



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 7, 2019

CASE NUMBER: 2019OPA-0240

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 (Lawful and Proper)
# 2	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	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 Employees did not follow SPD policy when they chose not to make an arrest in connection with an incident that allegedly involved domestic violence (DV), custodial interference, and assault.

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 Employees. As such, the Named Employees were not interviewed as part of this case.

SUMMARY OF INVESTIGATION:

Officers were dispatched to a DV disturbance at a location they were familiar with due to past law enforcement responses. When the officers arrived, several people converged simultaneously in an attempt to provide their accounts of what had transpired. Officers separated the parties in order to lessen tensions and to get each involved individual’s account of events.

There were three main involved individuals, who are referred to here as Subject #1, Subject #2, and Subject #3. Each of the Subjects provided a separate account to the officers.

Subject #1 stated that she lives with Subject #2, Subject #3, and a child. Subject #2 and Subject #3 are the parents of the child and Subject #1 is the child’s grandmother. She relayed that Subject #2 is a drug addict who has been trying

to move out but has been unable to find housing. Subject #1 is the child's current primary caregiver and she filed for custody of the child. Subject #1 asserted that Child Protective Services (CPS) is aware of Subject #2's ongoing drug abuse issues, and that CPS has approved of Subject #2, Subject #3, and the child living in Subject #1's house.

Subject #2 told the officers that she wants to leave Subject #1's house with her child. Subject #2 stated that she plans on getting housing with the help of her former foster parents. Subject #2 verified that there was no court order or parenting plan in place. Subject #2 reported that she tried to leave with her child when Subject #1 and Subject #1's family members, who were also present, protested against her doing so and arguments ensued. Officers noted in their report that Subject #2 appeared to be sober at the time of their response.

Subject #3 confirmed to officers that he was the father of the child. When asked if he approved of Subject #2 taking the child from the home, Subject #3 informed officers that he did not. When asked if he was designated by CPS as the primary custody parent, Subject #3 was not forthcoming. Subject #3 was upset by the dispute and broke down in tears.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) advised the involved parties that they would document the incident and informed the parties that, based on the available information, they decided to leave the child in the care of Subject #1. NE#1 and NE#2 conveyed that Subject #2 could not provide a custody order or parenting plan concerning herself and the child. Moreover, the officers noted that, despite appearing to be sober, Subject #2 admitted to them that she used drugs in the past. NE#1 and NE#2 gave the involved parties the case number and advised them to seek the necessary and appropriate court orders.

Unrelated to the custody dispute, Subject #2's sister reported to the officers that one of the individuals present at the residence spit in her face during the disturbance. When questioned by officers, the individual said that she spit towards Subject #2's sister but did not hit her. Subject #2 contradicted the individual and confirmed that the individual did, in fact, spit in her sister's face. NE#2 told the involved parties that he would be writing a report concerning this assault and NE#2 ultimately requested charges of assault against the individual.

At a later date, Subject #2 and her former foster parents met with a Sergeant at the Southwest Precinct. At his meeting, which was held at Subject #2's request, the Sergeant provided a further explanation as to the Named Employees' decision to document this incident in a report, rather than making an arrest. The Sergeant specifically noted that, based on the information available to the Named Employees, they did not have sufficient legal basis to remove the child from the home. The Sergeant added that in situations when they do remove a child, the child goes to CPS rather than with family members.

This complaint was subsequently filed with OPA by the Complainant, who is one of Subject #2's former foster parents. The Complainant told OPA that, on the date of this incident, he went to pick up Subject #2 and the child. According to the Complainant, when Subject #2 tried to leave with the child, another member of Subject #3's family took the child and pushed Subject #2 out of the house. The Complainant stated that Subject #2 had marks on her body from the push, and that the police were called. The Complainant maintained that, after police arrived, they failed to take action and they incorrectly decided that there was insufficient evidence to determine if anyone had committed any crimes. His allegations specifically called into question the decisions made by NE#1 and NE#2.

The Complainant maintained that Subject #2 was assaulted when she was pushed out of the house and provided OPA with photographs of marks that he contended were left on Subject #2's body. The Complainant also maintained that custodial interference occurred when the individuals in the household did not let Subject #2 and the child leave. The Complainant stated that Subject #2 should have full access the child and that there were no restrictions on Subject #2 accessing the child. The Complainant was upset that NE#1 and NE#2 only handed Subject #2 a pamphlet and told Subject #2 that a report would be written, while preventing her from leaving with the child. The Complainant was also upset that NE#1 and NE#2 decided to take the other parties' sides based on unfiled court paperwork, and that they did not thoroughly examine the totality of the evidence.

Lastly, the Complainant acknowledged that he spoke with a Sergeant at the Southwest Precinct; however, he stated that he had mixed feelings about that conversation. The Complainant told OPA that he found some of the Sergeant's advice helpful, but he asserted that it was still based on falsehoods provided by the other parties that were not fully investigated and disproved by the officers.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) associated with this matter and found the video to be consistent with the Named Employees' reports. The BWV showed the Named Employees' response to the residence, the ongoing disturbance, and the investigative steps that they performed. The video further captured NE#1's explanation of his decision that the child would not be removed from the home and that the outcome of the custody issues would ultimately be resolved by CPS and the courts.

OPA further reviewed the photographs that were provided by the Complainant. The Complainant maintained that the photos show the injury that Subject #2 sustained when she was allegedly pushed out of the residence. Based on its evaluation of the photographs, OPA observed some minor redness but could not conclusively determine whether they reflected injuries to Subject #2 consistent with the Complainant's allegation of DV assault.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 6. Employees May Use Discretion

The Complainant alleged that NE#1 and NE#2 abused their discretion when they chose not to make an arrest in connection with this incident.

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.)

Based on the totality of the evidence, I do not find that either of the Named Employees abused their discretion when they declined to make an arrest. OPA reaches this conclusion based on the following facts that were gathered by the Named Employees for each alleged criminal offense.

Custodial Interference

- The Named Employees determined that CPS placed the child with Subject #3 at the residence due to unsafe conditions with Subject #2. The Named Employees were not provided with contradictory evidence;
- They determined that there were no known or established court orders or parenting plans in place;
- They were unaware of any claims that the child was currently living in unsafe conditions; and
- The Named Employees believed that Subject #3 and Subject #1 had lawful parenting rights over the child and the actions taken by Subject #3's family members during the disturbance were purposed to protect the child.

Domestic Violence

- The Named Employees determined that Subject #2 temporarily resided with Subject #1;
- Their investigation revealed that the push was purposed to maintain the child in the home where Subject #1 and Subject #3 believed the child had been lawfully placed by CPS; and
- Subject #2 never claimed of injury at the scene, despite being given the opportunity to make the claim.

Assault

- The Named Employees' investigation revealed a dispute of fact as to whether Subject #2's sister was spit on by the individual.
- Given the lack of conclusive probable cause, the Named Employees completed a report and requested charges for assault, rather than making an arrest.

This was a complex incident with numerous differing accounts from the involved parties. As indicated above, the Named Employees conducted a thorough and impartial investigation and did their best to uncover what had occurred, who had primary custody, and who was at fault. Given the circumstances of this case, I find the Named Employees' decision to not make an arrest and to instead complete reports and request charges to have been a reasonable exercise of their discretion. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #2

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause

SPD Policy 15.410-POL-2 directs that officers are required to make an arrest in a domestic violence incident where there is probable cause that the subject committed an assault or violated a court order within the past four hours. The policy further provides that arrests are otherwise discretionary. (SPD Policy 15.410-POL-2.)

Based on the above (see Named Employee #1, Allegation #1), the officers had insufficient evidence to establish probable cause to arrest for DV assault. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #2 - Allegations #1

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

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

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