



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0481

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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 the Named Employees violated multiple Department policies during two responses to his residence.

SUMMARY OF INVESTIGATION:



The Complainant alleged to OPA that he called 911 to report that his wife was acting erratically. He asserted that, even though he was the one who called 911, he was arrested and mistreated. He said that he was not read Miranda rights after his arrest. He further alleged that all of the involved officers – the Named Employees – were unprofessional towards him. Lastly, he alleged that the Named Employees' actions were based on bias towards him. OPA commenced this investigation.

OPA determined that officers responded to the Complainant's home on two separate occasions. On the first occasion – which occurred on March 12, 2020 – officers responded to a call placed by the Complainant. He reported that his wife was trying to take their twin children to the wife's mother's house without his permission. He later indicated that he did not want police to come; however, he was informed that, given the domestic nature of the call, they were required to do so. The Complainant stated that he would not let them in the building or his apartment. The wife's mother later called 911 and said that the children needed to leave the home because they were sick and because the Complainant had been violent with the wife approximately five days earlier. That prior incident was not reported to the police.

Named Employee #2 (NE#2) and Named Employee #3 (NE#3) came to the residence. They spoke to the wife's mother who confirmed her concerns and the content of what she told 911. The officers knocked on the apartment door. The Complainant answered but would not open the door. The officers told the Complainant that they did not have a warrant but needed to verify that the wife was okay. The Complainant initially was uncooperative. The officers stated that they would not come into the apartment but would talk to the wife outside. The Complainant ultimately relented. The officers spoke with the wife, who was crying. She denied being harmed by the Complainant that evening or that she felt that she was in danger. She was given a domestic violence (DV) pamphlet and provided information on DV investigations. NE#3 spoke with the Complainant and explained what the officers were doing. NE#2 also spoke to the Complainant. He explained that they were required to ensure that everyone was okay. NE#2 noted that, given his past experience, it was concerning when a husband was uncooperative and would not open the door. The officers left without arresting the Complainant.

The second occasion, which occurred on July 30, 2020, involved another DV incident at the residence. On this occasion, it was reported that the Complainant harmed his wife when he grabbed her arm. Officers responded to the apartment and interviewed both the Complainant and the wife. The Complainant acknowledged grabbing the wife's arm when he was trying to grab the television remote. He said that she then started yelling at him. The wife was very shaking and crying. She said that the Complainant grew angry at her and grabbed the remote causing an injury to her hand and forearm. The officers verified the injuries. Named Employee #1 (NE#1), who was the primary officer, made the decision to arrest the Complainant. After the Complainant was arrested, he was read Miranda warnings. He asked why he had not been read them earlier in the contact and he was informed that he was not in custody at that time.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant alleged he was improperly arrested by NE#1.



SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

Pursuant to the BWV, NE#1's investigation established that the Complainant grabbed the remote from the wife, making contact with her hand and forearm. The wife asserted that this was done by the Complainant because he was angry at her and said that it caused her to suffer an injury. The injury was confirmed by the officers.

Given this, NE#1 had probable cause to arrest the Complainant for DV assault. Moreover, under both policy and state law, this arrest was mandatory. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights

SPD Policy 6.010-POL-3 requires that arrestees be read their Miranda warnings "as soon as practical" after being taken into custody.

The BWV indicated that the Complainant was read Miranda warnings once he was taken into custody. This complied with policy. While the Complainant asserted that he should have been read Miranda before that time, this is not required by either policy or the law as he was not subject to a custodial interrogation.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

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.*)

As with the other allegations, the BWV is again dispositive here. There is no indication from the video that any of the Named Employees engaged in biased policing. To the contrary, the actions they took were in response to the 911 calls they received, what they discovered based on their on-scene investigations, and the conduct of the Complainant.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.



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

Named Employee #1 - Allegation #4

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

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

There was no evidence, video or otherwise, indicating that any of the Named Employees engaged in unprofessional behavior towards the Complainant. To the contrary, the BWV showed that the Named Employees treated him respectfully during their interactions, even when he was arrested, and did not make rude, aggressive, contemptuous, or derogatory statements towards him. While the Complainant was unhappy with the results of the SPD responses to his home, OPA found no violations of policy or any grounds to determine that the officers failed to conduct themselves professionally.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation 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 #1 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

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



For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded.

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