



CLOSED CASE SUMMARY

ISSUED DATE: JULY 17, 2020

CASE NUMBER: 2019OPA-0767

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)
# 2	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)

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	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant 1. Direct supervision of police officers, including:	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:

It was alleged that Named Employee #1 and Named Employee #2 failed to make a mandatory arrest in a domestic violence incident and did not conduct a complete investigation. It was further alleged that Named Employee #3, a supervisor, improperly approved the officers' report.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees responded to a potential domestic violence (DV) incident between a woman – the Complainant – and her juvenile son. When the officers responded, Named Employee #1 (NE#1) spoke with the Complainant. Named Employee #2 (NE#2) spoke to the son. The Complainant told NE#1 that the son had been aggressive towards her, had used his shoulder to push by her, and then held up his fists as if he was going to fight her. The Complainant asserted her belief that the son was actually going to harm her. The Complainant said that she wanted her son arrested and taken to juvenile detention. NE#1 spoke with the grandmother, who was also at the home, who said that the son was “disrespectful” and in the Complainant’s face. The Complainant was not injured.



NE#1 then consulted with NE#2, who relayed that the son reported that he had been trying to get his mother out of the way because she was blocking him. NE#1 told NE#2 about the threat of harm and “squaring up” reported by the Complainant. NE#2 stated that his intent was to write a DV disturbance report and that the son would not be placed under arrest. The officers spoke to the son of the seriousness of DV incidents. They notified the Complainant that they would be writing a report and provided her and the grandmother with DV resources.

The report generated as a result of this incident was reviewed and approved by Named Employee #3 (NE#3), a supervisor. He concurred that there was not sufficient probable cause to arrest the son.

The Complainant later alleged that the Named Employees acted inappropriately when they failed to arrest the son. This investigation ensued.

SPD Policy 15.410-POL-2 requires officers to make arrests in DV incidents where there is probable cause to do so. One exception is where the subject is a juvenile. In such cases, arrest is not mandatory and is within the discretion of the officer.

Here, the officers did not believe that there was probable cause to arrest the son. They credited the son’s account that he was being blocked by the Complainant and pushed by her and did not believe that this rose to the level of an assault. In addition, both officers noted that, even had there been probable cause to arrest, they would have exercised their discretion not to do so. They asserted that this was warranted by the specific facts of this case and their belief that an arrest was not the best course of action.

Based on OPA’s review of the evidence, OPA cannot say that this was an unreasonable decision. To the contrary, OPA finds that NE#1 and NE#2 exercised their discretion consistent with policy when they decided not to arrest the son. As such, 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 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident

SPD Policy 15.410-TSK-1 sets forth the general requirements of an investigation into a DV incident. Among the steps officers are required to complete are: (1) provide DV pamphlets to victims; (2) use a sworn affirmation to complete victim and witness statements; (3) complete a DV Supplemental, including an assessment of the presence and/or ownership of weapons; (4) discuss whether the victim needs medical care or a shelter; and (5) check the victim and suspect for current court orders.

Here, NE#1 and NE#2 provided DV pamphlets to both the Complainant and the grandmother. NE#1 and NE#2 also assessed whether the Complainant was injured and determined that she was not. The officers did not, however, complete a sworn affirmation, complete a DV Supplemental, determine the presence or ownership of weapons, or ask the Complainant whether she wanted alternative shelter. NE#2 did check the Complainant and son for court orders; however, he stated that he was not aware of the fact that the Complainant disclosed an open warrant and did not locate the warrant during his search. NE#1 did not appear to disclose this to him.



While the officers completed aspects of this policy, as discussed above, they did not satisfy all of its requirements. However, given their substantial compliance with policy and given that this case was unique in that it was properly classified as a disturbance and not an arrestable DV assault, OPA recommends that the officers receive the below Training Referrals rather than Sustained findings.

- **Training Referral:** NE#1 and NE#2 should receive retraining on SPD Policy 15.410-TSK-2, the requirements of DV investigations, and their failure to complete all of those steps in this case. NE#1 and NE#2 should be reminded to more closely comply with this policy in future cases. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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

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 #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

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

This allegation is recommended Not Sustained and OPA refers to the above Training Referral (see Named Employee #1 – Allegation #2.)

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

Named Employee #3 - Allegations #1

5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant 1. Direct supervision of police officers, including:

SPD Policy 5.100(III)(1) governs the supervision of officers by sergeants. Relevant to this case, it requires sergeants to ensure that officer reports are thorough, complete, and consistent with the evidence.

Here, OPA finds that NE#3 acted consistent with policy when he approved the officers' report and, specifically, approved the decision not to arrest the son. NE#3 found that there was insufficient evidence supporting probable cause and OPA agrees based on its independent review of the record. While NE#3 optimally would have identified some of the gaps in the officers' investigation, his failure to do so did not rise to the level of a policy violation.

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

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