



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0742

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	5.001 – Standards and Duties 18. Employees Must Avoid Conflicts of Interest	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 that the Named Employee caused her to be arrested without probable cause and that he did so because of a conflict of interest.

SUMMARY OF INVESTIGATION:

The Complainant initiated a complaint with OPA in which she alleged misconduct on the part of Named Employee #1 (NE#1). She asserted that NE#1, a sergeant at the time, caused her to be arrested without probable cause. She further asserted that NE#1 did so because he was friendly with her ex-husband.

As part of its investigation, OPA interviewed the Complainant. She contended that she called 911 because her sister assaulted her. When the police arrived, they interviewed both her and her sister. The Complainant acknowledged that her story was a little jumbled but attributed this to how fast the incident occurred. She stated that her sister provided a calmer and more organized statement. She stated that, because of this, the officers believed her sister and arrested the Complainant. She said that they did so even though her mother said that the Complainant was not the primary aggressor.

She said that she was very injured as a result of this incident and that the officers did not ask her sufficient questions concerning her injuries and existing medical condition. She further asserted that the officers only learned from the sister that the Complainant had scratched her arm because they asked her sister leading questions. She said that there were no witnesses to the incident other than herself and her sister.

The Complainant she did not recognize any of the officers except for NE#1, who she identified as a friend of her ex-husband. She opined that, due to this, he caused her arrest without probable cause. When asked for more information concerning why she believed NE#1's friendship with her ex-husband was related to this case or was a causal factor in



her arrest, she replied: "I can't describe that." However, she opined that there was something "fishy" going on even though she previously believed NE#1 to be a "nice guy."

OPA further reviewed the Body Worn Video (BWV) relating to this incident. The BWV showed the officers' response to the scene and their interviews of the Complainant and her sister. The Complainant said that she had been trying to evict her sister from the home for around three years. She said that she was bringing out garbage (a box) when her sister tried to take it, saying that it was her things. The officers asked the Complainant if she was injured when her sister took the box and she twice said that she did not know. The officers then spoke with her sister, who said that the Complainant grabbed her arm in a tug of war over the box. She said that she suffered a scratch, and her arm was beginning to swell. The Complainant subsequently amplified her story. She said that her sister hit her and pushed her, causing her to fall to the ground. The Complainant then clarified that it was a push not a hit. After further questioning by officers, the Complainant said that she did not remember more details and could not provide a further description. She told the officers that she did not know if anyone else witnessed the incident.

The officers discussed the parties' statements and their evaluation of the evidence. The officers determined that there was probable cause to arrest the Complainant for domestic violence (DV) assault because she was the primary aggressor. The Complainant became extremely agitated and started yelling for her parents to intervene. Her mother came outside but was prevented from approaching the Complainant, who was seated in the rear of a patrol vehicle. The officers drove her from the scene to ensure that the situation did not further escalate.

NE#1 met the officers a short distance away to screen the arrest. He introduced himself to the Complainant and she said that she was in significant pain. He tried to inspect her injuries, but she said that there was nothing to look at and referenced a prior injury to her neck. NE#1 asked if she wanted to see the Seattle Fire Department (SFD); however, the Complainant informed him that the SFD had already inspected her and there was nothing else that they could do. The Complainant then said to NE#1: "Come on, you know who I am." NE#1 replied: "I don't know." The Complainant further stated: "I used to be married to a fucking police officer and you guys don't even care." NE#1 did not respond to this and again referenced the Complainant's alleged injuries and offered to call the SFD, an ambulance, or to arrange for her to see a nurse. The Complainant declined these offers and NE#1 ended the screening. The Complainant was then transported from that location.

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

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.

The Complainant contended that she was arrested without probable cause and that her arrest occurred as a result of NE#1's relationship with her ex-husband. The alleged conflict of interest is discussed below and OPA focuses solely on the justification for the Complainant's arrest here. For the reasons set forth below, OPA finds that there was probable cause supporting the Complainant's arrest and that neither NE#1 nor any of the other officers violated SPD policy.



First, OPA finds that NE#1 did not make the decision to arrest the Complainant and that she was already in custody at the time he screened her arrest. As such, her assertion that NE#1 was the causal factor behind her arrest is not supported by the evidence.

Second, the officers who decided to make the arrest did so based on their reasonable interpretation of the evidence. Specifically, they evaluated the credibility of the two involved parties – the Complainant and her sister – and determined that her sister’s account was the most consistent and believable. In addition, contrary to the Complainant’s claim, OPA found no evidence indicating that anyone else other than the involved parties witnessed the incident.

Third, the only party with visible injuries was the Complainant’s sister. This provided further evidence for the officers to conclude that the Complainant was the primary aggressor and that her sister’s account was more congruent with the evidence. In addition, there were no injuries visible on the Complainant and certainly none that were consistent with her being struck and pushed to the ground.

Ultimately, probable cause only requires a reasonable belief that the Complainant committed DV assault, not proof that she did so beyond a reasonable doubt. When assessing the totality of the evidence, OPA finds that the officers met this standard and that the Complainant’s arrest was legally supported.

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

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

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 18. Employees Must Avoid Conflicts of Interest

SPD Policy 5.001-POL-18 requires that Department employees avoid conflicts of interest. In this regard, the policy specifically provides the following: “Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest.” This also applies where any person with whom the employee has a personal relationship is involved in the event.” (SPD Policy 5.001-POL-18.)

The Complainant asserted that NE#1 caused her to be arrested due to his relationship with her ex-husband. She stated that this constituted an improper conflict of interest on NE#1’s part.

First, as discussed above, NE#1 did not make the decision to arrest the Complainant and she was already in custody when he arrived on scene. As such, even if he did have an impermissible conflict – which has not been proven by evidence adduced by the Complainant – that conflict would not have caused her arrest.

Second, from a review of the BWV, NE#1 appeared to not know or recognize the Complainant, even after she contended that he had an awareness of her and her ex-husband. Moreover, the video provided no indication that NE#1 took any acts or engaged in any omissions that could plausibly be attributed to this alleged conflict of interest.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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