



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 17, 2020

CASE NUMBER: 2019OPA-0549

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	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 the Named Employee abused his discretion when he failed to arrest an individual who the Complainant claimed assaulted him.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 6. Employees May Use Discretion

Officers, including Named Employee #1 (NE#1), responded to a report of a fight disturbance involving three males. The Subject, who was at the scene, was contacted by NE#1. The Subject, who was very animated at the time, stated that he observed another male – the Complainant in this case – exposing himself in public. The Subject said that, when he confronted the Complainant, the Complainant became aggressive with him and pushed him. The Subject told the officers that he hit the Complainant back. The Subject explained that he did so because the Complainant was the primary aggressor. The Subject said that he tried to walk away, and the Complainant followed closely behind him and claimed that the Subject stole the Complainant's phone. The Subject told NE#1 that he wanted a report written and that he wanted the male to be arrested.

Another officer spoke to the Complainant. The Complainant said that the Subject was the primary aggressor. He alleged that the Subject came up to him and started harassing him about where he worked. He said that when he did not answer the Subject's questions, the Subject hit him multiple times. The Complainant alleged that the Subject then struck him on the face with his belt, causing the Complainant to suffer a laceration to his face. He acknowledged that he pursued the Subject and asked him if he had stolen his phone. The Complainant further alleged that the Subject's friend threatened him with a hammer. The Complainant stated that he wanted to file charges against the Subject.



A third officer spoke to several witnesses who observed portions of the altercation. However, none of the witnesses saw the beginning of the fight and who initiated it.

After conferring together, the officers determined that there was an insufficient basis to arrest anyone given the disputes of fact and no witnesses to who started the fight.

NE#1, who was the primary officer on the call, decided to document this incident in a report and to not make any arrests. He relayed this decision to the Complainant. The Complainant was upset by the outcome of the case but said that he understood NE#1's decision.

The Complainant later initiated this complaint with OPA. He asserted that NE#1 should have arrested the Subject. He further contended that the officers should have done a more thorough investigation, including: taking the Subject's belt into evidence and testing it for DNA; seizing the Subject's backpack; and locating the hammer that he was threatened with.

As indicated in SPD Policy 5.001-POL-6, "[e]mployees 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." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

Based on OPA's review of the evidence, OPA concludes that NE#1's decision not to make an arrest did not constitute an abuse of his discretion. As discussed above, there were no witnesses who saw the inception of the conflict and, thus, none who could identify the primary aggressor. When coupled with the irreconcilable disputes of fact between the accounts provided by the Complainant and the Subject, this prevented NE#1 from developing probable cause to arrest. With regard to the Complainant's allegation that NE#1 conducted an insufficient investigation, OPA disagrees that that this was the case. First, there was no reason to seize the belt to test it for DNA as it was undisputed that it was used by the Subject to strike the Complainant. Second, the officers did not have the legal authority to seize the Subject's backpack given that he was not arrested. Third, there was no reason to locate the hammer as the Complainant did not assert that he was hit by it.

Given the above, and even though OPA understands the Complainant's frustration that the Subject was not arrested, there is no evidence supporting a finding that NE#1 abused his discretion or acted in any way inappropriately during this incident. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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