



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 3, 2020

CASE NUMBER: 2020OPA-0128

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	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)

Named Employee #2

Allegation(s):		Director's Findings
# 1	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)

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 Employees improperly arrested the Subject for domestic violence assault when she was not the primary aggressor.

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.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers, including the Named Employees, responded to a potential domestic violence (DV) incident. At the time, Named Employee #1 (NE#1) was a student officer and Named Employee #2 (NE#2) was his Field Training Officer. The Complainant, who was the 911 caller, reported that a male, who lived with the Complainant and her female friend (referred to here as the "Subject"), was yelling at the Complainant and had hit the Subject. The Complainant reported that she was in her room and heard banging noises and the Subject yelling. The Complainant further disclosed that the male and the Subject were in a dating relationship.

The Named Employees arrived at the apartment and interviewed the occupants separately. The Subject stated that she and the male got into an argument and that he threw her food across the room and approached her. She said that she asked him to get back and, when he did not do so, she punched the male in the right side of the face causing a cut to his cheek. The Subject denied that the male struck her and said that he was “only getting his point across.”

The male denied that he was injured even though he had a visible cut to his cheek. He acknowledged that he had been assaulted but he would not say by whom. The male said that everything was fine and that he just wanted to go to bed.

The Complainant told the officers that the male was yelling at her because her dog had gone to the bathroom in the apartment. She stated that the male had a drinking problem and that he was intoxicated and upset at the time. She recounted that, at one point, the male said that he was going to leave. He subsequently pushed the Subject onto a couch and the Complainant pulled him away. The Complainant saw mutual pushing between the male and the Subject. The Complainant then went into her room while the male followed the Subject into the kitchen. She did not see what happened next, but she heard yelling and banging coming from the kitchen. She also heard the Subject say “stop.” The Complainant clarified that she did not see the male ever hit the Subject.

After conferring with NE#2 multiple times and after fully considering the evidence, NE#1 determined that there was probable cause to arrest the Subject. She was placed under arrest for DV assault. In reaching this decision, NE#1 and NE#2 discussed that the arrest of the Subject was appropriate because the male was the only injured party. Moreover, they evaluated that there was no evidence that the male ever struck the Subject and, to the contrary, she struck him.

The Complainant later filed this complaint with OPA. She alleged that the officers inappropriately arrested the Subject when they should have taken the male into custody. She was further upset that she was left in the apartment with the male who she perceived to be a danger, instead of the male spending the night in jail. This investigation ensued.

SPD Policy 15.410-POL-3 states that: “Officers will make a reasonable effort to protect the victim and arrest the suspect.” The policy instructs that, when responding to a potential DV incident, officers take specific action including, but not limited to, the following: (1) determine whether it is, in fact, a DV incident; (2) conduct a primary investigation; and (3) make an arrest if there is probable cause and if it is a mandatory arrest situation. (SPD Policy 15.480-POL-3.)

From a review of the evidence and in OPA’s opinion, the question of whether or not there was probable cause to arrest the Subject was a close one. Indeed, the Named Employees appeared to struggle with this and only reached their determination after much careful deliberation. It is clear from the BWV, that the officers evaluated all of the information available to them and then tried to make the best decision they could under the circumstances. Even if a different decision could have been made, which is possible, OPA cannot say that the decision that was ultimately made was unreasonable. To the contrary, it was reasonable for the officers to place significant weight on the fact that the male was the only injured party, as well as the fact that the only person proven to have used a strike was the Subject. Given the above, OPA finds that the Named Employees did not violate policy when they arrested the Subject.

Lastly, while OPA recognizes the Complainant’s frustration that she had to remain with the male in the apartment when he was not arrested, the officers did not have the legal authority to remove him as he was a legal resident. As such, this also did not violate policy.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

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

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)**