



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 15, 2018

CASE NUMBER: 2017OPA-0894

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Inconclusive)
# 4	6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Inconclusive)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	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 Named Employee #1 was emotionally unstable, aggressive, and pushed her against a wall in front of her child when he arrested her unlawfully. The Complainant further alleged that because of Named Employee #1 she was displaced, her job was put in jeopardy, and she was humiliated in front of her community.

During OPA’s intake, it was discovered that both Named Employee #1 and Named Employee #2 may have failed to properly activate their ICV systems during the incident.

**ANALYSIS AND CONCLUSIONS:**

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

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

SPD Policy 16.090-POL-5(b) sets forth when officers are required to record their actions. The policy indicates that officers must record their responses to dispatched calls. (SPD Policy 16.090-POL-5(b)). In such cases, the recording must be commenced “before the employee arrives on the call in order to ensure adequate time to turn on



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cameras.” (*Id.*) The exception to this mandate is where there are exigent circumstances that justify a delayed activation. (*Id.*)

While the Named Employees were dispatched to a call for service at the Complainant’s home and were thus required to activate their In-Car Video (ICV) systems, no video was located for them. Both Named Employees did, however, recall activating their ICV. OPA contacted SPD IT to see if this discrepancy could be resolved. SPD IT informed OPA that both Named Employees’ COBAN mobile microphones were malfunctioning due to low voltage levels on their battery packs. As such, even though there was no ICV, it was due to a malfunction not the intentional failure to record. For this reason, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

On the date in question, the Named Employees responded to a call of possible child neglect at an apartment complex. Upon their arrival, they saw that a child, who they learned was the Complainant’s son, was playing in the street out in front of the building. The officers got the Complainant’s contact information from another resident and called her at her work. The Complainant then came to the apartment complex. As discussed more fully below, her arrest ensued.

The Complainant alleged that, during this incident, Named Employee #1 (NE#1) was emotionally unstable, aggressive, and pushed her against a wall in front of her child when he arrested her unlawfully. She further alleged that NE#1 embarrassed her in front of other residents of her building. As a result, she claimed that NE#1 acted unprofessionally in this instance.

NE#1 stated that during the incident his tones may have been elevated. NE#1 indicated that he was bothered by how little regard he believed the Complainant had for her child. He recalled feeling “shaky.” NE#1 further recalled “getting close to being unprofessional” with the Complainant and stated that he said: “I’m about to say something I don’t wanna say.” He stated that he then removed himself from the situation. NE#1 denied being aggressive, but stated that he did push the Complainant against a wall when he effectuated her arrest and handcuffed her. NE#1 also indicated that he did interview residents of the building in order to investigate the call.

Named Employee #2 (NE#2) was present during parts of the interaction between NE#1 and the Complainant. She stated that at the outset of their response, NE#1 was already “pretty elevated” and told her “well you better not let me near that mom.” NE#2 noted that this was before the Complainant had even arrived at the scene and they had gotten a chance to investigate the case. Moreover, NE#2 stated that the child appeared to be healthy and it was unclear whether there was an actual crime at issue. NE#2 stated that she was concerned enough about NE#1’s demeanor that she asked him whether he wanted to leave and take another call.

Based on her testimony, it is clear that NE#2 had concerns with the basis for the Complainant’s arrest. She noted, however, that it was uncomfortable to have an argument about that with NE#1 in front of the Complainant. NE#2 explained that she attempted to remove the Complainant from the situation based on her concern that it had “really escalated.” NE#2 stated that she was “pretty uncomfortable with the whole thing.” NE#2 recounted that the



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Complainant asked her several times why she had been arrested and made numerous comments to her and another officer that NE#1 “totally went off on her.” NE#2 affirmed to OPA that she did not believe that the situation was handled appropriately by NE#1.

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.) The policy further states that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*) Lastly, the policy states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

Applying a preponderance of the evidence standard, I find that NE#1 violated the Department’s professionalism policy in this case. I believe that NE#2’s testimony supports the Complainant’s account that NE#1 was verbally aggressive and acted in an emotionally unstable manner towards her, thus inappropriately escalating this incident. This behavior not only frightened the Complainant and her son, but it also very much concerned his fellow officer, NE#2. I find it very telling that NE#2 believed that NE#1’s demeanor was inappropriate enough at the inception of the call to warrant telling him that he might want to leave the scene. I also place great weight on NE#2’s conclusion that NE#1 did not handle this matter appropriately. As such, NE#1 unnecessarily escalated these events and, by doing so, undermined public trust both in himself and in the Department. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

Due to a malfunction with the Named Employees’ ICV systems, the interaction between NE#1 and the Complainant that preceded her arrest was not captured on video.

NE#1 contended that he had probable cause to arrest the Complainant for obstruction. Specifically, he asserted that when he was attempting to speak with the Complainant to investigate possible child neglect she walked away with her son. NE#1 indicated that even though he told the Complainant that she was not free to go, she continued to try to leave the building with her child. At that point, he placed her under arrest for obstruction and handcuffed her while pushing her up against a wall.

The Complainant asserted that virtually immediately upon interacting with NE#1, he seemed “angry” and “charged after” her into her apartment complex. The Complainant told the officer that she was trying to take her child inside and was asking her child why he was outside and what he was doing. NE#1 reportedly told her to wait right there and she asked what she had done wrong. NE#1 then asked her whether she knew what obstruction of justice was and told her to put her hands behind her back. Her son was right there at the time and started crying and covering his eyes. NE#1 handcuffed her and when she saw two other officers – one of them being NE#2– they took her away from NE#1 and asked her if she was okay. She told them that she did not know why NE#1 was acting like he was. The



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other officers said they would try to figure out what was going on. The Complainant told OPA that NE#2 called a Sergeant to see whether she could overturn NE#1's decision to arrest her. The Complainant reported that the other officer said that he did not understand why she had been arrested but that they could not override NE#1's decision to do so because he was the officer in charge. She was then told that there was nothing that the officers could do until they arrived at the precinct.

During her interview, NE#2 expressed that she was surprised when she observed that NE#1 had the Complainant in handcuffs and up against a wall. NE#2 recalled that the Complainant kept trying to turn around to speak with NE#1 and was asking why she was arrested and why the arrest had been effectuated in front of her son. NE#2 did not witness what led up to the arrest, but noted that NE#1 was "pretty elevated" and "angry" even before the Complainant arrived. NE#2 was concerned enough that she asked NE#1 whether he needed to leave the scene and go to another call. NE#2 noted that they were required to de-escalate NE#1 before the officer even knew enough to determine what had actually occurred. In her testimony to OPA, NE#2 clearly indicated that she did not fully understand the basis for the Complainant's arrest and that she had significant concerns about this incident. However, she admittedly did not observe the initial interaction with the Complainant that led to her arrest and could thus not opine as to whether there was sufficient probable cause.

For these reasons, and given the dispute of fact between NE#1 and the Complainant as to what exactly preceded her arrest, I cannot conclusively determine whether the arrest was lawful. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

#### **Named Employee #1 - Allegation #4**

***6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical***

SPD Policy 6.010-POL-2 states that "when taking a suspect into custody, officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical."

While NE#1 reported that he told the subject that she was under arrest, as well as told her that she was under arrest for obstruction, he admittedly did not identify himself as a police officer. I note that NE#1 was wearing a full uniform that identified himself as an officer on that day, but, based on the plain language of the policy, he was also required to identify himself. Given this fact, however, and given that this is a technical violation of the policy, I recommend that this allegation be a training referral rather than a sustained finding.

- **Training Referral:** NE#1 should receive counseling from his chain of command concerning the requirement that he identify himself as early as practical when making an arrest. His chain of command should ensure that he does so going forward. This counseling should be memorialized in a PAS entry.

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



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**Named Employee #1 - Allegation #5**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-5, “[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-5.)

While I think it was largely inadvisable for NE#1 to arrest the Complainant in front of her child and that it caused the child to suffer emotional distress, if NE#1 had probable cause to do so, it would not necessarily have been a violation of policy. As discussed above in the context of Allegation #3, I do not have sufficient information to conclusively determine what led to the Complainant’s arrest and thus to conclude whether probable cause existed. As such, while I believe that this matter could have been handled in a different and more appropriate manner, I recommend that this allegation, like Allegation #3, be Not Sustained – Inconclusive.

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

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

***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

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

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