



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 23, 2018

CASE NUMBER: 2017OPA-0898

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|---|------------------------------|
| # 1 | 15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report | Sustained |
| # 2 | 5.001 - Standards and Duties 5. Employees May Use Discretion | Not Sustained (Inconclusive) |
| # 3 | 6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops | Not Sustained (Unfounded) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|----------------|---|------------------------------|
| # 1 | 15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report | Not Sustained (Unfounded) |
| # 2 | 5.001 - Standards and Duties 5. Employees May Use Discretion | Not Sustained (Inconclusive) |

Named Employee #3

| Allegation(s): | | Director's Findings |
|----------------|---|---------------------------|
| # 1 | 6.220 - Voluntary Contacts, Terry Stops & Detentions 11. Supervisors Shall Approve the Documentation of Terry Stops | Not Sustained (Unfounded) |

Named Employee #4

| Allegation(s): | | Director's Findings |
|----------------|--|------------------------------|
| # 1 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Inconclusive) |

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 Named Employees were alleged to have failed to arrest an individual who had used stolen credit cards that belonged to the Complainant and that the Named Employees did not write a robbery report. The case was named Suspicious Circumstances and was administratively cleared, and not forwarded for follow-up investigation. The victim suffered an injury and believed that he was robbed. The Named Employees contacted the alleged suspect and were able to recover the Complainant's credit card and ID, and threatened to place the subject under arrest, but then later changed their minds and didn't arrest the subject. It was clear from the In-Car Video that the Named Employees were aware that the victim was intoxicated at the time and did not have the ability to consent to the use of his credit cards, which could have been sufficient probable cause for an arrest.

Additionally, the wife of the Complainant, alleged that an Unknown Employee was rude over the telephone when that employee discussed this incident and called her husband an "alcoholic."



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to a call concerning a welfare check. The officers responded to the location based on the complaint of an individual (also a complainant in this case but referred to here as “the Complainant’s wife”) who was concerned about the welfare of her husband (referred to here as the Complainant). The Complainant was injured and was apparently intoxicated. In her report, NE#1 wrote that the Complainant “invited us in, as in to hang out with him and had no recollection that we were the police.” NE#1 recounted the conversation that she and NE#2 had with the Complainant and another individual that was with him. NE#1 wrote that the Complainant told NE#2 that he had been at Safeway and several bars but could not provide any details concerning his injuries. The Complainant did not request any police assistance at that time and the officers left. NE#1 reported that she and NE#2 told the Complainant and the other individual to call their wives as their wives had initiated the welfare check. The Named Employees were again dispatched to the Complainant’s home several hours later when he reported to 911 that he had been robbed. When they arrived, the Complainant informed them that he realized that he had been robbed and that his credit cards and Florida identification had been stolen. The officers stated that he was sober at that time and seemed in pain, but he did not appear to remember that the officers had previously responded to his residence. The officers were able to verify, with assistance from the Complainant’s wife, that the Complainant’s credit card had been charged at a local motel.

The Named Employees went to the motel and spoke with motel employees. They identified that the subject had used the Complainant’s identification and credit card to rent a motel room. The officers watched a video that verified that the subject had done so. In the General Offense Report, NE#1 wrote that she and NE#2 “contacted” the subject and discussed his use of the credit card and identification. NE#1 noted that the subject informed her that earlier that the evening he had found the Complainant who was injured. He stated that he helped the Complainant and, in return, the Complainant gave him his credit cards, identification and told the subject to use them. The subject also had in his possession the Complainant’s ring.

In her report, NE#1 stated that there were no injuries to the subject’s person or blood on him or his clothing, which led her to believe that he was not involved in an assault on the subject. She further reported that due to the subject’s recounting of his interaction with the Complainant earlier, his purported knowledge of information concerning the Complainant (including the Complainant’s address), the officers did not believe that there was probable cause to arrest the subject for using the Complainant’s credit card and identification. NE#1 wrote she told the subject that she would be generating a report and that charges could be brought later. She also wrote in her report that she directed the subject to leave the motel room. The General Offense Report written by NE#1 characterized the case as a “suspicious circumstances.”

From a review of the officers’ In-Car Video (ICV), that the Complainant “invited” them in as if to “hang out with them” is not captured on the video. The officers knocked on the door several times before it was opened by the Complainant. They interacted with the Complainant and the other individual, but the Complainant’s responses were predominantly slurred and unintelligible. At no point, did it appear that he was cordial or attempted to socialize with the officers or that he discussed in any detail what had occurred earlier that evening. I further did not hear any reference to Safeway or going to bars. When asked if he remembered what had occurred, the Complainant



responded that he was not sure. The other individual, not the Complainant, stated that the Complainant did not need medical assistance.

In their second response to the Complainant's residence, which was also captured on ICV, the Complainant admitted that he had previously been intoxicated, but claimed that his property had been stolen. The Complainant informed the officers that he had been struck from behind. The officers also spoke with the Complainant's wife who informed them of the financial charges at the motel.

Lastly, the officers' response to the motel was again recorded on ICV. The officers' initial contact with the subject involved them detaining him and telling him that he was not free to go. They questioned him concerning his use of the Complainant's credit cards and stated that they had evidence that he had done so. At first, the subject denied having the Complainant's identification, but later admitted that he did have it in his car. The officers read the subject his Miranda warning and told him that he was going to be arrested a number of other times. The subject explained that he found the Complainant who was injured and that he helped him. He reported that the Complainant was appreciative and, as a result, gave the subject his identification and credit cards and gave him permission to use them. Even after hearing this story, the officers still threatened the subject with arrest. NE#2 then said to the subject: "you said the dude was pretty much unconscious and you didn't know if he was even, yeah, ok. But then you think someone who is unconscious can then give permission to use credit cards?" The subject continued to stick to his account of what had occurred.

NE#1 then discussed the facts with another officer and stated that she did not believe that the subject was involved in the assault of the Complainant or that he used the credit card and identification without permission. She then informed the subject that she was not going to arrest him but that he needed to leave the motel. She then walked with the subject to his car to get from him the remainder of the Complainant's property, which included a ring. She told the subject that if he used someone else's credit card again she would charge him with a felony. She further stated that she would note information about this incident in her "computer" so that other officers would know about it in the future. She lastly told him that she would be writing a report and that he cannot stay in the motel. The officers then leave the scene.

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a general offense report. It further states that "all reports must be complete, thorough and accurate." (SPD Policy 15.180-POL-5.)

As part of their defense to why they did not complete a Terry template in this case, the Named Employees assert that their initial detention of the subject was based on probable cause, not on reasonable suspicion. However, nowhere in the General Offense Report do they detail that they detained the Complainant and told him that he was not free to leave; instead, they simply state that they "contacted" him. Moreover, on the ICV, the officers repeatedly threatened the subject with arrest and being charged with a felony, read him his Miranda warnings, and questioned him concerning his possession of the Complainant's property and usage of the Complainant's credit card and identification. All was consistent with the hallmarks of an arrest. None of this was reported in the General Offense Report. In this respect, their report was neither thorough nor complete

The ICV also captured the officers asking the Complainant whether he believed that a person who was "pretty much unconscious" could consent to allow him to use his credit cards, which would be germane to whether there was



probable cause to arrest. However, this statement and the subject's answer was not recorded in the General Offense Report. In this respect, their report was also neither thorough nor complete.

I further find that portions of the General Offense Report were either inconsistent with or minimized the facts of this case as memorialized by the ICV. For example, that during their initial interaction with the subject, he invited them in as if he wanted to hang out with them. As such, in this respect, the report was inaccurate. While denied by NE#1, it appeared plausible from my review of this case that the report was written in a manner to support the officers' disinclination to arrest the subject, rather than in a manner that completely and thoroughly addressed the objective facts of this case.

Based on the above, I find that NE#1's report failed to comply with policy and the Department's expectations that it be thorough, complete, and accurate. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

Here, the Named Employees used their discretion to not place the subject under arrest for using the Complainant's identification and credit card to rent a hotel room. This was the case even though: the Complainant claimed to have been assaulted and robbed of his property; there was video evidence that the subject had possessed and used both the Complainant's credit card and identification; the subject lied to the officers when he initially said that he did not have the identification and he did not immediately divulge that he had other property belonging to the Complainant; and the officers detained the subject, threatened arrest on numerous occasions, and read him Miranda warnings.

I further note that, at least in my opinion, the subject's story that he was given the identification, credit cards, a ring, and other property from an injured and intoxicated man and that that he believed that he had actually had consent to keep and use those possessions was unbelievable if not patently ridiculous. However, I was not in the place of the officers on that date and was not there in real time to perceive the credibility of the involved parties. I also note that the Complainant was intoxicated and, thus, the officers may have been warranted in questioning his account.

As such, while I ultimately believe that probable cause existed to arrest the subject, I cannot definitively say that the Named Employees improperly exercised their discretion when they failed to do so. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that officers document all Terry stops via a Terry template. Here, NE#1 did not draft a Terry template. She did not do so even though she undisputedly detained the subject. Her explanation for why she did not do so was because she detained the subject based on probable cause not reasonable suspicion and



thus no Terry template was required. While technically she is correct in this regard, I note that, as discussed more fully above, she failed to provide any information regarding the nature, extent, or duration of her detention of the subject anywhere, including, most notably, in the General Offense Report.

However, with regard to this allegation, I recommend that it be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

I find that NE#1, not NE#2, drafted the General Offense Report. From my review of the record, NE#2 did not generate any paperwork relating to this arrest.

As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

As explained above (see Named Employee #1, Allegation #2), I disagree with the determination of the Named Employees that there was not sufficient probable cause to arrest the subject. However, this does not mean that NE#2 failed to exercise his discretion in violation of policy.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 11. Supervisors Shall Approve the Documentation of Terry Stops

As indicated above, based on the Named Employees' description of the incident, they stopped and detained the subject based on probable cause, not reasonable suspicion. As such, they argued that a Terry template was not required. While I understand this argument, as detailed more fully above, the Named Employees failed to note the extent, nature, or duration of their detention of the subject anywhere, including in the General Offense Report.

Named Employee #3, as a supervisor, should have caught and corrected this error. However, I recognize that he was put in a tough place given that he was assigned this report to review and approve at the beginning of his shift and had not supervised the Named Employees who had worked the previous shift. For these reasons, while a more thorough, complete, and accurate report was required, I do not feel that NE#3 engaged in any misconduct. As such, I recommend that this allegation be Not Sustained – Unfounded as against him.



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

Named Employee #4 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

With regard to the Complainant's wife's allegation that an unknown officer referred to the Complainant as an "alcoholic," OPA could not identify who this officer was and whether this statement was actually made. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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