
Issued Date: JUNE 5, 2024

From: Deputy Director, Director Bonnie Glenn on Behalf of Gino Betts, Jr.
Office of Police Accountability



Case Number: 2023OPA-0534

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

Finding: Not Sustained - Lawful and Proper (Expedited)

Executive Summary:

Community Member #1 (CM#1) allegedly assaulted the Complainant at an apartment complex where they both resided. The Complainant alleged Named Employee #1 (NE#1) exercised unreasonable discretion by failing to secure a warrant to enter CM#1's unit to arrest CM#1.

Administrative Note:

Witness Officer #1 (WO#1) was allegedly unprofessional during the assault investigation by commenting on an inappropriate use of police resources. Additionally, Witness Officer #2 (WO#2) allegedly failed to respond to the Complainant's email about the assault investigation. OPA processed these allegations for Supervisor Actions. Supervisor Actions generally involve 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).

This case was approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue a recommended finding based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee in this case.

On January 18, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

On December 11, 2023, the Complainant submitted an OPA complaint. The Complainant wrote that he lived in a five-unit apartment building, one of which was an AirBnB where CM#1 resided. The Complainant wrote that around 10:30pm an AirBnB guest began screaming violent threats.

The Complainant went to investigate and was attacked by CM#1 and badly cut when they fell into a window. The Complainant wrote that he escaped with his girlfriend's (Community Member #2 or CM#2) help. The Complainant wrote that after the police responded, "the police planned to leave the attacker in the building; they refused to enter the [Airbnb]." The Complainant wrote that, while he was hospitalized, CM#1 emerged from his unit and destroyed property. The Complainant wrote that CM#1 was in his unit even after the Complainant returned from the hospital. Among other complaints, the Complainant argued that officers should have entered CM#1's unit to arrest him.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, and email correspondence. OPA also interviewed the Complainant.

On November 28, 2023, at 11:15 PM, CAD call remarks noted, "IN PROGRESS, [REPORTING PARTY] HEARS SOMEONE BEING ATTACKED IN [BUILDING]..."

NE#1 responded to the incident location and activated his BWV, capturing the following:

WO#2 told NE#1 about a fight between the Complainant and CM#1. WO#2 said the Complainant was injured when "they fell into the window." WO#2's incident report documented, "[The Complainant] described the fight as a "scuffle" in which at one point they both collided with the window, causing it to break and injuring [the Complainant]. [The Complainant] stated he did not believe [CM#1] purposely forced them into the window." WO#2 said officers attempted to contact CM#1, who was inside his unit. NE#1 said, "It sounds like [the Complainant] was hurt by accident. You know, the fight." NE#1 believed the fight constituted fourth degree assault but concluded a warrant was unneeded. WO#2 said the lacerations to the Complainant's arm were not life threatening. NE#1 suggested contacting CM#1 but advised that CM#1 did not need to be arrested because charges could be filed later when CM#1 was identified. NE#1 noted no weapons, and officers should "ramp down."

WO#1 told NE#1 that CM#1 was escalated and refused to exit his unit as officers spoke through CM#1's door. WO#1 said he was unable to identify CM#1 but confirmed the incident was unrelated to domestic violence (DV). NE#1 characterized the fight as misdemeanor assault, and officers could follow up on the investigation because they knew where CM#1 lived. WO#1 asked, "Have the guys back out?" NE#1 replied, "I would say so."

NE#1 approached WO#2 and the Complainant. The Complainant said he was going to the hospital but would provide a statement. NE#1 said officers would escort CM#2 back to the Complainant's unit. NE#1 said, "We know where [CM#1] lives. We're probably going to try to refer charges. At this time, he's not coming out. He's very escalated, so we're not going to push it further at this point." The Complainant indicated he could get the code to CM#1's door from the landlord. NE#1 replied, "We can't just enter." The Complainant asked whether NE#1 would leave CM#1 in his unit, and NE#1 said, "We're not going to force him out of there for this." The Complainant said that was unacceptable and would not leave CM#2 with CM#1 nearby.

NE#1 spoke with CM#2. NE#1 said CM#1 would not exit his unit but could be identified by his driver's license since CM#1 was renting an Airbnb unit. NE#1 said officers needed a warrant to

enter CM#1's unit based on the type of assault and relationship between the parties. NE#1 also indicated the fight did not meet the threshold for SPD to obtain a warrant.

On December 19, 2023, OPA interviewed the Complainant. The Complainant said CM#1 was intoxicated when he asked CM#1 to turn down the music. The Complainant said CM#1 pushed him across the room and threw him into a window while CM#1 screamed. The Complainant said he defended himself from CM#1. The Complainant said CM#2 assisted, and they retreated to their apartment as the Complainant bled. The Complainant said the police responded but left CM#1 in his unit, endangering CM#2 and himself. The Complainant expressed frustration that CM#1 "was left in this building and was left to basically terrorize the people here and also wasn't taken into custody after he basically nearly killed me." The Complainant said after the police left, CM#1 emerged from his unit and damaged property at the apartment building.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

The Complainant alleged that NE#1 exercised unreasonable discretion by refusing to enter CM#1's unit to arrest him.

Employees 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. SPD Policy 5.001-POL-6. Discretion is proportional to the severity of the crime or public safety issue being addressed. *Id.*

NE#1's decision not to enter CM#1's unit to arrest CM#1 was informed by several facts. First, NE#1 determined the fight constituted fourth degree misdemeanor assault, not felony assault. Second, NE#1 noted no weapons since the Complainant and CM#1 appeared to accidentally strike the window. Third, the assault was not DV-related, so it did not require a mandatory arrest. Fourth, WO#1 reported that officers knocked at CM#1's door to get him to exit his unit voluntarily, but CM#1 refused and appeared agitated and possibly in crisis. Under these circumstances, officers could not enter CM#1's unit without a warrant. Additionally, NE#1 advised CM#2 to contact SPD if she saw CM#1 exit his unit so that officers could return to arrest CM#1. NE#1 also believed CM#1 could be identified from his Airbnb paperwork and subsequently charged. Based on the evidence provided, in review of the totality of the circumstances, OPA finds NE#1 exercised reasonable discretion in not obtaining a warrant based on the facts known to NE#1.

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

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