



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 17, 2020

CASE NUMBER: 2019OPA-0441

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained
Imposed Discipline		
Two Day Suspension		

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:

It was alleged that the Named Employee engaged in insubordination when he failed to obey an order from his supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer

Officers, including Named Employee #1 (NE#1), were dispatched to an assault. The call reflected that the suspect had jumped onto a car and assaulted the driver. The suspect was located and identified. It was determined that the suspect had an open warrant. He was then placed under arrest.

After arresting the suspect, NE#1's Body Worn Video (BWV) showed him speaking with the victim. NE#1 told the victim that he was going to book the suspect for assault, property damage, and the warrant violation. The victim responded: "But I'm not hurt. All I want to make sure is I don't have a cracked hood." NE#1 asked the victim: "So you don't want to be a victim of property damage or assault?" The victim replied: "I don't think there is any damage."

NE#1's Sergeant came to the scene to screen the arrest. The BWV captured the screening conversation between NE#1, Witness Officer #1 (WO#1), and the Sergeant. The Sergeant asked NE#1 whether there was any damage to the car. NE#1 responded: "I got just the footprints all over the hood." When asked by the Sergeant whether there were any dents on the car, NE#1 said: "No, it's a fiberglass hood." The Sergeant said that it was just assault and NE#1 replied: "I'm still gonna go for the property damage too." The Sergeant asked NE#1 whether he was referring to attempted property damage and NE#1 said: "Yeah, because, I mean if you intend, if you do something that is going to damage my property whether you were successful or not, you cannot do that." The Sergeant informed NE#1 that criminal attempt was its own misdemeanor crime and they agreed that NE#1 would look it up.

The Sergeant stated that they should not arrest for property damage "for now" and that they should just arrest for assault and the warrant violation. This statement was made while in the immediate vicinity of all NE#1 and WO#1.



WO#1 asked whether there was any damage to the car. The Sergeant said that there was not. NE#1 also replied: "No, it's a fiberglass hood. You either crack it or you don't." The Sergeant again said, "just the assault's fine," and everyone began to walk away. At that time, NE#1 asked rhetorically: "How many times do I need to kick your fiberglass Corvette before you should get arrested for it?" WO#1 responded: "Well if there's no damage..." NE#1 and WO#1 continued to discuss the call. NE#1 questioned why they needed witnesses to corroborate each aspect of the call. NE#1 then said to WO#1: "I'm still putting property damage on there." After the call, the Sergeant sent NE#1 a confirmatory message via the MDT system that stated: "Stick with misd [misdemeanor] assault and put that other stuff in [the] narrative."

NE#1 ultimately booked the suspect for assault, property destruction, and the warrant violation. He further wrote the following in the superform for this incident: "[Suspect] was arrested for Assault, Property Destruction, and his warrant...this incident was screened on scene by [the Sergeant]."

The Sergeant later reviewing the superform, even though NE#1 submitted it after the Sergeant's normal work hours had ended. The Sergeant confirmed that, while she directed him not to do so, NE#1 had arrested the suspect for property damage. She immediately went to speak with NE#1 and asked him why he arrested for property damage when she had said that this should not occur. He told the Sergeant that, after she left the scene, he spoke with WO#1 and that they collectively determined that property damage was appropriate. NE#1 also told her that he did not construe her statement to them as an order.

The Sergeant researched property damage and determined that there was not probable cause to arrest the suspect for that crime. She asked NE#1 to make some corrections to and add information to the narrative of the superform. She further elevated this issue to her Lieutenant.

The Lieutenant reviewed the superform, the BWV for both NE#1 and the Sergeant, and the other documentation relating to the case. Based on this review, the Lieutenant believed that NE#1 may have engaged in insubordination and referred this matter to OPA. He further directed the Sergeant to memorialize her conversation with NE#1. The Sergeant did so.

As a result, OPA initiated this investigation. OPA reviewed the documentation generated regarding this case, including NE#1's reports and the memorandum generated by the Sergeant. OPA further reviewed the BWV for NE#1, WO#1, and the Sergeant. OPA also conducted interviews of NE#1, WO#1, and the Sergeant.

NE#1 told OPA that he recalled the conversation with the Sergeant in which she said that the suspect should just be arrested for assault. He further recalled his conversation with WO#1 in which he stated that he was going to arrest for property damage regardless. NE#1 stated that he thought the Sergeant was making suggestions and that he thought it was his final decision, not the Sergeant's, to decide whether to arrest and what to arrest for. NE#1 was asked whether he felt that the Sergeant's statement to him was an order. He said that he did not. He said that he had received orders from the Sergeant before but that he could not, off the top of his head, remember how she phrased those orders. NE#1 told OPA that, to consider a statement from the Sergeant to be an order, he would expect her to use the term "order" when provided the direction. Lastly, NE#1 stated that, had he known the Sergeant was giving him an order, he would have followed it.

WO#1 recalled the conversation between NE#1 and the Sergeant. He confirmed that the Sergeant told NE#1 that the suspect should only be arrested for the assault and the warrant. WO#1 further confirmed that NE#1 told him



that he was going to arrest for property damage anyway. WO#1 said that, had he been the officer tasked with completing the superform, he understood that he was to only arrest for the assault and the warrant, not the property damage.

The Sergeant told OPA that her direction to NE#1 to not arrest for property damage was “absolutely” an order. She stated that, for direction she gave to be an order, did not have to explicitly use the term “order.” She stated that NE#1 purposefully disobeyed a direct order when he included property damage as one of the crimes of arrest. She explained that, as the screening supervisor, she had the responsibility to make the final decisions on arrest and criminal charges.

SPD Policy 5.001-POL-15 states that Department employees must obey any lawful order issued by a supervisor. The failure to do so constitutes insubordination.

OPA finds that the Sergeant’s direction to NE#1 that the suspect should not be arrested for property damage constituted an order. Notably, the Sergeant, as she indicated, had the overall authority to screen and approve arrests and, in that capacity, made the final call on what the suspect would be arrested for. Accordingly, the order was lawful. In addition, and contrary to NE#1’s assertions, OPA does not believe that for a direction to constitute an official order it must include the phrase: “I order you.” Explicit Instruction from a supervisor to an officer not to do something – particularly where it is as important as potentially arresting for a crime without probable cause – is an order, regardless of phrasing. While NE#1 asserted the contrary, that is inconsistent with the commonplace practice of this Department. Moreover, the evidence is clear that NE#1 knowingly and deliberately chose not to comply with this order. This was established by the language he used during his discussion with WO#1 when he said: “I’m *still* putting property damage on there.” The word “still” indicates that NE#1 was aware that he had been told not to do something, but that he was going to do something anyway. Moreover, the BWV further indicates that this decision to act contrary to the Sergeant’s clear direction was based on his articulated disagreement with the Sergeant.

Ultimately, SPD is a para-military organization that functions within a strict chain of command. SPD Policy 5.001-POL-15 exists to ensure that this chain of command is respected and complied with. Here, however, NE#1 acted outside of that chain of command when he intentionally failed to obey a direct order from his supervisor. When he did so, he acted inconsistent with this policy and engaged in insubordination. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**