



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 10, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0126

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties, 5.001-POL 6. Employees May Use Discretion	Not Sustained - Lawful and Proper

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties, 5.001-POL 6. Employees May Use Discretion	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 Named Employee #2 (NE#2) used unreasonable discretion by arresting Community Member #1 (CM#1)—the Complainant's wife. The Complainant also alleged that Named Employee #1 (NE#1), a supervisor, used unreasonable discretion by approving the arrest.

ADMINISTRATIVE NOTE:

On July 19, 2023, the Office of Inspector General certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant called OPA to file a complaint. The Complainant said CM#1 had mental episodes, leading him to call the police on four prior occasions. The Complainant said that, on each prior occasion, the police transported CM#1 to a hospital for treatment. However, the Complainant said that, on the date in question, the responding officers arrested CM#1 "instead of doing what was right." The Complainant said the experience caused him mental anguish and "destroyed" CM#1.

OPA opened an investigation. During the investigation, OPA reviewed the complaint, computer-aided dispatch (CAD) call report, incident report and supplements, body-worn video (BWV), and training records. OPA also interviewed the Complainant and named employees.



a. CAD Call Report, Incident Report, and Supplements

The CAD call report showed that officers, including the named employees, responded to a 9-1-1 call where the Complainant reported that CM#1 threatened to kill him. The call noted that CM#1 was unarmed. The call was made around 9:07 p.m. The call remarks noted that CM#1 struck the Complainant earlier in the day. The Complainant also told the 9-1-1 call taker that CM#1 was in crisis, an alcoholic, currently intoxicated, and suffered depression and uncontrolled rage. Around 9:11 p.m., the Complainant told the call taker that he locked himself in a bathroom. The Complainant also told the call taker that CM#1 was recently released from a hospital and yelled at and kicked the Complainant daily. Around 9:18 p.m., the Complainant told the call taker that CM#1 was hitting the bathroom door and yelling. Around 9:30 p.m., NE#2 radioed that he had taken “one into custody.”

NE#2 also wrote the incident report, summarizing the officers’ response and describing CM#1 as appearing heavily intoxicated. NE#2 documented the Complainant’s account of CM#1 following him, screaming obscenities, and “hitting him with a hammer fist.” NE#2 also documented the Complainant saying, “...what did worry him was when [CM#1] stated that she was going to kill him” and “he was fearful that [CM#1] was going to act on [her “angry and hostile”] emotions. . . . [The Complainant] related that he was so fearful of [CM#1], that he began hiding all of the kitchen knives to try and mitigate the possibility of being harmed.” NE#2 documented CM#1’s account, alleging that the Complainant threatened her, hurt her, and tried to strangle her. NE#2 also wrote that CM#1 was unable to elaborate on the details of her allegations. NE#2 concluded that CM#1 was the “primary aggressor,” arresting her for felony harassment. NE#2 also wrote that, after CM#1’s arrest, CM#1 repeatedly threatened to kill the Complainant when she was released from jail. NE#2 screened the call with NE#1.

OPA reviewed supplemental statements from other officers on the scene. They were consistent with NE#2’s statement. Witness Officer #1 (WO#1) also documented his interview with CM#1. WO#1 noted that CM#1 said the Complainant strangled her, but WO#1 did not observe marks or injuries. WO#1 also described CM#1 as “rant[ing]” when asked to explain her allegations.

b. BWV

OPA reviewed NE#1, NE#2, WO#1, and other officers’ BWV. Those videos appeared consistent with NE#2’s incident report.

NE#2 arrived around 9:20 p.m. NE#2 knocked on the Complainant’s and CM#1’s door. CM#1 answered and said, “My husband is trying to kill me.” NE#2 asked for consent to enter, which CM#1 granted. NE#2 entered and contacted the Complainant. NE#2 spoke with the Complainant and other officers spoke with CM#1.

NE#2 spoke with the Complainant in a separate room, away from CM#1. The Complainant said CM#1 drank a bottle of wine and became “enraged” with “uncontrolled anger issues.” The Complainant said, “She just keeps yelling at me and yelling at me, hitting me and telling me she’s going to kill me or gonna kill herself.” NE#2 asked whether the Complainant felt endangered or were CM#1’s threats due to “mental health issues.” The Complainant said he thought her threats stemmed from mental health issues. NE#2 asked the Complainant to clarify what CM#1 did that day. The



Complainant responded, "She hit me. She's threatened to kill me. . . . She threw things at me." The Complainant also said he hid the knives in the home after CM#1 threatened to kill him. NE#2 asked, "Do you think she's actually gonna, gonna kill?" The Complainant responded, "Yeah, I really, I hid all the knives. So, because of the way she was acting and she's just uncontrolled."

Screening the incident with his sergeant, NE#1, NE#2 asked whether CM#1 should be booked into jail or taken into custody under the Involuntary Treatment Act. NE#1 advised that, under the circumstances, CM#1 should be booked into jail.

NE#2 reentered the home and re-asked the Complainant whether he hid the knives because of CM#1's threats to kill him. NE#2 followed up, "And you felt fearful that she was actually gonna do it?" The Complainant responded, "Oh, Compl... Yes. Because she just won't stop."

NE#1 arrived, and NE#2 rescreened the incident with NE#1.

BWV also recorded WO#1 speaking with CM#1. CM#1 accused the Complainant of "acting like a nut," "trying to hurt [CM#1]," and strangling CM#1. When WO#1 attempted to clarify CM#1's allegations, CM#1 made vague and inconsistent statements about whether she was assaulted or committed an assault. BWV also recorded CM#1 threatening to kill the Complainant multiple times after her arrest.

c. OPA Interviews

OPA interviewed the Complainant twice. The first interview was discussed above. During the second interview, the Complainant said following his complaint, he learned that under Washington State domestic violence laws, the officers were legally required to arrest CM#1. Based on that understanding, the Complainant requested to retract his complaint.

OPA also interviewed the named employees.

NE#1 said he worked for SPD for over twenty years and investigated thousands of domestic violence incidents. NE#1 said that the Washington State domestic violence laws prioritize safeguarding victims and arresting suspects. NE#1 explained that DV laws require arrests in specific situations. NE#1 noted that the Complainant and CM#1 were married and lived together. NE#1 said there was probable cause to arrest CM#1 for felony harassment, noting CM#1 hit the Complainant with a "hammer fist," CM#1 threatened to kill the Complainant, the Complainant was so fearful that he hid knives, and it was reasonable to believe the threats would be carried out. NE#1 expressed concern for the Complainant's safety, noting CM#1's intoxication and reported history of attacking the Complainant. NE#1 said that the misdemeanor assault and threats to kill triggered a mandatory arrest. Even if the arrest was not mandatory, NE#1 explained the arrest would still be a reasonable use of discretion to protect the Complainant.

NE#2 said he worked for SPD for about five years. NE#2 understood Washington State domestic violence laws to prioritize protecting DV victims. NE#2 said there was probable cause to arrest CM#1, outlining the bases articulated by NE#1. NE#2 said CM#1's arrest was mandatory, so taking her to a hospital instead was not an option.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties, 5.001-POL 6. Employees May Use Discretion

The Complainant alleged the named employees used unreasonable discretion by arresting CM#1 instead of taking her to a hospital.

“Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” SPD Policy 5.001-POL-6. Further, “Discretion is proportional to the severity of the crime or public safety issue being addressed.” *Id.*

Here, neither named employee used unreasonable discretion by arresting CM#1 instead of taking her to a hospital. The officers were confronted with a DV situation and developed probable cause that CM#1 committed felony harassment. Under Washington law, a person is guilty of felony harassment if they knowingly threaten to kill another person and, because of the words or conduct, the threatened person reasonably fears that the threat will be carried out. *See* RCW 9A.46.020. The named employees responded to a 9-1-1 call in which CM#1 was reportedly intoxicated, in an “uncontrolled rage,” threatening to kill the Complainant, and had hit the Complainant earlier that day. The call remarks noted that the Complainant locked himself in a bathroom and that CM#1 was hitting the bathroom door. Upon arrival, the named employees encountered CM#1, who appeared intoxicated. NE#2 also spoke with the Complainant, who repeated his allegation that CM#1 hit him and threatened to kill him. The Complainant also noted, “One night, I had to hide all the knives. She kept saying she was going to kill me.” While NE#2 may have misunderstood the Complainant as saying that he hid the knives on the day of the incident, there was still probable cause to arrest CM#1 for felony harassment due to the threat, course of conduct (repeated threats and assaults), earlier assault, and evidence of fear (hiding knives on a prior occasion and the Complainant hiding in a bathroom.) Accordingly, OPA cannot say it was unreasonable to arrest CM#1 for domestic violence felony harassment.

OPA agrees with NE#1 and NE#2 that this, most likely, was a mandatory arrest, as a domestic violence assault occurred earlier that day, and CM#1’s words and actions placed the Complainant in reasonable fear of imminent bodily injury. *See* SPD Policy 15.410-POL-2 (Officer Make Arrests with Probable Cause). Even if the scenario did not technically meet the mandatory arrest criteria—if, for example, the assault itself occurred somewhat more than four hours earlier, or CM#1 made no “physical action” that placed the Complainant in fear of death—the arrest still was reasonable as a matter of discretion. *See id.* (Discussing discretionary arrests for felonies or misdemeanor threats of physical harm to people). A discretionary arrest in this scenario was aligned with the Department’s policy to protect victims of domestic violence and arrest perpetrators. *See* SPD Policy 15.410-POL.

To the extent the named employees exercised discretion by arresting CM#1, it was reasonable. Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**



Named Employee #2 - Allegation #1

5.001 - Standards and Duties, 5.001-POL 6. Employees May Use Discretion

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**