
Issued Date: FEBRUARY 15, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0406

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 15.410 – Domestic Violence Investigation, 15.410-POL-2. Officers Make Arrests with Probable Cause
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

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 (NE#1) responded to a domestic violence (DV) call involving the Complainant and his girlfriend, Community Member #1 or CM#1. NE#1 arrested the Complainant after determining he was the primary aggressor. The Complainant alleged that NE#1 lacked probable cause to arrest him for DV.

Administrative Note:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee in this case.

On October 16, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On September 6, 2023, a captain submitted a Blue Team complaint to OPA on the Complainant's behalf, writing that the Complainant suggested his arrest was unlawful and NE#1's investigation was improper. In-car video (ICV) captured the Complainant from the backseat of a patrol car, saying the police only believed CM#1's claim, even though he had bite marks on his back.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, incident report, ICV, and photographs. The Complainant's attorney did not respond to OPA's request to interview the Complainant.

On July 30, 2023, at 9:13 AM, CAD call remarks noted, "CALLER SAYS GIRLFRIEND IS PUNCHING HIM, YELLING AT HER NOW."

NE#1 responded to the incident location and documented his investigation in an incident report. NE#1 wrote that the Complainant and CM#1 dated for about three years and shared a child in common. NE#1 documented the Complainant's statements. The Complainant alleged that CM#1 bit him, repeatedly punched his face, and threw an iPad at him. NE#1 wrote that the Complainant showed two bite marks on his back that appeared "red and fresh." NE#1 wrote that the Complainant denied medical aid and denied strangling CM#1.

NE#1 wrote seeing "a large fresh bruise" around CM#1's neck. NE#1 documented CM#1's statements. CM#1 alleged that the Complainant choked her, and she threw an iPad at him and bit him in response. CM#1 said she felt lightheaded from being choked. NE#1 wrote, "I determined [the Complainant] was the primary aggressor, and I had probable cause to arrest him for Assault 2." NE#1 wrote that another officer handcuffed the Complainant.

A photograph of CM#1 depicted bruising and redness around her neck. A photo of the Complainant depicted bite marks on his back.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

15.410 – Domestic Violence Investigation, 15.410-POL-2. Officers Make Arrests with Probable Cause

The Complainant alleged that NE#1 lacked probable cause for a DV arrest.

An officer must arrest a person without a warrant when the officer has probable cause to believe that the person is age 18 or older and assaulted a family or household member within the preceding four hours, and the officer believes a felonious assault occurred, an assault occurred resulting in bodily injury to the victim, whether visible or not, or any physical action occurred intending to cause another person reasonably to fear imminent serious bodily injury or death. SPD Policy 15.410-POL-2. When the officer has probable cause to believe that family or household members assaulted each other, the officer does not have to arrest both people. *Id.* The officer must arrest the person whom the officer believes to be the primary physical aggressor, considering that the primary physical aggressor is not always the person who struck first, the intent to protect DV victims, the comparative extent of injuries inflicted or serious threats creating

fear of physical injury, and the parties' DV history, including whether the conduct was part of an ongoing pattern of abuse. *Id.*

Here, NE#1 arrested the Complainant despite the evidence indicating that both parties assaulted each other. However, SPD policy required NE#1 to arrest the primary physical aggressor after considering several factors. According to his incident report, NE#1 interviewed both parties, evaluated their injuries, and "determined [the Complainant] was the primary aggressor." Probable cause only requires a reasonable belief that a crime was committed. It does not require proof beyond a reasonable doubt, which the government must prove to secure a conviction. No facts or circumstances documented in NE#1's incident report undermine NE#1's reasonable belief that the Complainant was the primary aggressor.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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