



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 1, 2019

CASE NUMBER: 2018OPA-1022

### Allegations of Misconduct and the Director's Findings

**Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Allegation Removed
# 4	15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances	Allegation Removed
# 5	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause	Not Sustained (Inconclusive)
# 6	15.410 - Domestic Violence Investigation Assault-Mandatory Arrests:	Allegation Removed
# 7	15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect	Sustained
# 8	15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents	Sustained

**Imposed Discipline**

**Resigned Prior to Proposed Discipline**

**Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports:	Not Sustained (Training Referral)

### EXECUTIVE SUMMARY:

It was alleged that Named Employee #1's investigation of a domestic violence incident and her subsequent reporting of that matter was inconsistent with policy in numerous respects. It was further alleged that Named Employee #2, the supervisor, failed to ensure that Named Employee #1's investigation was sufficient and that her reporting was thorough, complete, and accurate prior to approving her General Offense Report.



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**SUMMARY OF INVESTIGATION:**

An officer reported to a Lieutenant his concerns regarding how Named Employee #1 (NE#1) handled a domestic violence call. The officer's predominant concerns were that NE#1 did not properly investigate the incident and that she twice allowed the suspect of a domestic violence assault to avoid arrest. The Lieutenant conducted a preliminary inquiry into this matter, which included watching NE#1's Body Worn Video (BWV) that captured her two responses to the subject location. Based on her review of that video, the Lieutenant concurred with the officer's concerns regarding NE#1's handling of this incident. The Lieutenant accordingly referred this matter to OPA and this investigation ensued.

OPA determined that NE#1, along with other officers, was dispatched to the subject location in response to a possible domestic violence (DV) assault. The caller reported that her mother and her boyfriend were involved in a verbal argument and there was screaming in the background. NE#1 was dispatched as the primary officer. Call updates indicated that the boyfriend was the primary suspect and that he had assaulted the caller's brother. Another update indicated that there was a six-year-old in the house.

As discussed above, NE#1 responded to the subject house twice and both responses were recorded. The BWV from her first response indicated that, when she arrived, she spoke with the 911 caller. The caller reported that her boyfriend was being aggressive. Several other family members walked to the front of the house from the back. One told NE#1 that the boyfriend was "hitting everybody." NE#1 walked to the back of the house where a woman was sitting on top of a man. The man was motionless at that time and presented as possibly unconscious. The woman got off of the man and stood next to NE#1. The man, who was shirtless, continued to lay on his back. NE#1 did not check on the status of the boyfriend and, instead, left the scene without making an arrest. She further did not follow up with either the 911 caller or the male who alleged that the boyfriend had engaged in assaultive behavior.

Only a few minutes later, NE#1 was dispatched again to the residence. When she arrived, she observed a white car driving away. She later learned that the vehicle contained the boyfriend. She was informed that the boyfriend had physically assaulted multiple individuals and had caused damage to another vehicle. She wrote a General Offense Report, but did not charge by officer and, as far as OPA is aware, the boyfriend was never arrested for this incident. She submitted her report to her supervisor, Named Employee #2 (NE#2), who reviewed and approved it.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

NE#1's decision-making during this incident, including her decision not to arrest the boyfriend and the various decisions that informed her investigation and documentation of this case, is already fully discussed in the context of the other allegations below. As such, while I conclude that she did not exercise her discretion as a law enforcement officer appropriately during this incident, I find that this allegation is duplicative and I recommend that it be removed.

Recommended Finding: **Allegation Removed**



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**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

From my review of the record, it is unclear why this allegation was alleged. To the extent it was classified for investigation based on the theory that, if NE#1 did not make a mandatory arrest when required, she violated the law, I find that it is duplicative of Allegation #5. Moreover, even if the allegation was not duplicative, I do not believe that the circumstances of the case and NE#1's actions and inactions would warrant a finding that she violated this policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #3**

***15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

I find that Allegations #3 and #4 are duplicative of the other allegations herein concerning conducting thorough and complete DV investigations. As such, I recommend that Allegations #3 and #4 be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegations #4**

***15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #5**

***15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause***

When NE#1 first arrived at the scene, she was informed by a male witness that the boyfriend was hitting "everybody." She did not, however, arrest the boyfriend for DV assault. This was based, in large part, on the fact that the witnesses in the rear of the home stated that they had not been assaulted.

When she returned to the scene, the boyfriend was being driven away in a vehicle. She did not attempt to stop the vehicle nor did she call in the vehicle's plate and request that another officer stop it. At that time, she learned that the boyfriend had, in fact, assaulted several individuals. As far as OPA is aware, the boyfriend was never arrested as a result of this incident and NE#1 did not charge by officer.

As is discussed below, NE#1 should have taken a statement from both the initial male witness and the 911 caller. Had she done so, she would have almost certainly developed probable cause to arrest the boyfriend. However, given her failure to do so – which underlies the recommended Sustained finding for Allegation #7, I cannot conclusively determine that she, in fact, had probable cause at the time. As such, I choose not to sustain this allegation, even



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though I believe that the arrest of the boyfriend would or should have been effectuated but for NE#1's failure to conduct an adequate investigation.

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

**Named Employee #1 - Allegation #6**

***15.410 - Domestic Violence Investigation Assault-Mandatory Arrests:***

This allegation is subsumed in Allegation #5. As such, I recommend that it be removed as duplicative.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegations #7**

***15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect***

SPD Policy 15.410-POL-3 requires that officers make a reasonable effort to protect the victim and arrest the suspect. The policy provides direction to officers on how to do so and this includes, but is not limited to: notifying the victim that the suspect may be arrested at a later time even if suspect has left the scene prior to officers' arrival; documenting the incident appropriately; advising the victim of resources to prevent further abuse, such as shelters and/or other services; providing the victim with the SPD DV Resource Guide; explaining to the victim how to seek an order of protection; asking the victim whether there are firearms or other deadly weapons accessible to the suspect; and, where applicable, facilitating transportation for the victim to a hospital for treatment or to a place of safety or shelter. The policy also generally instructs that the responding officers will conduct a thorough and complete primary investigation, as well as that they will fully and accurately document the incident.

NE#1 satisfied virtually none of the requirements of this policy. She did not: offer any of the potential victims a DV Resource Guide; discuss potential resources or refer this matter to the Victim Support team; explain how to seek an order or protection; ask whether the boyfriend had access to firearms or other deadly weapons; ask whether any of the victims needed to be transported to a safe place; take photographs of the victim's injuries suffered by any of the victims; have the victims execute releases for medical information; take victims' statements; or complete the supplemental DV form template.

As discussed below, she also did not complete an adequate DV investigation. Most notably: she failed to separate the witnesses in order to get accounts from everyone involved; she spoke to only a few of the involved parties and formally interviewed none; she did not conduct a sufficient inquiry into the status of the warrant and, indeed, was ultimately incorrect that it was not extraditable; she did not investigate the potential damage to a vehicle that was allegedly caused by the boyfriend; and she did not check on the welfare of a six-year-old who was reported to be in the house at the time. Moreover, during her first response to the home, she did not check on the welfare of the boyfriend, who was lying on the ground, was unresponsive, and who had been admittedly scratched by the mother. Further, the General Offense Report that she generated was incomplete and, in part, inaccurate – both with regards to the facts of the incident and the criminal charges at issue.



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Lastly, NE#1's failure to conduct a sufficient investigation into this incident put the initial 911 caller and others at risk of harm from the boyfriend. Had she performed an adequate examination of the facts at the outset, she would have almost certainly established probable cause to arrest the boyfriend and, had she taken him into custody, he would have been unable to later assault individuals at the home. In this respect, she failed to ensure the safety of the victims.

For the above reasons, I find that NE#1 violated this policy during her responses to this case and due to her insufficient investigation and reporting of this incident. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegations #8**

***15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents***

SPD Policy 15.410-POL-5 states that the Department is committed to a thorough primary investigation of DV incidents. The policy provides guidance as to what constitutes a thorough primary investigation and, in doing so, references SPD Policy 15.180 and other sections of SPD Policy 15.410.

As discussed more fully above, NE#1's investigation of this incident was deficient in virtually all respects. It was not thorough or complete and, as such, was contrary to the Department's expectations and the specific requirements of this policy. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegations #1**

***5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports:***

NE#2 was NE#1's supervisor on the date of the incident. He reviewed and approved the report that she submitted relating to this case. He did not identify any of the issues with her investigation and report that are detailed more fully above.

SPD Policy 5.100(III)(B)(6) governs the responsibilities of patrol sergeants and, specifically, the obligation of a patrol sergeant to ensure the "accuracy and completeness" of an officer's reports. Here, NE#2 admittedly did not do so. He stated that he simply "missed" the problems with NE#1's report and that he believed that he approved the report, rather than directed NE#1 to make corrections, because she had already left work for the evening.

When NE#2 failed to do so, he did not comply with this policy and, for that matter, with the expectations that the Department holds for its patrol supervisors. However, I recommend that NE#2 receive the below Training Referral rather than a Sustained finding. I base this decision on the fact that this is a minor policy violation and, given my reading of NE#2's OPA interview, I believe that the shortcomings of his review constituted a mistake not intentional misconduct.



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- **Training Referral:** NE#2's chain of command should go over this incident with him and counsel him concerning the expectation that he will ensure that reports that are submitted to him are thorough, complete, and accurate prior to approving them. NE#2's chain of command should discuss with NE#2 its hope that he learns from this incident and more closely complies with the requirements of SPD Policy 5.100(III)(B)(6) moving forward. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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