



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 7, 2019

CASE NUMBER: 2019OPA-0300

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
# 2	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)

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 failed to conduct a thorough investigation into a domestic violence incident and inappropriately arrested him. OPA further alleged that the Named Employee failed to record any Department video or to document the absence of video.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1), responded to a call concerning a domestic violence (DV) incident between two brothers. One of the brothers is the Complainant in this case. The call further indicated that the two brothers had used narcotics and that no weapons were involved. Officers arrived at the scene and interviewed both individuals. The officers did not conserve any visible injuries on either individual. During their investigation, the officers heard the Complainant call his brother a “snitch” for calling the police to the scene. Based on the totality of the circumstances and on the available evidence, the officers determined that the Complainant was the primary aggressor during this incident, and he was placed under arrest for DV assault.

The Complainant later alleged that NE#1 had insufficient evidence to place him under arrest. He contended that NE#1 performed an incomplete investigation, did not look for injuries on the Complainant’s person, did not take time to listen to both sides of the story and rushed through the investigation, and based his decision on prior incidents involving the Complainant rather than on the facts of this case. The Complainant additionally alleged that NE#1 did not tell him that he was under arrest.

OPA initiated its investigation into this matter. OPA determined that NE#1 did not record In-Car Video (ICV) or Body Worn Video (BWV) of this incident. OPA further determined that NE#1 did not complete a number of the steps required for DV investigations.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

OPA's intake investigation revealed that NE#1 did not record either ICV or BWV for this incident. OPA further found no documentation concerning this lack of video.

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; arrests and seizures; and questioning victims, suspects, or witnesses. In addition, SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

At his OPA interview, NE#1 acknowledged that he failed to record video and had no explanation for why this was the case. He stated that he could have simply forgotten and that he made a mistake. NE#1 further asserted that he did not document the lack of video because he did not know about it until he received the notice of this investigation from OPA. NE#1 stated that he has taken affirmative steps to ensure that this did not occur in the future and that, if it did, he would promptly self-report and document.

Based on OPA's investigation, this was clearly a mistake and not an intentional failure to record. Moreover, NE#1 has not received prior discipline for failing to activate video. As such, and even though NE#1 technically acted contrary to policy, I recommend that he receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should receive additional training on recording ICV and BWV, as well as concerning the need to appropriately document the lack of a recording. NE#1 should be counseled concerning his failure to do so here. NE#1 should be informed that subsequent non-compliance with this policy may result in a Sustained finding. This training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident

SPD Policy 15.410-TSK-1 sets forth the requirements for a patrol officer's investigation into a DV incident. The policy further includes a number of investigative steps that officers must complete.

In this investigation, the assigned investigator focused on the Complainant's allegations that: (1) NE#1 did not inspect him for injuries; (2) NE#1's investigation was cursory and the decision to arrest was not supported by the evidence; and (3) NE#1 failed to tell him that he was under arrest and what he was being arrested for.



With regard to the first allegation, the video established that NE#1 did examine the Complainant's face to determine whether he suffered any injuries. As NE#1 documented and articulated at his OPA interview, the Complainant had no injuries consistent with the assault he described.

With regard to the second allegation, the totality of the evidence indicates that NE#1 conducted an adequate investigation into this incident, which included interviewing both of the involved individuals and observing their persons for injuries. Based on this investigation, NE#1 made the decision to arrest the Complainant. This decision, and NE#1's determination that the Complainant was the primary aggressor, was reasonable under the circumstances and NE#1's law enforcement action was taken in good faith.

Lastly, with regard to the third allegation, the BWV for this incident (from another officer) indicated that NE#1 said the following to the Complainant at the scene concerning the arrest: "Come with us today...you're the primary aggressor"; and "I think you started it today." While at the precinct, NE#1 explicitly told the Complainant that he was arrested for "misdemeanor assault." NE#1 told OPA that, while he could have been clearer, he felt that the Complainant understood what was happening at the time.

Based on OPA's review of this case, I find that the first two allegations made by the Complainant are unsupported by the evidence. With regard to the third allegation, it would have been optimal for NE#1 to have explicitly informed the Complainant that he was under arrest and to have provided the basis for the arrest; however, I agree that what NE#1 did tell the Complainant clearly indicated that he was being taken into custody because he was the "primary aggressor." As such, I find that NE#1 ultimately predominantly complied with this portion of the policy.

Lastly, and while not raised by the Complainant, OPA determined that NE#1 failed to complete a number of the DV investigation steps required by policy. Most notably, NE#1 did not complete a DV supplemental report or document in his report why no photographs were taken of the Complainant's alleged injuries. The failure to wholly comply with the investigative requirements is inconsistent with policy. However, given that NE#1's investigation was otherwise thorough, I recommend that he receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be retrained as to the elements of a DV investigation that are set forth in policy. NE#1 should further be counseled concerning his failure to complete all of those elements here. NE#1's chain of command should inform him that future failures to comply with this policy will result in a recommended Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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