



## ***CLOSED CASE SUMMARY***

ISSUED DATE:      APRIL 8, 2021

FROM:              DIRECTOR ANDREW MYERBERG  
                         OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:    2020OPA-0614

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

| Allegation(s): |  | Director's Findings               |
|----------------|--|-----------------------------------|
| # 1            | 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) |
| # 2            | 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances                         | Not Sustained (Lawful and Proper) |

#### **Named Employee #2**

| Allegation(s): |  | Director's Findings               |
|----------------|--|-----------------------------------|
| # 1            | 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) |
| # 2            | 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances                         | Not Sustained (Lawful and Proper) |

#### **Named Employee #3**

| Allegation(s): |  | Director's Findings               |
|----------------|--|-----------------------------------|
| # 1            | 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) |
| # 2            | 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances                         | 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 twice falsely arrested by the Named Employees and that they failed to properly investigate both incidents.

### **ANALYSIS AND CONCLUSIONS:**

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

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



The Complainant filed an OPA complaint in which he alleged that he was twice falsely arrested by SPD officers. He said that, on both occasions, he was arrested for trespassing in a grocery store. However, he asserted that the trespass was invalid as it was for his failure to wear a mask and he had a disability that excused him from wearing a mask. He did not share what that disability was but said that it conveyed to him the civil right not to be trespassed from a public place. This OPA investigation ensued.

As part of its investigation, OPA reviewed the documentation and Body Worn Video (BWV) for both incidences. OPA determined that, on September 11, 2020, officers were dispatched to a report of a possibly intoxicated man who was harassing staff at a grocery store. The call indicated that the man – who was later identified as the Complainant – had been previously trespassed from the store. The call further indicated that the Complainant was fighting with staff. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrived at the store. They spoke with store staff who confirmed that the Complainant had been previously trespassed for refusing to wear a mask inside. They stated that, when they tried to enforce the trespass and to get the Complainant to leave the store, he assaulted a staff member. NE#1 spoke with the Complainant who confirmed that he had been trespassed but asserted that it was illegal because of his disability. OPA also spoke with officers who had dealt with the first trespass and asked them to come to the scene, which they did. All the officers conferred and, after verifying that the store wanted to proceed with charges as the victim of the trespass, they placed the Complainant under arrest.

Officers responded to a second call at the grocery store involving the Complainant on September 16, 2020. A store employee reported that the Complainant was in the parking lot and was armed with a rifle. This time, NE#1, NE#2, and Named Employee #3 (NE#3) all responded. The officers contacted the Complainant. He again asserted that the trespass was invalid and that he was going to contest it. He was arrested.

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. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

Based on a review of the totality of the evidence, OPA finds that the officers had probable cause to arrest the Complainant on both September 11 and September 16, 2021. First, it was undisputed that the Complainant had been previously trespassed from the grocery store and had chosen to come back to the store despite this. While the Complainant alleged that the trespass was unlawful, OPA does not agree that this is the case. Specifically, private businesses are permitted to enact mask mandates and, at the time of this case, could prohibit individuals from being in the store without a mask on. While private businesses are required to provide reasonable accommodations when requested, it is not clear that the Complainant ever sought such an accommodation. Instead, he asserted that he was entitled to not wear a mask without limitation. Based on OPA's research, this is incorrect. Second, even disregarding the trespass, the Complainant engaged in other criminal activity during both incidents that would have provided independent probable cause to arrest him. Third, even if the Complainant has a legitimate grievance against the store for discrimination, that is a civil matter outside of the ken of officers. They acted reasonably in deciding to make arrests under the circumstances of these cases.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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



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

***15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances***

The Complainant further alleged that the Named Employees did not fully and fairly investigate the incidents that led to his two arrests.

Again, in OPA's perspective, the BWV is dispositive. The video showed that the Named Employees took sufficient steps to investigate both incidents, including interviewing the Complainant and other involved individuals and thinking through the incidents critically and comprehensively prior to taking enforcement action. While the Complainant may not like the outcome of the investigations, this does not yield them out of policy.

For these reasons, OPA recommends that this allegation Not Sustained – Lawful and Proper as against all of the Named Employees.

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

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

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

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

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

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

***15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances***

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #1**

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

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

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

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

***15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances***



For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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