



## ***CLOSED CASE SUMMARY***

ISSUED DATE: DECEMBER 9, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0197

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	15.400 – Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations	Sustained
# 2	15.410 – Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect	Sustained

#### **Imposed Discipline**

Suspension Without Pay: 5 days/hrs

#### **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	Allegation Removed
# 2	15.400 – Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations	Allegation Removed
# 3	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Sustained

#### **Imposed Discipline**

Written Reprimand

***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:**

Named Employee #1 was alleged to have failed to take appropriate action to address a domestic violence incident. Named Employee #2 was alleged to have insufficiently supervised Named Employee #1.

### **SUMMARY OF INVESTIGATION:**

Officers, including Named Employee #1 (NE#1), were dispatched to a potential violation of a no-contact order. The 911 caller reported that a male – the respondent – had been at the residence of his ex-girlfriend – the petitioner – 30 minutes earlier. The officers arrived at the location at 11:53 a.m. but could not locate either of the involved parties. They then departed.



At approximately 2:11 p.m., another 911 call was placed concerning the respondent being present at the petitioner's residence. 911 was also informed that the respondent's current girlfriend was making threats to kill the 911 caller's husband. Officers, including NE#1, were again dispatched to the scene. NE#1, who was a Field Training Officer (FTO) at the time, responded to the residence with his Student Officer – Witness Officer #1 (WO#1).

NE#1 and other officers discussed the incident, including the location of the respondent. One of the officers – Witness Officer #2 (WO#2) – opined that the respondent was inside of the residence because he had been seen going around the back of the house. They also saw a window get locked shortly thereafter. The officers were further aware that the petitioner's grandmother, who was inside of the house, had cognitive deficits and could potentially be at risk. WO#1, who was primary, asked whether they should seek a warrant. NE#1 queried how long it would take and another officer – Witness Officer #3 (WO#3) – said that it could be several hours before a warrant could be obtained. WO#3 indicated that they could form containment at the house while seeking the warrant and they he had sought warrants under similar circumstances in the past.

NE#1 spoke with WO#1 and asked him what his plan was. WO#1 said that they could seek a warrant, but that it "sounded" like that would not "work." They decided to clear the call and write the incident up as a violation of a no contact order with no enforcement action taken. WO#1 walked over to WO#2's patrol vehicle. WO#2 asked if his FTO was going to have him "blow off" the call. WO#1 said that they would be writing it up. WO#2 responded that he called for a K-9 unit to come to the scene and began containment because it was a domestic violence (DV) no-contact order violation that they could not just "walk away" from.

Simultaneously, NE#1 called his Sergeant – Named Employee #2 (NE#2). NE#1 told NE#2 that they had responded to a no-contact order violation but that they were going to write it up and leave. He explained that, in his opinion, there was no exigency because the respondent and petitioner went into the residence together. He noted to NE#2 that they could seek a warrant but that it would take "forever." He then expressed uncertainty concerning where exactly the respondent was at the time.

After he got off the phone with NE#2, NE#1 spoke with WO#1. He told WO#1 that they would knock on the door once more and, if there was no answer, they would leave. WO#1 asked about the DV nature of the case and whether it was a mandatory arrest situation. NE#1 responded that there was no exigency because the respondent and the petitioner were together. The officers knocked on the door once more, left a business card, and departed.

Body Worn Video (BWV) captured WO#2 criticizing NE#1's decision-making with other officers. WO#2 stated that it was "ridiculous" that NE#1 wanted to "walk away." WO#2 said that there was more that they could do, including going into the backyard due to the nature of the crime to further investigate.

OPA later received an anonymous complaint alleging that NE#1 and WO#1 acted improperly by not removing the respondent from the petitioner's residence. OPA further identified that NE#2 may have failed to carry out his supervisory responsibilities. OPA commenced this investigation. Given that WO#1 was a Student Officer at the time and consistent with past precedent, OPA referred his alleged inaction to the Training Unit. He received counseling and retraining. NE#1 and NE#2 were subject to a full investigation.

As part of its investigation, OPA reviewed the BWV and the reports documenting the incident. OPA further interviewed NE#1, NE#2, WO#1, and WO#2.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 – Allegation #1**

***15.400 – Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations***

SPD Policy 15.400 generally governs DV court orders. SPD Policy 15.400-POL-3 specifically instructs that arrests are mandatory for violations of a DV no-contact order. In addition, SPD Policy 15.410-POL-3 states that “officers will make a reasonable effort to protect the victim and arrest the suspect.” The policy sets forth the various tasks officers are required to complete when responding to a domestic violence incident. (See SPD Policy 15.410-POL-3.)

As a threshold matter, there was clearly probable cause to arrest the respondent for the violation of a DV no-contact order. In addition, it cannot be disputed that this was a mandatory arrest situation under SPD policy. Lastly, as NE#1 was the FTO for WO#1 during this incident, he is responsible for WO#1’s acts and omissions. What is at issue here is whether NE#1’s and WO#1 collective inaction, including failing to obtain a warrant or to make meaningful efforts to enter the residence, violated SPD policy. OPA ultimately finds that it did.

As discussed above, once they developed probable cause to arrest the respondent, the officers were responsible for ensuring that an arrest occurred. Indeed, this was mandatory. This included taking steps to gain access to the residence, including obtaining a warrant. NE#1 and WO#1 did not do so here and, instead, did as little as they possibly could to investigate and resolve this matter. Unfortunately, what appears clear to OPA from the BWV and the conversations had by NE#1 is that this inaction was based on the concern that it would take a long time to obtain and effectuate the warrant, not because of any other legitimate reason. As NE#2 later expressed at his OPA interview, the time to obtain the warrant should not bear on the decision to do so. Moreover, NE#1’s assertion that there was no exigency because the respondent and petitioner may have entered the house together does not make sense, particularly in the DV context. Moreover, it does not provide a basis for not following policy by making an arrest.

OPA is not alone in the conclusion that this incident was mishandled. WO#1 recognized at his interview that they should have sought a warrant and explained that he would do so in the future. WO#2 reiterated the belief he expressed at the scene that the officers were required to fully address the incident given its DV nature, including seeking a warrant.

Ultimately, OPA finds that NE#1’s response to this incident was so deficient that it violated policy. By failing to take appropriate action, NE#1 not only failed to make a mandatory arrest, but also did not take sufficient steps to protect the petitioner and her infirm grandmother. OPA further notes that this is exacerbated by the fact that NE#1 was an FTO at the time and was expected to properly handle these types of cases. He did not do so here and set a poor example for his student. Accordingly, OPA recommends that both this allegation and Allegation #2 be Sustained as against him.

Recommended Finding: **Sustained**



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**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***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**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***

While OPA finds that NE#2 did not carry out his supervisory duties consistent with the Department's expectations, OPA concludes that NE#1, not NE#2, is responsible for the violations of SPD Policy 15.400-POL-3 and SPD Policy 15.410-POL-3. Accordingly, OPA recommends that this allegation and Allegation #2 be removed against NE#2.

Recommended Finding: **Allegation Removed**

**Named Employee #2 – Allegation #2**

***15.400 – Domestic Violence Court Orders 3. Officers Make Mandatory Arrests for Court Order Violations***

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 – Allegation #3**

***1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command***

SPD Policy 1.020-POL-7 requires supervisors to take responsibility for the actions of officers under their command. OPA alleged that NE#2 did not do so here as he failed to ensure that NE#1 took appropriate action to effectuate a mandatory arrest.

At his OPA interview, NE#2 acknowledged that the time it would take to obtain a warrant was not a reason to fail to do so. He stated that he did not believe the officers were certain that the respondent was in the house. However, the BWV indicated that, at one point, NE#1 told him that the respondent ran into the house with the petitioner and that there was "no exigency" because they were together. This should have prompted NE#2 to ask more probing questions concerning the facts of this incident. Instead, he endorsed NE#1's decision to merely knock on the door and leave the scene without taking any further action.

Ultimately, when he screened this decision and approved it, NE#2 was responsible for its outcome. Here, that outcome was a clear violation of policy and the placing of the petitioner and her grandmother in potential continued danger. This was simply unacceptable.



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In determining that NE#2's failure to supervise warrants a Sustained finding, OPA finds relevant a prior decision. In that case – 2018OPA-0824 – NE#2 watched BWV of an incident during a supervisory review but failed to identify multiple clear incidences of misconduct. As such, he took no remedial action, did not make an OPA referral, and, as a general matter, did not properly perform his supervisory duties. OPA initially recommended that he receive a Sustained finding but later amended its finding to a Training Referral after NE#2's chain of command advocated for him and pointed to his lack of similar discipline. As part of that Training Referral, OPA put NE#2 on notice that "similar conduct in the future will likely result in a recommended Sustained finding."

NE#2's conduct in this case represents such similar conduct. Again, he failed to properly recognize that a subordinate employee was acting in non-compliance with policy and he did not take appropriate action to remedy or address this. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**