



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 16, 2019

CASE NUMBER: 2019OPA-0374

Allegations of Misconduct & Director’s Findings

Named Employee #1

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)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 4	6.120 - Impounding Vehicles 8. Officers May Impound Vehicles to the Vehicle Processing Room (VPR) for Specific Reasons	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 lacked probable cause to arrest him, verbally harassed him during his arrest, and improperly accessed information on his cell phone without a warrant or his consent.

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.

SUMMARY OF INVESTIGATION

This case arises from the two arrests of the Complainant, which occurred on March 9, 2019 and on May 21, 2019.

With regard to the March 9 arrest, a witness reported that a man was unloading property from a U-Haul that had been reported stolen two days prior by a U-Haul employee. The U-Haul employee gave consent for SPD officers to conduct a vehicle search if the U-Haul truck was located. The Body Worn Video (BWV) for this incident showed officers, including NE#1, locate the Complainant, who was unloading items from the stolen truck as had been described by the witness. The Complainant was placed under arrest. While other officers took the Complainant into custody, NE#1 began to search the truck. Prior to opening the rear door of the truck, NE#1 confirmed with other officers that the U-Haul employee had given SPD consent to conduct the search.



During the search, NE#1 found various items, including narcotics which he placed in an evidence bag. He also discovered a credit card with a woman's name on it and a plugged-in cell phone. NE#1 asked the Complainant whether he recognized the name on the credit card and the Complainant said he did not. Another officer screened the incident with the Major Crimes Task Force (MCTF). A MCTF supervisor directed the officers to place any property back inside the truck and to impound the truck to the Vehicle Processing Room pending a search warrant. Lastly, the officers on scene ran the truck's license plate to confirm that it was reported stolen.

After he had been taken into custody, the Complainant asked if NE#1, who was still searching the cab, to get his cell phone and turn it off for him so that it would not lose power. NE#1 picked up the phone and viewed the lock screen briefly. The BWV showed that there were multiple notifications on the phone's lock screen; however, the content of these notifications could not be discerned by OPA based on its review of the video. NE#1 looked at the screen and, apparently reading one of the notifications, asked the Complainant who "D in the MF house" was. The Complainant replied that it was a friend's nickname. NE#1 immediately attempted to power down the phone but, when prompted, hit "cancel" instead of "power off." Moments later the phone rang, and NE#1 appeared to look at the screen before hitting the side button causing the screen to go dark. From a review of the BWV, there was no indication that NE#1 attempted to unlock the phone or to access its contents. NE#1 put the Complainant's phone in a paper bag with the Complainant's other personal property in order for the property to be transported to the North Precinct. NE#1 then placed the Complainant into a patrol vehicle and he was driven from the scene.

After the Complainant's subsequent arrest on May 21, he was transported to the North Precinct where his arrest was screened by a Department supervisor. During the screening process, the Complainant alleged to the screening sergeant that NE#1 had violated policy during the Complainant's March 9 arrest. Specifically, the Complainant alleged that NE#1 called him drug addict and a thief. The Complainant also alleged that NE#1 and other officers took the Complainant's possessions from a truck without his permission and improperly accessed his cell phone contacts. The screening sergeant forwarded the Complainant's complaint to OPA and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 6.180-POL-2 concerns searches and seizures. It specifically references the various exceptions to the search warrant requirement. One such exception is where consent is given for the search. (SPD Policy 6.180-POL-2(a).) Consent must be given voluntarily and not coerced, and the consenting person must have authority to consent to the search. (*Id.*)

Another such exception is where there are exigent circumstances. (SPD Policy 6.180-POL-2(b).) With regard to this exception, the policy states the following: "Police may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that delay in getting a warrant would result in the loss of evidence, escape of the suspect, or harm to police or public." (*Id.*) The policy specifically references exigent circumstances in suspected domestic violence cases and instructs: "Exigent circumstances also exist if the police are responding to a domestic violence call. Entry may be made if a person's health, welfare, or safety is concerned." (*Id.*)



As an initial matter, OPA notes that the U-Haul truck that NE#1 searched was owned not by the Complainant, but rather by U-Haul. The U-Haul employee's consent to search, given when its theft was reported, therefore authorized SPD to search the truck. NE#1 confirmed that U-Haul had provided consent prior to conducting the search. As such, even though the Complainant did not provide consent, it was not required given that he had no privacy interest in a stolen vehicle.

OPA also finds that there was no search of the Complainant's phone sufficient to trigger the Fourth Amendment's warrant requirement. Had NE#1 manipulated the Complainant's phone to view data stored within, this could very well have constituted a search to which the Fourth Amendment's protections applied. (*See Riley v. California*, 574 U.S. 373 (2014)). Here, however, NE#1 simply looked down at the phone that the Complainant had given him permission to handle and, without any manipulation of the phone, viewed information concerning the Complainant's contacts. NE#1 did not actually access the Complainant's phone to review the names of his contacts or read his messages. Moreover, he appeared to handle the phone in the most limited manner possible in order to turn it off as the Complainant had requested.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

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 OPA's review of the evidence, there was abundant probable cause for the Complainant's arrest. First, the Complainant was in possession of a stolen truck and was observed unloading items from that truck, confirming that he had dominion and control over it. Second, within the truck, the officers located a credit card that did not belong to the Complainant and illegal narcotics, which provided a further basis to take him into custody. Third, upon running the Complainant's identifying information, the officers determined that he had a valid outstanding warrant for his arrest.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 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-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

From a review of the BWV, there is no support for the Complainant’s assertion that NE#1 was unprofessional towards him. To the contrary, the BWV indicates that NE#1 appeared to interact with the Complainant in a polite and friendly manner. Moreover, while NE#1 told other officers that a credit belonging to someone else and narcotics were found in the truck, he did not refer to the Complainant as a thief or a drug user.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #4

6.120 - Impounding Vehicles - 8. Officers May Impound Vehicles to the Vehicle Processing Room (VPR) for Specific Reasons

SPD Policy 6.120-POL-8 permits officers to impound vehicles to the Vehicle Processing Room for specific reasons, including a finding that “the vehicle contains evidence and is pending a warrant” or “is an integral part of the investigation.” (SPD Policy 6.120-POL-8.) Sergeants are required to screen impoundments. (*Id.*)

The officers’ observation of the scene revealed multiple pieces of property both inside and outside the truck, including two bicycles, tires, and a credit card with a woman’s name on it. In addition, NE#1’s search revealed narcotics in the passenger cab of the truck.

Based on a review of the video and other documentation, OPA concludes that, once narcotics were located in the truck, the officers properly screened the impoundment of the truck with MCTF. Further, the impoundment was ultimately authorized by the MCTF supervisor.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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