



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 26, 2020

CASE NUMBER: 2019OPA-0800

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect | Not Sustained (Lawful and Proper) |
| # 3 | 15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate | 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 Employee did not properly investigate a domestic violence incident. The Complainant asserted that this was based on the Named Employee's bias towards him. Lastly, the Complainant asserted that the report generated by the Named Employee was incomplete and inaccurate.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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:

Named Employee #1 (NE#1) and other officers were dispatched to a domestic disturbance. It was reported by the Complainant that his ex-girlfriend – who is referred to here as the Subject – was trying to break into his residence. The Complainant further reported that the Subject may have cut a screen window with a knife. He further stated that, while on the phone with 911, the Subject struck him. The sound of a potential physical disturbance could be heard on the 911 call audio. The Subject and a friend that she was with also called 911. The friend told 911 that the Subject did not hit the Complainant. The Subject further indicated that the Complainant had a gun in the house and had a history of violence. She stated that she was simply trying to recover her property.

NE#1 arrived on scene and contacted the Subject. She told him that she had property that was still in the residence. Specifically, she identified that she received a cell phone in the mail that she wanted. She told NE#1 that she asked a neighbor to intercept another package earlier that day because she knew that, had the neighbor not done so, it would have been impossible for her to recover it from the Complainant. The Subject denied that she had a knife. She



also denied that she struck the Complainant. To the contrary, she said that the Complainant pushed her away from the door. She informed the officers that she still technically lived at the residence. NE#1 determined that this was accurate based on DOL records.

NE#1 then spoke with the Complainant. The Complainant asserted that there had been a fire a few days earlier and that he had been using foam to keep one of windows in the residence closed. He said that the Subject got a knife from her friend and began cutting the foam. He stated that the Subject was halfway into the window when he stopped her from entering the residence. He confirmed that the Subject struck him. Based on a review of the Body Worn Video (BWV), the Complainant did not have any visible marks. He told NE#1 that he felt a slight stinging but that it was not serious. NE#1 asked the Complainant how he wanted this matter resolved and the Complainant said that he wanted the female removed from the location for the night and that he would give her the property back in the morning. NE#1 told the Complainant that, as the Subject technically lived at the residence, he could not make her leave. However, NE#1 proposed that, if the Complainant allowed the Subject to get her things, she would likely depart from the residence.

NE#1 spoke to a neighbor. The neighbor said that there was loud banging and “shit talking”; however, the neighbor did not view any assault. The neighbor also indicated that the Complainant and the Subject were both “full of shit.” NE#1 also spoke with a senior officer. She agreed with NE#1 that whether to make an arrest and, if so, who to arrest was a tough call. She advised NE#1 to speak with the Subject again, as well as to screen the incident with a supervisor.

The Subject again told NE#1 that she did not hit the Complainant. She said that she was going to slap him because of comments he made and because he laughed at her, but that she did not do so. She acknowledged that she did begin to enter the residence, but she reiterated that she lived there and was trying to recover her property. The senior officer spoke with the friend about what he observed. The senior officer then touched base with NE#1 and told him that she believed that the friend was being forthcoming about what occurred. Lastly, NE#1 spoke with a Dispatch Supervisor who told him that, while listening to the 911 call, she did not hear a slap. The Dispatch Supervisor believed that the noise heard during the call was more consistent with a push.

Based on the totality of the available information, NE#1 made the decision to not arrest any of the involved individuals. He informed both the Complainant and the Subject of this. He told the Complainant that he would be writing a report concerning this incident and that, if the Subject returned, he should call 911. NE#1 further told the Subject that she needed to get a standby officer in the future when trying to recover her property.

The Complainant later initiated this complaint with OPA. He alleged that NE#1 took the Subject’s side and that this was based on the fact that she is a woman and he is a man. He further contended that NE#1 did not appropriately investigate this matter and “played down” his version of what occurred in the report for this incident. This OPA investigation followed. OPA attempted to contact the Complainant several times in order to interview him; however, the Complainant did not respond to OPA. OPA also reviewed the BWV concerning this incident, as well as the documentation that was generated.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA’s review of the evidence, there is no basis to conclude that NE#1 engaged in biased policing. To the contrary, it appeared that NE#1 properly evaluated the evidence and took appropriate law enforcement action. As discussed more fully below, NE#1’s determination that no arrest should be effectuated was based on his investigation and the dispute of fact between the involved parties’ accounts. It was not, as the Complainant alleged, due to any bias on NE#1’s part.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

SPD Policy 15.410-POL-3 generally requires that, during a DV investigation, officers make a reasonable effort to protect the victim and to arrest the suspect. Officers are instructed that, among other tasks, they must: assess whether the incident is DV in nature; conduct a primary investigation; arrest the suspect where there is probable cause to do so and where the arrest is mandatory under state law; and properly document the investigation.

When NE#1 arrived on scene, he properly determined that this was a potential DV incident. He then conducted a thorough primary investigation that involved interviewing the Complainant and Subject multiple times, as well as speaking with other witnesses.

During his investigation, NE#1 was confronted with two very different accounts of what occurred. The Complainant asserted that the Subject broke into his residence using a knife and then slapped him. The Subject indicated that she did try to access the residence but that she officially lived there. She further denied slapping the Complainant and, instead, said that he pushed her. The Subject’s friend corroborated that she did not engage in an assault. Moreover, there were no independent witnesses to the alleged assault. Given these disputes of fact, OPA agrees with NE#1 that he did not have probable cause to make an arrest. As such, OPA finds that his decision-making was reasonable and was consistent with policy.

Lastly, NE#1 thoroughly and completely documented this incident and his investigation in a report. Moreover, contrary to the Complainant’s assertions, OPA finds that NE#1 did not appear to favor one side over the other and did his best to write a balanced and accurate report.



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

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

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate

SPD Policy 15.180-POL-5 requires officers to document all primary investigations in a report. The report must be complete, thorough, and accurate.

As discussed above, OPA finds that the report generated by NE#1 was complete, thorough, and accurate. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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