



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 19, 2019

CASE NUMBER: 2019OPA-0452

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--|---------------------|
| # 1 | 15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect | Sustained |
| # 2 | 15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations) | Sustained |

Imposed Discipline

Written Reprimand

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 Named Employee violated Department policy when he failed to thoroughly investigate and document a domestic violence incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect

As part of its investigation into a fatal officer-involved shooting, the Department’s Force Investigation Team (FIT) reviewed an earlier law enforcement response to a possible domestic violence (DV) incident between the decedent – referred to here as the subject – and his girlfriend – referred to here as the victim. Named Employee #1 (NE#1) and other officers investigated that earlier incident, with NE#1 acting as the primary officer. FIT was concerned about the thoroughness of NE#1’s DV investigation in which no law enforcement action was taken. FIT accordingly referred this matter to OPA and this investigation ensued.

As part of its investigation, OPA reviewed the 911 audio from the victim, the reports generated by NE#1, and the Body Worn Video (BWV) recorded by him and other officers who responded to the call.

OPA determined that in the initial 911 call from the victim, she was crying and stated that the subject was being “abusive.” She indicated that he was possibly armed. She further reported that she was blocked in the bathroom and could not leave safely. She said that she had been pushed earlier by the subject and he was still in the apartment. She ultimately was able to leave the apartment and waited in an alley for police to arrive.



NE#1 contacted the victim and asked her what had happened. The victim told him that the subject had threatened her with her “life” and that the subject had threatened to take his own life. She indicated that she had been filming the subject and offered to show the videos to NE#1. The victim said that the subject was “insane” and on “anti-depressants.” NE#1 then asked her: “So he’s making like vague threats, or? Did he touch you today? Did he hit you?” The victim said: “not today.” NE#1 confirmed: “No assault today?” The victim said no. NE#1 then queried: “So today, ultimately, you’re just kinda wanting to get away from him?”; and “So, ultimately, just kinda what I’m getting is that it was just an argument and you’re getting kind of tired of him?” The victim responded yes to both questions. NE#1 asked other questions concerning the threats. She told him that he made threats often, such as saying that he would “behead” her or “shoot [her] head off.” NE#1 stated to the victim: “So the threats that he made, you, you don’t believe they’re necessarily true, just something he consistently says.” The victim replied: “It’s the mental.” The victim indicated to NE#1 that the subject had access to knives.

NE#1 briefed other officers at the scene and told them that the victim was alleging “vague” threats, that the subject was intoxicated, and that it was a likely crisis situation. One of the officers asked about the possible unlawful imprisonment of the victim and NE#1 asked her follow up questions concerning this issue. She told him that she was not locked in the bathroom but that she could not get out because the subject was “yelling and screaming.” NE#1 said: “So you just didn’t want to leave?” The victim responded: “Yeah.” The victim further told NE#1 that the subject was suicidal.

NE#1 then spoke with the subject who denied being suicidal. He had injuries to his knuckles, which he claimed were from when he punched the wall. He denied assaulting the victim.

NE#1 again briefed other officers and said that he did not think he had enough to involuntarily detain the subject for a mental health evaluation. NE#1 characterized the incident as a “simple disturbance.”

NE#1 spoke with the victim once more. She indicated that she did not want the subject to be arrested. When she was told by NE#1 that they did not have enough to involuntarily detain the subject, the victim told him that the subject knew what to say to avoid that. NE#1 told the victim that there was nothing that could be done regarding the punching of the walls as the subject was not prohibited from destroying his own property. NE#1 offered to call the mobile crisis team for the victim, but she declined. The victim told NE#1 that, on a previous occasion, the subject had broken her nose. The victim then collected some of her things from the apartment while the officers remained therein. She then left the apartment. No arrest was effectuated of the subject and he was not involuntarily detained.

NE#1 generated a report concerning this incident that was categorized as “disturbance, family.” No DV supplemental report was included. Moreover, there were no statements taken from the victim or any witnesses, there was no indication that a DV resource pamphlet was provided to the victim, and several other elements of a DV investigation were absent from the report.

Approximately three weeks later, officers – including several that also responded to this incident – returned to the same apartment on a DV call. The victim reported that the subject was armed with a knife and was trying to assault her. She said that the subject had threatened to harm himself and her and that she had locked herself in the bathroom. When officers arrived at the apartment, they forced entry. They ultimately shot and killed the subject, who was armed with a knife.



SPD Policy 15.480-POL-3 states that: "Officers will make a reasonable effort to protect the victim and arrest the suspect." The policy instructs that, when responding to a potential DV incident, officers must do the following: (1) determine whether it is, in fact, a DV incident; (2) conduct a primary investigation; (3) make an arrest if there is probable cause and if it is a mandatory arrest situation; (4) notify the victim that the subject could be arrested at a later time; (5) document the incident appropriately; (6) advise the victim of resources; (7) provide the victim with a DV resource guide; (8) explain to the victim how to seek a DV protection order; (9) ask the victim about the subject's access to firearms or other deadly weapons; and (10) facilitate the victim's transport to hospital for treatment or to a place of safety or a shelter. (SPD Policy 15.480-POL-3.)

As a starting point, OPA finds that this was a DV incident, not just an "argument" as NE#1 contended. Notably, the victim initially reported that the subject was being "abusive," that he had pushed her earlier, and that he was preventing her from leaving the apartment. Even if it was later determined that there was not probable cause to arrest on any of these allegations, they were certainly DV in nature. As such, the requirements of a DV investigation applied to this incident.

While NE#1 conducted a primary investigation, the quality of that investigation was diminished by his interview of the victim. During that interview, he, at times, asked the victim vague and leading questions. NE#1 acknowledged that some of his questions were vague and could have been more open-ended, but he denied that they were leading. However, the BWV suggests the contrary. As a few examples of such leading questions, NE#1 asked the victim: "So today, ultimately, you're just kinda wanting to get away from him?"; "So, ultimately, just kinda what I'm getting is that it was just an argument and you're getting kind of tired of him?"; and "So the threats that he made, you, you don't believe they're necessarily true, just something he consistently says." In response to those questions, the victim, who told NE#1 that she did not want the subject arrested, gave answers that suggested that no assault or legitimate threats had occurred. Moreover, NE#1 did not explore several important aspects of the victim's initial complaints. For example, he did not ask her about her statement in the 911 call that she had been pushed earlier by the subject. In addition, NE#1 failed to follow up on the seriousness of the subject's threats and the victim's response when she said: "it's the mental." Lastly, NE#1 failed to follow up on the video that the victim said she recorded of the subject's actions.

Moreover, NE#1 failed to complete most of the other requirements of this policy. He did not notify the victim that the subject could be arrested at a later time. NE#1 did not document the incident appropriately as he failed to categorize it as DV, he did not include any details concerning how he performed the tasks of a DV investigation, and he did not include other relevant information, such as the subject's alleged possession of knives. NE#1 did not advise the victim of any resources other than letting her know that he could call the Mobile Crisis Team. NE#1 did not provide the victim with a DV resource guide. NE#1 did not provide the victim with information on how to seek a DV protection order. NE#1 did not facilitate the victim's transport to a place of safety, as BWV reflected her leaving the vicinity of the apartment on foot.

With regard to whether there was probable cause to arrest the subject and, if so, whether the subject was properly arrested, this is a difficult question. As discussed above, the victim initially reported to 911 that the subject had pushed her. Notably, the victim confirmed this when she was later interviewed by OPA. She further reported that the subject was "very intoxicated," had knives on his person, had cornered her in the bathroom, and had been threatening her as well as himself. The victim also told 911 that the subject had said to her: "watch me get shot down."



However, based on the victim's responses to NE#1's questions – which, as discussed above, were leading and incomplete – she did not provide sufficient information upon which to base probable cause for the subject's arrest. As such, and even though the lack of sufficient available information was, at least in part, the responsibility of NE#1, OPA cannot find that he violated policy when he did not effectuate an arrest.

Unfortunately, this incident revisited itself approximately three weeks later and, this time, resulted in the subject threatening the victim with a knife and subsequently being shot and killed by SPD officers. NE#1 cannot be held responsible for the subject's behavior and it would be speculative for OPA to conclude that, had NE#1 conducted a better DV investigation, that later incident may have been avoided. However, this does show how important it is to conduct thorough and comprehensive DV investigations and to properly document such incidents. NE#1 did not do so here and, as such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)

SPD Policy 15.410-POL-5 states that "the Department is committed to a thorough primary investigation" of DV incidents and sets forth several additional requirements of such investigations. Specifically, officers are required to: (1) attempt to obtain the DV history of the subject; (2) complete a DV supplemental, which must include an assessment of the presence/ownership of firearms; and (3) use the sworn affirmation form to take a witness statement. (SPD Policy 15.410-POL-5.)

The record reflects that NE#1 did not complete any of these steps. This was the case even though, as discussed above, this was a DV incident and he was required to comply with this policy. As such, and similar to OPA's finding in Allegation #1, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**