



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 27, 2018

CASE NUMBER: 2018OPA-0616

### 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)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained (Lawful and Proper)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

***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 he was subjected to excessive force and falsely arrested. It was further alleged that the initial detention of the Complainant may have exceeded a reasonable time frame and that Named Employee #2 may have failed to complete a Terry Template as required by policy.

**STATEMENT OF FACTS:**

The Named Employees responded to a disturbance call. The call was updated to include information stating that a male was urinating outside of a building, that the male was possibly intoxicated and/or in crisis, that the male was arguing with neighbors, and that the male was possibly holding a knife in his hand.

Named Employee #2 (NE#2), who was the primary officer, was the first to respond to the scene. He was informed by a witness that the Complainant, who was standing in the vicinity, was the suspect. Just over a minute later, Named Employee #1 (NE#1) arrived. The officers contacted the Complainant, detained him, sat him down on the sidewalk, and then placed him into handcuffs. While he was seated on the ground, the Complainant asked what he did wrong. He was again identified as the subject by another individual.

The Complainant was transported to the East Precinct. At the precinct, his arrest was screened by a Sergeant. The Sergeant determined that there was insufficient evidence to determine that the Complainant had been in possession of a knife. This was due to the fact that the knife was not located on the Complainant’s person at the time of the



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arrest, as well as due to the fact that no witness could be found who actually saw the Complainant holding the knife. The Sergeant determined, however, that there was probable cause to arrest the Complainant for indecent exposure. The Sergeant informed the Complainant that he would be released directly from the precinct and would not be booked into the King County Jail. The Sergeant further attempted to screen the Complainant's arrest but was unable to do so due to the Complainant's hostility and apparent intoxication. The Complainant told the Sergeant that he had been falsely arrested and kidnapped.

Another supervisor, an Acting Sergeant, also attempted to screen the arrest. The Acting Sergeant determined that the Complainant was intoxicated and, based on the Complainant's statements, possibly in crisis. The Complainant additionally told the Acting Sergeant that he was "thrown to the ground" by the Named Employees. Given the Complainant's allegations, which were construed to set forth false arrest and excessive force claims, the Acting Sergeant referred this matter to OPA and this investigation ensued.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***8.200 - Using Force 1. Use of Force: When Authorized***

The Complainant alleged that he was subjected to excessive force when he was "thrown to the ground."

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.*)

The Named Employees' interaction with the Complainant and the force they used were both captured on Body Worn Video (BWV). That video showed that the Named Employees used de minimis force to move the Complainant into a seated position onto the sidewalk. They did not throw the Complainant to the ground at any time.

Under the circumstances of this case – most notably, the fact that the Named Employees reasonably believed that the Complainant in possession of a weapon, it was appropriate to use force to ensure that the Complainant was secured and that both the officers and nearby community members were safe. I find that the force used by the Named Employees was reasonable, necessary, and proportional and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

##### **Named Employee #2 - Allegation #1**

##### ***6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time***



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SPD Policy 6.220-POL-4 requires that officers limit Terry stops to a reasonable amount of time. It instructs that “subjects may only be seized for that period of time necessary to effect the purpose of the stop” and further states that “officers may not extend a detention solely to await the arrival of a supervisor.”

Based on a review of the BWV, approximately 18 minutes elapsed from when the Complainant was first detained to when he appeared to be formally under arrest. During that time, the Named Employees took the following law enforcement actions: handcuffed the Complainant to ensure the safety of themselves and others; conducted their investigation into what occurred, which included interviewing witnesses; attempted to obtain a statement from the Complainant and to discern his identity, which he refused to provide; requested a Mobile Fingerprint Reader (MFR) and waited for it to be brought to the scene; used the MFR to identify the Complainant; and conducted additional witness interviews. All of these actions occurred within the presumptive 20-minute limit that is deemed the outside of what is considered a reasonable length for a detention.

Given the above, and based the nature of the law enforcement activities engaged in during the detention, I find that the length of the stop was permissible and consistent with both law and policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #2**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops  
The Complainant alleged that NE#2***

SPD Policy 6.220-POL-10 requires that officers document all Terry stops using a Terry Template. Within the Terry Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

NE#2 admittedly did not generate a Terry Template for this incident. This was the case even though the Complainant was detained for approximately 18 minutes and, even though probable cause was later developed for his arrest, a Terry Template was required by policy.

In explaining why he did not complete a Terry Template, NE#2 stated that he simply forgot to do so. He told OPA that he sent his report to his Sergeant for approval and she also did not catch the error. OPA also interviewed the Sergeant. The Sergeant acknowledged that a Terry Template should have been generated. The Sergeant further took responsibility for NE#2’s failure to complete this documentation.

The Sergeant’s acceptance of responsibility convinces OPA that a Sustained finding is not warranted here. This is the case even though the failure to complete a Terry Template has resulted in the issuance of recommended Sustained findings in the past. Instead, I recommend that NE#2 receive the below Training Referral.

- **Training Referral:** NE#2 should be retrained on the requirement of a Terry Template that is set forth in SPD Policy 6.220-POL-10 and should be counseled concerning his failure to complete this documentation in this case. NE#2 should be reminded to comply more closely with this policy moving forward. This retraining and



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associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #3**

***8.200 - Using Force 1. Use of Force: When Authorized***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegations #4**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

The Complainant alleged that he was falsely arrested by NE#2.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

At the time of the initial detention, NE#2 spoke with the witnesses to try to determine whether the Complainant was actually viewed in possession of the knife. None of the witnesses could verify that this was the case, even though one stated that he was told by the Complainant that the Complainant had a knife. While the witnesses told NE#2 that the Complainant was “screaming, talking crap and being verbally assaultive,” as expressed succinctly by NE#2 during his screening conversation with his Sergeant: “there’s no crime, he’s just being an ass...” At the time of that screening, NE#2 made the decision to further investigate the public urination by the Complainant. NE#2 asked one of the witnesses whether he had seen the Complainant’s genitals while the Complainant was urinating. The witness said that he did. NE#2 then asked whether the sight of the Complainant’s genitals caused the witness to be “alarmed and affronted,” and the witness again said that it did. The witness also agreed to be the victim of the offense. At that point, NE#2 believed that he had probable cause to arrest the Complainant for indecent exposure.

NE#2 and his Sergeant reaffirmed their belief that probable cause existed for the arrest of the Complainant at their OPA interviews. Based on my review of those interviews, as well as of the entirety of the record and the elements of the statute, I agree.

The statute reads as follows: “A person is guilty of indecent exposure if he or she makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.” The Complainant clearly openly exposed his genitals. Moreover, it was arguably obscene when he urinated on the witness’s windows in plain view of the witness and potentially others. Lastly, NE#2 established, via the statement by the witness, that the exposure caused the witness to feel affront and alarm. While it would have been optimal to further explore whether the witness believed the exposure to be obscene and how the exposure



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caused affront or alarm, I do not feel that this yields the investigation or arrest to be legally infirm.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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