



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 8, 2019

CASE NUMBER: 2019OPA-0145

### 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)
# 2	6.180 - Searches-General - Search Incident-to-Arrest / Custodial Search	Not Sustained (Unfounded)

*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 the Named Employee used excessive force when he “assaulted” her. It was further alleged that the Named Employee may have caused an improper search of the Complainant’s purse when he handed it to her mother and the mother searched the purse.

#### SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and other officers responded to a potential domestic violence (DV) incident. The Complainant, who was 17 years old at the time, was outside of her mother’s residence seeking entry and her mother would not let her in. NE#1’s partner attempted to broker communications between the mother and the Complainant; however, the mother continued to refuse to let the Complainant enter. At one point, the mother told the Complainant that she would not let her in unless the mother searched the Complainant’s purse. The Complainant refused to let the mother search her purse. The Complainant grew increasingly escalated over the request to search her purse and the mother’s continued refusal to let the Complainant into the home. The officers attempted to convince the Complainant to allow her mother to search the purse, with NE#1’s partner stating: “just let [your mother] look through it...”

As this incident proceeded, NE#1 appeared to grow frustrated with the Complainant. At one point during the Complainant’s interaction with the mother, NE#1 softly stated, apparently concerning the other officer’s attempts to reason with the Complainant: “you’re being way too nice.”

The Complainant continued to argue with her mother and continued to yell. Eventually, the Complainant pushed past her mother and entered into the residence. NE#1 stepped towards the door and grabbed the Complainant by the arm, pulling her back towards the porch. In a fluid motion, NE#1 sat the Complainant down onto a bench, still grasping her arm. He pulled her left arm towards her back. With her other hand, she began to use her phone to record the incident. She asked NE#1 why he was grabbing her and said that it was an “assault.” NE#1 told her that she pushed the mother.

NE#1 took the Complainant's purse from her and took her cellphone. During this time, the Complainant told NE#1 that he did not have a warrant. She also said that he was taking her things that she paid for. NE#1 gripped the Complainant's left wrist in an attempt to get her to release the purse. The Complainant stated that he was twisting her arm. Ultimately, the Complainant let go of the purse and NE#1 gave it to the mother.

NE#1 continued to hold onto the Complainant's left wrist and she kept complaining of pain. NE#1 and other officers stood the Complainant up and they placed her into handcuffs. The officers sat her back down on the bench. She told the officers that they should not have grabbed her like that and asked for a supervisor. Shortly thereafter, a supervisor arrived on-scene. NE#1 briefed the supervisor about what had occurred. He then went inside of the residence and spoke with the mother. During that conversation he asked the mother what she was concerned would be in the purse. The mother referenced marijuana and NE#1 did not ask any further questions regarding the purse or its contents.

Ultimately, the Complainant was unhandcuffed and was permitted to reenter her home. Prior to doing so, she alleged to the supervisor that NE#1 assaulted her. The supervisor took photographs of the Complainant's wrists. There appeared to be some redness but no noticeable injuries or deformities. The supervisor further referred the Complainant's allegation of assault to OPA and this investigation ensued.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 – Allegation #1**

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

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.*)

Based on OPA's review of the video, OPA finds the force used by NE#1 to have been consistent with policy. OPA concludes that, at the time the force was used, NE#1 believed that the Complainant had potentially engaged in the DV assault of the mother and, if not removed from the residence, could further harm the mother. Given this, NE#1 had a lawful basis to detain the Complainant and, if required, to use appropriate and reasonable force to do so. The force was also reasonable under the circumstances as NE#1 legitimately believed that there was no other reasonable alternative to using force at that time to secure the Complainant's person and to stop her from committing further assaults. Moreover, the force was only that force needed to effectuate NE#1's lawful purpose. Lastly, I find that the force – which included gripping the Complainant's arm and wrist and then placing her into handcuffs – was proportional to the threat she presented to the mother and her level of resistance.

While it is unfortunate that the Complainant was in pain from the force, this does not, itself, render the force outside of policy. Moreover, even though NE#1 was clearly frustrated by the Complainant and her conduct, I do not feel that it caused him to use unnecessary force or to use more force than was appropriate.

Ultimately, as discussed above and based on the totality of the circumstances, I find that the force was consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

### **6.180 - Searches-General - Search Incident-to-Arrest / Custodial Search**

Based on its intake investigation, OPA alleged that NE#1 may have caused an improper search of the Complainant's purse. This was specifically based on NE#1 handing the purse to the mother and the mother then searching the purse without the Complainant's consent.

After conducting its full investigation, including interviewing NE#1 and conducting legal research, OPA concludes that NE#1 did not violate Department policy when he handed the Complainant's purse to the mother. First, NE#1 did not himself search the purse or look inside the purse. Second, there is no evidence in the record suggesting that NE#1 made or intended to make the mother an agent of the police when he passed her the purse. Third, as discussed above, NE#1 not ask her to conduct the search or attempt to gain access to any items that she may have found therein. Fourth, the mother wanted to search the purse for her personal benefit, not to assist the officers.

OPA believes that this decision is consistent with applicable caselaw. As a general matter, the Fourth Amendment's warrant requirement applies to a search by a private individual when: (1) "the government knew of or acquiesced in the intrusive conduct"; and (2) "the party performing the search intended to assist law enforcement efforts [rather than] further his or her own ends." *U.S. v. Mazarella*, 784 F.3d 532, 538 (9th Cir. 2015) (citing *U.S. v. Reed*, 15 F.3d at 931 (9th Cir. 1994)). The second prong of this test is determinative here. The mother clearly intended to search the purse prior to having her daughter enter the home and she stated so explicitly. As such, the search was clearly conducted to further her own ends rather than to assist the officer.

For these reasons, I find that NE#1 did not cause an improper search of the Complainant's purse and I recommend that this allegation be Not Sustained – Unfounded.

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