



CLOSED CASE SUMMARY

ISSUED DATE: JULY 16, 2019

CASE NUMBER: 2019OPA-0086

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)

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	15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest	Not Sustained (Training Referral)

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 his arrest was due to biased policing on the part of Named Employee #1 and Named Employee #2. It was further determined that Named Employee #1 and Named Employee #2 may have failed to complete multiple required steps for a domestic violence investigation, as well as that Named Employee #3 reviewed and approved their paperwork without identifying these issues and causing them to be remedied.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to a domestic violence (DV) assault call. When NE#1 and NE#2 responded to the scene they separated the involved parties and interviewed them. The involved parties were the Complainant, who is African American, and his ex-girlfriend, who is Latina. After



conducting separate interviews of the involved parties, NE#1 and NE#2 believed that the evidence indicated that the Complainant was the primary aggressor. Given this, they felt that they had probable cause to arrest the Complainant for DV assault.

The Named Employees' response to this incident and investigation was recorded on Body Worn Video (BWV). The BWV reflected that the involved parties provided differing accounts. Both alleged that the other was the primary aggressor. The BWV indicated that, after conducting the interviews, NE#1 and NE#2 spoke together to evaluate the evidence. They determined that the ex-girlfriend's account was more credible and was more "in-depth" than that provided by the Complainant. They further learned that the Complainant had been previously arrested for DV assault towards the ex-girlfriend and that he had two open warrants.

The officers called their supervisor, Named Employee #3 (NE#3), to the scene to screen the Complainant's arrest. At that time, the Complainant alleged to NE#3 that he believed that his arrest was improperly based on his race. NE#3 referred this matter to OPA and this investigation ensued.

During its investigation, OPA tried to locate the Complainant but was unsuccessful. As such, the Complainant was not interviewed as part of this case. OPA interviewed both NE#1 and NE#2 concerning their basis for arresting the Complainant and whether or not bias played any part in their decision-making. Both officers asserted that there was sufficient probable cause to arrest the Complainant and denied engaging in bias. They stated that, given the evidence available to them at the time, they would have arrested the Complainant regardless of his race.

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.*)

Based on OPA's evaluation of this incident, I conclude that NE#1 and NE#2 did not engage in biased policing. The BWV establishes that NE#1 and NE#2 reasonably believed that the Complainant was the primary aggressor during this incident. This was based on the totality of the evidence available to them at the time, as well as on the credibility determinations that they collectively made after conducting their investigation. Moreover, even had they not established that the Complainant was the primary aggressor, they still would have had a lawful basis to arrest him given his open warrants. For these reasons and as I find that neither NE#1 nor NE#2 acted with bias during this incident, I recommend that this allegation be Not Sustained – Unfounded as against both officers.

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

Named Employee #1 - Allegation #2

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident

SPD Policy 15.410-TSK-1 sets forth the requirements for an officer's investigation of a DV incident. The policy sets forth 16 items that need to be completed. Among these required steps are: completing a DV supplemental report; obtaining a statement from the victim; and having the victim execute an authorization to disclose private health information. OPA's review of the documentation relating to this case indicated that none of these required steps were completed by NE#1 and NE#2.



At their OPA interviews, both officers acknowledged that they failed to complete the above steps and recognized that they should have done so pursuant to policy.

Based on OPA's analysis, while inconsistent with policy, the failure by NE#1 and NE#2 to complete all of the required steps of the DV investigation appears to have been an oversight not intentional misconduct. Given this, I believe that retraining, rather than a Sustained finding, is the appropriate result. In reaching this decision, I note that both officers accepted responsibility and neither made excuses for their actions. As such, I recommend that NE#1 and NE#2 receive the below Training Referral.

- **Training Referral:** NE#1 and NE#2 should be retraining on the requirements of a DV investigation that are outlined in SPD Policy 15.410-TSK-1. They should be counseled to complete all necessary steps when completing a DV investigation. NE#1 and NE#2 should be informed that a future failure to comply with this policy may result in a Sustained finding. This training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegations #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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence Incident

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegations #1

6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest

SPD Policy 6.010-TSK-1 concerns the screening of arrests by Sergeants. The Sergeant is specifically required to review the reports generated concerning the arrest for thoroughness. (SPD Policy 6.010-TSK-1.)

Given his role as the screening Sergeant, NE#3 reviewed and approved the arrest of the Complainant. He further reviewed and approved the documentation that was generated as a result of the arrest. In doing so, he did not



identify the officers' failure to comply with all of the requirements of a DV investigation, including that there was no DV supplemental or victim statement.

At his OPA interview, NE#3 took responsibility for the incomplete report and acknowledged that he should have caught the deficiencies.

For the same reasons as discussed in the context of NE#1 and NE#2, I find that NE#3's failure to identify the gaps in the investigation and reporting was an oversight not intentional misconduct. I further recognize and commend NE#3 for accepting responsibility for this rather than making excuses. As such, I recommend that he receive the below Training Referral instead of a Sustained finding.

- **Training Referral:** NE#3 should be reminded of the requirement that he closely review arrest documentation and ensure that it is thorough and complete prior to approving an arrest. No further training is required unless NE#3's chain of command deems it appropriate. This counseling and any training conducted should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**