



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 17, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0007

### **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 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Lawful and Proper)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Lawful and Proper)

***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 she was arrested without probable cause and subjected to biased policing.

### **ADMINISTRATIVE NOTE:**

OPA identified some shortcomings in the report generated by Named Employee #1. However, OPA felt that this was best addressed via a Supervisor Action and it returned this part of the case back to the chain of command for handling.

### **SUMMARY OF INVESTIGATION:**

On December 31, 2020, officers, including Named Employee #1 (NE#1), were dispatched to a domestic incident. The 911 caller – who is the Complainant in this case – alleged that she had been assaulted by her girlfriend and that the girlfriend had tried to kick her door in. The officers did not observe any visible damage to the door. However, they arrested the girlfriend for domestic violence (DV) assault. During their investigation, the officers also learned that there was an active order of protection between the Complainant and the girlfriend in which the Complainant was the respondent and the girlfriend was the protected party. The officers further determined that the Complainant had invited the girlfriend to her home, thus violating the order. She was arrested for this offense. At that time, the Complainant was also arrested for a prior DV assault that she had perpetrated against the girlfriend six days earlier. The arrests of both parties were approved by Named Employee #2 (NE#2), a supervisor.



The Complainant later alleged to NE#1 that she was only arrested due to her race. NE#1 notified NE#2 who spoke with the Complainant. The Complainant reiterated her allegations to NE#2 and asked that he make an OPA referral on her behalf. NE#2 did so and this OPA investigation ensued.

OPA's investigation included reviewing the Body Worn Video (BWV) and documentation relating to this incident, OPA also interviewed the Complainant.

The Complainant felt that the investigation conducted into this incident was inadequate and that the officers did not fully explore all of her allegations, including the damage to her door. She was also upset because, based on her understanding, the officers did not arrest the girlfriend. However, the Complainant was arrested even though she was the victim. The Complainant again asserted her belief that she was arrested because of her race and her sexual orientation.

#### **ANALYSIS AND CONCLUSIONS:**

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

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

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 a review of the BWV, OPA finds no evidence of biased policing on the part of NE#1 or any other officer. Instead, as discussed below, OPA concludes that there was probable cause to arrest both the Complainant and the girlfriend and that, based on Washington law and SPD policy, the officers had no discretion in this regard and were mandated to take this action.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

##### ***15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)***

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. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. SPD Policy 15.410-POL-2 further mandates that, where probable cause exists to make a DV arrest – including for violation of an order or protection, that arrest must be effectuated. In requiring this, SPD policy cites to Washington State law.

It is undisputed that, at the time of the incident, there was an active order of protection between the parties and the Complainant was the respondent. The officers further determined that the Complainant had invited the girlfriend to her home. This constituted a violation of the order and established grounds for the Complainant's



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mandatory arrest. OPA notes that, while irrelevant to the legal basis for the Complainant's arrest, the girlfriend was also arrested, contrary to the Complainant's assertions.

As the Complainant's arrest was legally required and since the officers had no discretion as to whether to take her into custody, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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

***15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)***

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

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