



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 8, 2019

CASE NUMBER: 2019OPA-0318

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	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 10. Employees Shall Strive to be Professional	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 said that Named Employees failed to arrest his ex-girlfriend and mother of their child as the primary aggressor on a domestic violence call. He also said that Named Employee #2 (NE#2) intimidated him by placing his hand on his gun.

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:

On August 30, 2017, the Complainant called to report that his ex-girlfriend (referred to here as the Subject) was trying to take their child from his apartment. Named Employee #1 (NE#1) and NE#2 were dispatched to the apartment and began interviewing the Complainant and the Subject separately.

At the time of this incident, the Named Employees were not equipped with Body Worn Video. However, the audio of NE#1's interview of the Complainant was captured on In-Car Video (ICV). The Complainant told NE#1 that the Subject was not adequately caring for the child and that she showed up unexpectedly that morning to take the child. The Complainant said that, when he asked her to leave, the Subject became angry and slapped him once with her open hand, leading him to call SPD.



NE#2 interviewed the Subject. According to her, the Complainant had a history of engaging in physical, verbal, and emotional abuse towards her. She was on the lease for the apartment and had a key, but the Complainant's abusive behavior had caused her to move out. She told NE#2 that, on the morning of the incident, the Complainant had left harassing voicemails demanding that she pick up the child, who had been staying with him temporarily. She said that, when she arrived, the Complainant called 911 and alleged that she hit him. She denied hitting the Complainant and said he had a history of lying and manipulative behavior. ICV captured her reading text messages and showing them to NE#2. One message to her from the Complainant read: "I hope you get AIDS and die." Another read: "the way you treat your kids you should get punched in the mouth." The subject also provided NE#2 with contact information for her Child Protective Services (CPS) case officer. She further explained that the Complainant did not appear on the child's birth certificate, did not have a parenting plan in place, and had no custodial rights to the child. During the entire conversation with the Subject, NE#2 appeared habitually to rest his hand on or near his firearm.

NE#1 and NE#2 conversed briefly and agreed that they did not see any injuries on the Complainant. They spoke to the Complainant. They established that the Complainant had no parenting plan in place and explained to him that, without a parenting plan or other court order, they lacked a basis to take enforcement action. During this conversation, the Complainant became frustrated, but did not say anything about NE#2 resting his hand on his gun. NE#1 and NE#2 then went outside and told the Subject that she was free to leave. She asked if she could get items from the apartment, and NE#2 recommended that she come back later with the CPS caseworker and a police standby escort to prevent escalation.

On September 2, 2017, the Complainant called SPD to report a burglary. He alleged that the Subject was inside the apartment and was damaging property. SPD officers (but not the Named Employees) responded and entered the apartment. Officers observed the apartment in disarray but did not find anyone inside. The Complainant also said that \$1,800 in cash had been taken from a box in the closet. The Complainant stated that he listened to a voicemail from the Subject's mother, which indicated to him that the Subject may have driven to Texas. Officers documented the scene and left.

On February 13, 2019, the Complainant made this complaint to OPA. He alleged that NE#1 and NE#2 failed to follow protocol in the initial incident when they did not arrest the Subject. He further alleged that NE#2 behaved in a threatening manner by placing his hand on his firearm. He said that the burglary on September 2 was caused by Named Employees' failure to arrest the Subject, and that she had since fled to Mexico with their child. This OPA investigation ensued.

During this investigation, OPA learned that NE#1 spoke to the CPS social worker assigned to the case, who confirmed that CPS had never identified a threat to the child. OPA also received an email from the Subject's attorney, who stated that the Subject had not fled to Mexico.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

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.)

OPA finds that the Named Employees did not abuse their discretion when they decided not to arrest the Subject. Most notably, and as NE#1 wrote in her report and discussed during her conversation with NE#2, neither officer observed any injury on the Complainant consistent with an assault. As such, there was no evidence apart from the Complainant's statements to both the officers and 911 dispatch that any criminal activity had occurred. Given this and due to the Subject's denial that she engaged in assaultive behavior, it was reasonable for the Named Employees to conclude that they did not have sufficient probable cause to arrest the Subject. Moreover, as there was not a valid no-contact order or a parenting plan giving the Complainant custody over the child, the officers had no legal basis to prevent the Subject from legally entering her own home and/or from taking custody of her child.

For these reasons, I find that the Named Employees acted consistent with policy during this incident and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper as against them.

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

Named Employee #2 - Allegation #1

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

For the reasons 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)**

Named Employee #2 - Allegation #2

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

As discussed above, the Complainant alleged that NE#2 was unprofessional towards him. Specifically, the Complainant asserted that NE#2 was unprofessional because he rested his hand on his firearm during the interaction.

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.*)

There was no ICV video of NE#2’s physical conduct and positioning during his interaction with the Complainant. However, there was ICV video of NE#2’s interaction with the Subject. During that interaction, NE#2 rested his hand on the butt of his firearm. There is no evidence indicating that this was purposed to be intimidating or that it had such an effect on the Subject. To the contrary, it appeared that NE#2 was simply resting his hand there based on comfort and convenience. As such, even if NE#2 was doing the same during his interaction with the Complainant, OPA finds that the totality of the evidence does not support a conclusion that this was purposed to intimidate the Complainant and that NE#2 was unprofessional. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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