



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 22, 2019

CASE NUMBER: 2019OPA-0218

### 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 (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 the Named Employee improperly used her discretion when she chose not to arrest the individuals who allegedly assaulted the Complainant.

### ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, 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 responded to a call at the KOMO Plaza of a male – the Complainant in this case – who was refusing to leave the premises. The call was updated to include that building security guards were trying to hold the Complainant on the ground, and that he was still fighting and bleeding.

After SPD officers arrived, they observed the Complainant on the ground with two individuals – identified as building security guards – on top of him. The security guards stated that they directed the Complainant to leave the premises and that he continued to argue with them. The security guards reported that the Complainant then pushed another individual – referred to here as Witness #1 – and, as a result, they collectively took the Complainant down to the ground. The security guards relayed that the parties fought while on the ground and one of the security guards said that he was injured as a result. Witness #1 supported the account provided by the security guards. However, officers interviewed another witness – Witness #2 – who asserted that Witness #1 was the instigator of the incident and that the security guards failed to de-escalate the situation.



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The Complainant was injured with bruises and scratches. He stated that he was walking through the building when he was approached and harassed by security guards. The Complainant asserted that they were the primary aggressors and that he was the victim. The Complainant contended that he had the right to be in a public place at the time of the alleged assault.

The officers obtained and reviewed the security video from the building. The substance of the video was memorialized in the General Offense Report. Of note, the report documented that the video showed the Complainant arguing with one of the security guards while in the building plaza. Another security guard walked over and assisted in getting the Complainant to leave the plaza and walk onto the street. At this point, Witness #1 approached and he and the security guards all appeared to argue with the Complainant. The video showed the Complainant take off his backpack and get into a fighting stance; however, at that time, Witness #1 and the security guards were advancing towards the Complainant and surrounded him. The video indicated that one of the security guards picked up the Complainant's backpack and walked away. That security guard returned without the backpack and, with Witness #1 and the other security guard, encircled the Complainant. One of the security guards pushed the Complainant and, in response, the Complainant pushed Witness #1. The security guards then took the Complainant down to the ground and they, Witness #1, and the Complainant engaged in a physical struggle.

Officers investigated this matter and, based on their review, determined that all of the parties bore some responsibility for the incident and that it was "mutual." Named Employee #1 (NE#1), a Sergeant, was summoned to the scene. When she arrived, she spoke with officers and reviewed the security video. NE#1 also spoke to the individuals involved in the fight. She cautioned Witness #1 that, once the Complainant was on the public street, he was no longer on building property and a physical altercation with him could potentially be viewed as assault. She also told the security guards that the force used on the Complainant seemed "pretty excessive" and that it would be documented and later addressed by a follow-up unit. Ultimately, however, NE#1 approved the decision to not make an arrest and to, instead, generate a report.

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.)

At the outset, I sympathize with the Complainant's frustrations that no law enforcement action was taken against the security guards. OPA, like the Complainant and, for that matter, NE#1, viewed the force used by the security guards to have been excessive and their approach to have been problematic. However, based on a review of the evidence, OPA determines that NE#1 did not abuse her discretion when she approved the decision to not make an arrest. Prior to making that decision, NE#1 thoughtfully assessed the evidence and the severity of the crime at issue, including talking to the involved parties and watching security video. Moreover, when she granted this approval, she was aware that the report generated would be forwarded to a follow-up unit for further investigation and the potential filing of charges. In this regard, she acted consistent with her training and experience investigating and supervising similar cases. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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