



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 3, 2020

CASE NUMBER: 2019OPA-0606

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 (RCW 10.31.100)	Not Sustained (Lawful and Proper)
# 2	15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect	Allegation Removed
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 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 alleged that an unknown SPD officer was unprofessional towards her husband and subjected him to excessive force. OPA further alleged that Named Employee #1 may have acted contrary to policy during his investigation of a domestic violence incident.

SUMMARY OF INVESTIGATION:

OPA received a complaint from the Complainant in which she contended that an unknown SPD officer had subjected her husband to excessive force. She asserted that the officer became frustrated with the husband and threatened to tase him. She alleged that the officer did, in fact, tase the husband, causing him to suffer burning. She further alleged that the officer struck the husband on the head with a baton and hit the husband's feet with the baton, causing bruising. She further alleged that an unknown SPD officer made inappropriate and unprofessional statements to the husband. Based on the Complainant's claims, OPA initiated this investigation.

OPA determined that officers were dispatched to the Complainant's home. The Complainant had called 911 to report that the husband was having a manic episode. She stated that she tased him and he pushed her. The Complainant asserted that the husband had been throwing furniture around the residence and had broken glass. She informed the 911 call taker that she may tase the husband again.

Named Employee #1 (NE#1) was the primary officer on scene. He spoke with the Complainant who confirmed that the husband was in a manic state and was causing property damage. She informed NE#1 that she threatened to tase the husband in order to get him to take his medication. She relayed that he pushed her causing her to hurt her arm

and that she pushed him back “really hard.” The Complainant disclosed that, at one point, she tased the husband in an attempt to medicate him. The Complainant’s son, who was also present, stated that the husband pushed the Complainant first and that this was why she tased him. The son further told officers that he also tased the husband after the husband pushed the Complainant.

NE#1 contacted the husband who, based on OPA’s review of the Body Worn Video (BWV), was suffering from a mental health crisis. He had a laceration to his head and appeared to potentially have stepped on glass. At the time the officers first observed the husband, he was sitting at a table downstairs holding a knife. There was also a semi-automatic rifle immediately next to him on the table. The rifle was later determined to be loaded. Two other officers stood the husband up and held him by his arms. NE#1 asked him what the cause of his laceration was but the husband was non-responsive. The officers began to walk the husband towards the stairway. He spoke incoherently and then fell down. The officers sat him on a couch where he remained for a period of time. He continued to make incoherent statements while the officers located more weapons in the downstairs room. The officers again stood the husband up and walked him upstairs. The husband yelled out that the officers were hurting him and referenced a baton. At this time, no officers were applying any force to the husband other than that needed to hold him up and guide him out of the residence. The husband was eventually taken outside of the residence. He was then treated by the Seattle Fire Department.

NE#1’s supervisor arrived on scene to screen the incident. NE#1 relayed much of the information he had learned at the scene. The supervisor stated that there was probable cause to arrest the husband for domestic violence (DV) assault. NE#1 questioned whether the husband should go to jail, noting that the husband was “not all there” and that the husband “had no intentions of harming” the Complainant. The husband then spit at officers and AMR personnel. Accordingly, the husband was arrested for both the DV assault and the assault from spitting.

After reviewing the BWV of this incident, OPA added allegations concerning the DV investigation conducted by NE#1 and his decision to arrest the husband, rather than arresting another party or not making any arrests at all.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 15.410-POL-2 states that, under policy and Washington State law, officers must make a DV arrest where there is probable cause to do so and where the DV incident occurred within the past four hours. This allegation was classified against NE#1 based on his failure to arrest either the Complainant or the son.

At his OPA interview, NE#1 stated that his initial intent was to involuntarily commit rather than arrest the husband. He noted that this plan was based on his inability to get the husband’s account due to the husband’s condition, as well as because he had questions regarding the Complainant’s credibility. However, the supervisor made the decision to arrest the Complainant and NE#1 did so in line with that decision.

OPA interviewed the supervisor who confirmed that he made the decision to arrest the husband. Based on the information that the supervisor had, he did not believe that there was a basis to arrest any of the other parties. Two other witness officers that were interviewed by OPA also believed that the arrest of the husband was appropriate and supported by probable cause.

Based on OPA’s review of the video, OPA does not believe that there was probable cause to arrest any of the parties other than the husband. The Complainant and the son both asserted that the husband was the initial aggressor and that they tased him and the Complainant pushed him in response to the husband’s actions. There was no evidence suggesting, instead, that the Complainant or the son were the primary aggressor. As such, it did not violate policy when NE#1 did not arrest either of these individuals.

Moreover, based on the accounts provided by the Complainant and the son, there was probable cause to arrest the husband for DV assault. While it would certainly have been better to obtain the husband's account, the absence of this did not vitiate probable cause. Further, NE#1 was entitled to rely on the direction from his supervisor that he arrest the husband.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

Allegation #2 and Allegation #3 both concern NE#1's decision to arrest the husband rather than the Complainant and/or the son. As this issue was fully addressed in Allegation #1, OPA finds these allegations to be duplicative. As such, OPA recommends that they be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

As stated above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

As discussed above, the Complainant alleged that an unknown SPD officer subjected the husband to excessive force by hitting him on the head with a baton, striking his feet with the baton, and tasing him. The Complainant also alleged that an unknown SPD officer was unprofessional towards the husband.

The entirety of the interaction between the husband and the SPD officers involved in this incident was recorded on BWV. The BWV conclusively disproves that any officer subjected the husband to excessive force. To the contrary, the BWV showed that the involved officers treated the husband calmly and with care. This was the case even though the husband was, at times, in close proximity to a knife and loaded firearms.

The BWV similarly contradicts the Complainant's assertion that an unknown SPD officer made unprofessional or otherwise inappropriate statements to the Complainant. Again, to the contrary, the video showed that the officers were kind and respectful towards the husband.

Lastly, the Complainant asserted that unknown SPD officers failed to record BWV during this incident. This is completely unfounded. All of the involved officers properly recorded video.

For these reasons, OPA recommends that Allegation #1 and Allegation #2 be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

For the same reasons as stated above (see Named Employee #2, Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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