de-escalate the situation. Under these circumstances, applying handcuffs to the Complainant was lawful and justified by additional articulable justification. After the named employees secured the scene, they investigated DV allegations by interviewing the involved parties. The Complainant was handcuffed for about 21 minutes. After NE#2 concluded that no crime occurred, he uncuffed the Complainant. Under these circumstances, the seizure was limited to a reasonable scope.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 – Allegation #3

15.250 – Interpreters and Translators, III. Interview and Interrogation of Non-English-Speaking Persons

The Complainant alleged that the named employees failed to obtain a Vietnamese interpreter promptly.

Whenever possible, a non-English translator shall be utilized when communicating with people who are non-English speaking. SPD Policy 15.250. When interviewing or interrogating a non-English-speaking person, officers should ask whether the person understands, reads, or writes in English. SPD Policy 15.250(III). Officers should also ask about the person's native language and whether they can speak, read, or write in their native language. *Id.* Additionally, officers should request an employee who speaks the person's native language. *Id.* The policy describes the procedures for contacting an interpreter. *See id.*

Here, NE#1 obtained a Vietnamese interpreter about 10 minutes after NE#2 began interviewing the Complainant. Although communicating with the Complainant was difficult due to the language barrier, it was not impossible. Ultimately, the named employees obtained an interpreter about six minutes after the Complainant's request.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #2 – Allegation #1

8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #2 – Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 – Allegation #3

15.250 – Interpreters and Translators, III. Interview and Interrogation of Non-English-Speaking Persons

For the reasons at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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