



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 9, 2019

CASE NUMBER: 2018OPA-0081

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	15.400-Domestic Violence Court Orders 2. Officers Verify Some Orders Before Enforcement	Not Sustained (Lawful and Proper)
# 3	15.400-Domestic Violence Court Orders 4. Officers Will Serve Court Orders	Not Sustained (Lawful and Proper)

Named Employee #2

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	15.400-Domestic Violence Court Orders 2. Officers Verify Some Orders Before Enforcement	Not Sustained (Lawful and Proper)
# 3	15.400-Domestic Violence Court Orders 4. Officers Will Serve Court Orders	Not Sustained (Lawful and Proper)

Named Employee #3

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	15.400-Domestic Violence Court Orders 2. Officers Verify Some Orders Before Enforcement	Not Sustained (Lawful and Proper)
# 3	15.400-Domestic Violence Court Orders 4. Officers Will Serve Court Orders	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times	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 he was arrested without probable cause. The Complainant further alleged that the officers did not verify an order for protection prior to arresting him and that they failed to serve the order that he presented to them. Lastly, it was alleged that Named Employee #4 failed to report potential misconduct to OPA and that he may have been unprofessional towards the Complainant.

ADMINISTRATIVE NOTE:

This case was submitted to the former OPA Auditor for certification on July 5, 2018, 17 days prior to the expiration of the 180-day deadline. On July 10, 2018, the OPA Auditor requested additional investigation. This investigation was completed and the case was again submitted to the OPA Auditor for certification. At that point, and after conducting further review of the case, the OPA Auditor asked for additional investigation for a second time. OPA ultimately completed this additional investigation. However, this was not done and the case was not finally certified until after the 180-day deadline had passed. As such, this case is untimely submitted.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant has been involved in an ongoing custody dispute with his ex-wife. At the time of this incident, the Complainant's ex-wife had primary custody of their child. As part of this ongoing dispute, the Complainant had been served with various orders, including one that precluded him from being on the premises of his child's school.

On the date in question, the Complainant came to his child's school with an order that he claimed permitted him to take custody of the child. The school, aware of the existing order precluding the Complainant from being on the premises, called 911. Officers, including Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3), arrived and spoke with the Complainant. The Complainant also informed the officers of the order. The officers called SPD Data to determine whether the order was valid. The officers were informed that the Complainant did not have a valid order and only possessed a petition. Given this, the officers placed the Complainant under arrest for violating the order prohibiting him from being at the school. Moreover, given that the order was domestic in nature, the Complainant's arrest was mandatory under SPD policy. The officers screened their decision to arrest the Complainant with Named Employee #4 (NE#4), who was their supervisor. NE#4 approved the arrest. The Complainant was later criminally charged with the violation of the order and for false reporting to the officers.

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.



As discussed above, it is undisputed that the Complainant was observed by the officers on school property. It is further undisputed that, at that time, there was an active order that had been served on the Complainant precluding him from being on school grounds. While the Complainant presented an order to the officers that permitted him emergency custody of his child, the officers were informed by SPD Data that this was a petition that had not been served and was not valid.

OPA's investigation ultimately revealed that the petition possessed by the Complainant at the time was, in fact, valid. However, the officers did not become aware of this because they were given incorrect information by SPD Data when they attempted to verify the orders prior to service. OPA finds that the officers' reliance on this incorrect information was in good faith and that reasonable officers would not have doubted the veracity of information provided to them by SPD Data.

As such and based on what the officers knew at the time, I conclude that they had sufficient probable cause to arrest the Complainant. Again, this is the case even though one significant piece of the information they relied upon – the validity of the Complainant's order – was later deemed to be incorrect. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

15.400-Domestic Violence Court Orders 2. Officers Verify Some Orders Before Enforcement

SPD Policy 15.400-POL-2 states that: "Officers will verify through Communications that the order exists and has been served on the respondent when enforcing a violation of...[a] protection order."

Prior to arresting the Complainant, the officers verified with SPD Data that there was a valid order for protection that had been served on him precluding him from being on school grounds. Moreover, the officers also attempted to verify the Complainant's order and were errantly informed that it was invalid. However, as discussed above, the officers cannot be penalized for relying in good faith on information provided to them by SPD Data.

Ultimately, by taking affirmative steps to verify the orders, the officers fully complied with the requirements of this policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as for NE#1, NE#2, and NE#3.

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

Named Employee #1 - Allegation #3

15.400-Domestic Violence Court Orders 4. Officers Will Serve Court Orders

SPD Policy 15.400 generally states that officers will serve court orders.

When the officers arrived at the school, the Complainant stated that he had an order that gave him emergency custody of his child and that he wanted the order served on his ex-wife. Based on the incorrect information that they received from SPD Data, the officers reasonably believed that the order was invalid and did not serve it.



When the officers declined to serve the order possessed by the Complainant, they acted consistent with the information that was provided to them. As discussed above, the officers should not be held responsible for mistakes that were outside of their control. As such, I find that the officers' decision to not serve the Complainant's order was reasonable based on the information that they possessed at the time. I, accordingly, recommend that this allegation be Not Sustained – Lawful and Proper as for NE#1, NE#2, and NE#3.

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

Named Employee #2 - Allegations #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

15.400-Domestic Violence Court Orders 2. Officers Verify Some Orders Before Enforcement

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #3

15.400-Domestic Violence Court Orders 4. Officers Will Serve Court Orders

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegation #2

15.400-Domestic Violence Court Orders 2. Officers Verify Some Orders Before Enforcement

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #3

15.400-Domestic Violence Court Orders 4. Officers Will Serve Court Orders

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

It was alleged that NE#4 may have failed to refer to OPA allegations of potential misconduct made by the Complainant.

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as a false arrest – must be referred to OPA. (SPD Policy 5.002-POL-5.)

NE#4 screened the Complainant's arrest while the Complainant was inside of a holding cell at the East Precinct. This screening conversation was captured on NE#4's Body Worn Video (BWV). During that conversation, the Complainant argued that he had a valid order and that he should not have been arrested.

The question here is whether those statements, standing alone, rise to the level of potential serious misconduct that should have been referred to OPA by NE#4. OPA does not think this is the case. Arrestees regularly contest their arrests. However, this is a matter that should be first resolved by a prosecutor and, later, the courts, not OPA. Moreover, construing such assertions to be allegations of serious misconduct requiring an OPA referral would represent a significant challenge in that it would greatly increase the number of OPA investigations and would test OPA's already limited resources.

Ultimately, I conclude that the Complainant did not make an allegation of serious misconduct that was required to be referred to OPA. Accordingly, NE#4 did not violate policy when he did not initiate an OPA complaint based on his conversation with the Complainant. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #4 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant asserted that NE#4 acted unprofessionally towards him. Specifically, the Complainant said that NE#4 tried to intimidate him and attempted to physically harm him while the Complainant was in the holding cell.

NE#4 stated that he did not engage in the behavior alleged by the Complainant and denied that he acted unprofessionally.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Based on OPA’s review of the BWV, there is no evidence supporting the Complainant’s allegations that NE#4 tried to intimidate and physically harm him. Moreover, there is no indication that NE#4 engaged in any unprofessional behavior towards the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.

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