



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 18, 2019

CASE NUMBER: 2018OPA-1181

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest	Not Sustained (Training Referral)
# 2	8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)
# 2	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)

Named Employee #5

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Allegation Removed

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 female suspect may have been arrested without probable cause and that officers may have made entry into a motel room without the apparent legal authority to do so. It was further alleged that Named Employee #1, the on-scene Sergeant, did not complete an arrest screening template for female suspect and that he

did not complete various requirements of a use of force investigation. Lastly, it was alleged that Named Employee #4, who was the Acting Lieutenant, did not identify issues with the force review and did not address those issues.

SUMMARY OF INVESTIGATION:

An individual advertised a car for sale and two potential purchasers, a man and a woman, took the car for a test drive and did not return it. The seller determined that the information the purported purchasers gave him was false. The seller reported the theft to the police. The car was later located at a motel on Aurora Avenue. Officers learned of the location of the vehicle and the potential perpetrators and responded to the motel. An enforcement operation was conducted that resulted in the arrest of the both suspects and the recovery of the vehicle. Force was used on the male suspect in order to take him into custody when he tried to escape the room through the rear window. In addition, in the aftermath of the arrests, both Named Employee #2 (NE#2) and Named Employee #4 (NE#4) made entry into the motel room.

This incident and the force used to take the male suspect into custody was evaluated by the Department's Force Review Board (FRB). The FRB identified several issues with this incident. First, the FRB noted concerns with the force investigation and review. Specifically, the FRB believed that the force investigation lacked some necessary details and that the review may not have constituted an "objective analysis" and that there was a lack of "documentation of the follow-up actions taken on many of the tactics and decision making related to this incident." The FRB additionally had questions concerning: the probable cause for the arrest of the female suspect and how she was ultimately connected to the vehicle by the officers; the fact that the reports referenced force being used on the female suspect when there was no indication that this occurred; and the legal basis for the entry into the motel room by NE#2 and NE#4. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest

SPD Policy 6.010-TSK-1 requires that Sergeants screen and approve arrests. The policy instructs that a Sergeant create an arrest screening template for each arrest.

Here, Named Employee #1 (NE#1), who was the on-scene Sergeant, completed an arrest screening template for the arrest of the male suspect; however, he did not do so for the arrest of the female suspect. At his OPA interview, NE#1 acknowledged that he failed to do so and stated that he did not know at the time that he was required to complete two separate arrest screening reports.

FRB also noted that NE#1 wrote in the arrest screening template that the female suspect was subjected to force when this did not actually occur. NE#1 recognized that he did include this information and that it was a typographical error.

OPA believes that NE#1 made a mistake when he did not complete an arrest screening template for both arrests. As such, OPA recommends that he receive the below Training Referral.

- **Training Referral:** At his OPA interview, NE#1 clearly articulated that he understood the requirement of the completion of an arrest screening template for each arrest that he effectuates. As such and unless NE#1's of chain of command feels otherwise, OPA does not believe that any other training or counseling is needed.

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

Named Employee #1 - Allegation #2

8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action

During its review of this incident, the FRB identified several issues with NE#1's use of force investigation in this case. Specifically, the FRB noted that NE#1 did not canvass for potential witnesses, did not interview the female suspect concerning the force aspect of the incident, and did not mark the portions of the Body Worn Video (BWV) that he reviewed concerning the force.

In addition, from a reading of the force review completed by Named Employee #3 (NE#3), who was the Acting Lieutenant on that date, it did not appear that NE#1 identified or addressed the investigatory requirements not satisfied by NE#3. However, it was NE#3's responsibility to do so and to ultimately ensure that those steps were completed.

OPA notes that, as referenced by both NE#1 and NE#3, this was the first use of force investigation that they conducted. Both are assigned to follow-up units and, as a result, have had significantly less exposure to uses of force. As such, OPA believes that they would benefit from additional development in this area and recommends that they both receive the below Training Referral.

- **Training Referral:** NE#1 and NE#3 should be given additional support and training from their chain of command concerning the investigation and evaluation of uses of force. Their chain of command should ensure that both Named Employees are familiar with the elements of such reviews and the expectation that, where investigatory steps are not completed, that they timely identify and address those matters. The retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

NE#2 made entry into the motel room without a warrant. He explained that he did so to perform a protective sweep and that this was done at the direction of NE#1. BWV captured NE#2's protective sweep. It further documented him calling for a "second" officer and, while inside of the room, stating: "police, get down." After he completed the protective sweep, he exited the room. Based on a review of BWV, OPA was able to conclusively establish that NE#2 did not search the room.

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. One such exception is where there are exigent circumstances. (SPD Policy 6.180-POL-2(b).) The policy explains that: "Officers are allowed to enter a home when the suspect retreats into the home or private area and there is reasonable fear of escape, destruction of evidence, or injury to police or public."

OPA's review of both the video and NE#2's OPA interview indicated that he performed a protective sweep that was consistent with policy. Moreover, even if it had not been, NE#2 was acting pursuant to an order from a supervisor and was entitled to rely on that direction.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

8.500 - Reviewing Use of Force 5. Reviewers Will Immediately Address Concerns That Arise During Use-of-Force Investigations or Review and/or Recommend Additional Action

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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

Named Employee #4 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

NE#4 confirmed that he entered the motel room and that he did so without a warrant. He stated, however, that he had consent to make entry. Specifically, he told OPA that the Complainant asked him to enter the home in order to retrieve a piece of clothing for her. He stated that she had little on underneath the jacket she was wearing. NE#4 said that he went inside, could not find the clothing she wanted, and then left the room. He indicated that he did not look for evidence or retrieve any evidence from the room. Lastly, NE#4 told OPA that, while he was not equipped with BWV during the incident, the female's provision of consent to enter the room could have been captured on another officer's BWV.

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. One such exception is where there is consent to search. (SPD Policy 6.180-POL-2(a).)

While OPA did not observe consent being provided on any of the BWV of this incident, that does not mean that it did not occur. Indeed, when applying a preponderance of the evidence standard, I credit NE#4's statement that consent was provided. As such, he was permitted to enter the room without a search warrant. Ultimately, he did not conduct a search and/or seize evidence or, based on OPA's investigation, exceed the scope of the consent he was provided by the female.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #2

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

At his OPA interview, NE#4 indicated that the officers learned that the male and female were the perpetrators based on information provided by a confidential informant (CI). The CI provided a description of both the female and the stolen car. These descriptions matched the officers' observations. Moreover, both the male and the female were observed approaching the car and then walking back into their hotel room. The officers later obtained the VIN for the car and it matched that of the car reported stolen. As such, NE#4 stated that they had probable cause for the arrest of both the male and the female suspects.

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.

Based on the above, OPA finds that there was probable cause supporting the arrest of both the male and the female suspects. In summary: the female was identified as the perpetrator, the car was parked outside of her motel room and both she and the male approached it and then returned back to the room; the seller reported both a male and a

female stole the car; and the male tried to flee the scene through the back window. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 - Allegation #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

It was alleged that an unknown employee may also have acted contrary to the policy governing searches. However, during its investigation, OPA was unable to determine who this unknown employee was and did not conclude that any such individual violated Department policy during this incident. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**