
Issued Date: MARCH 14, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0426

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, his son (Community Member #1 or CM#1), and his son's girlfriend (Community Member #2 or CM#2). NE#1 arrested the Complainant for being 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 a recommended finding based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee involved in this case.

On October 25, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On September 26, 2023, the Complainant called OPA, saying NE#1 wrongly arrested him. He claimed he was arrested for no reason.

OPA investigated the complaint and reviewed the computer-aided dispatch (CAD) call report, body-worn video (BWV), and incident report. OPA also interviewed the Complainant.

On September 24, 2023, at 1:16 PM, CAD call remarks noted, "INSIDE, [REPORTING PARTY'S] SON AND SON'S GIRLF[RIEND] ARE YELLING AT [REPORTING PARTY] AND TELLING [REPORTING PARTY] TO LEAVE, [REPORTING PARTY] IS INTOX[ICATED], NO THRE[A]T/[ASSAULT], NO [WEAPONS] SEEN."

NE#1 responded to an apartment and activated his BWV, which captured the following:

NE#1 interviewed CM#1 and CM#2. CM#1 said the Complainant temporarily lived at CM#1's apartment but was supposed to move out by today. CM#1 said he and CM#2 arrived at the apartment and asked the Complainant to leave, but he refused and said he would fight them if they touched his property. CM#2 said she told the Complainant that she would move his property out of the apartment. They said CM#2 walked away from the Complainant as he grabbed CM#2's right shoulder. CM#2 said she feared the Complainant would assault her. CM#1 said he thought the Complainant was about to assault CM#2, so he pepper sprayed the Complainant's face. CM#2 denied having any physical injuries.

NE#1 interviewed the Complainant, who confirmed that CM#1 allowed him to stay at CM#1's apartment. The Complainant denied knowing that he needed to move out today. He claimed CM#2 said she would throw out his property. He said he held out his arm to prevent CM#2 from grabbing his property but denied touching her. He said CM#1 pepper sprayed his face.

NE#1 spoke with another officer about the investigation. NE#1 reapproached the Complainant and arrested him, telling him that NE#1 believed he was the primary aggressor.

NE#1 wrote an incident report consistent with the events captured on BWV.

On October 16, 2023, OPA interviewed the Complainant. He said he "blocked" CM#2, akin to a basketball player blocking an opposing player by extending his arms. He denied grabbing, pushing, or putting his hands on CM#2. He believed NE#1 conducted an incomplete investigation, rushed to judgment, and wanted to quickly terminate the investigation.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

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

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

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 DV history of each person involved, including whether the conduct was part of an ongoing pattern of abuse. *Id.*

Here, NE#1 arrested the Complainant for allegedly grabbing CM#2's shoulder, causing CM#1 and CM#2 to reasonably fear that he would assault CM#2. CM#1 said he pepper sprayed the Complainant in response. While CM#2 denied having any physical injuries, SPD policy does not require a visible injury for an arrest. NE#1 concluded that the Complainant was the primary aggressor based on his alleged threats to fight CM#1 and CM#2 and allegedly grabbing CM#2's shoulder. CM#1's and CM#2's claims were consistent. While the Complainant denied touching CM#2, probable cause only requires a reasonable belief that a crime was committed based on the facts and circumstances known to the officer. After interviewing the parties, OPA finds NE#1 had sufficient probable cause to arrest the Complainant for DV.

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

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