



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#20160-0518

Issued Date: 03/17/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> Standards and Duties RCW 10.99.030 Duties of peace officers when responding to a domestic violence situation (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 15.180 (3) Primary Investigations: Officers Shall Take Statements in Certain Circumstances (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 15.180 (5) Primary Investigations: Officers Shall Document all Primary Investigations on a General Offense Report (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #4	<u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #5	<u>Seattle Police Department Manual</u> 7.010 (1) Submitting Evidence: Employees Secure Collected Evidence (Policy that was issued February 19, 2014)
OPA Finding	Sustained

Allegation #6	<u>Seattle Police Department Manual</u> 7.010 (2) Submitting Evidence: Employees Document Evidence Collection (Policy that was issued February 19, 2014)
OPA Finding	Not Sustained (Unfounded)
Allegation #7	<u>Seattle Police Department Manual</u> 7.010 (3) Submitting Evidence: Employees Follow Department Guidelines for Evidence Packaging and Submission (Policy that was issued February 19, 2014)
OPA Finding	Sustained
Allegation #8	<u>Seattle Police Department Manual</u> 15.180 (1) Primary Investigations: Officers Shall Conduct a Thorough and Complete Search for Evidence (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Final Discipline	6 Day Suspension (Under Appeal)

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 7.010 (1) Submitting Evidence: Employees Secure Collected Evidence (Policy that was issued February 19, 2014)
OPA Finding	Not Sustained (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 7.010 (2) Submitting Evidence: Employees Document Evidence Collection (Policy that was issued February 19, 2014)
OPA Finding	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 7.010 (3) Submitting Evidence: Employees Follow Department Guidelines for Evidence Packaging and Submission (Policy that was issued February 19, 2014)
OPA Finding	Not Sustained (Unfounded)
Allegation #4	<u>Seattle Police Department Manual</u> 15.180 (1) Primary Investigations: Officers Shall Conduct a Thorough and Complete Search for Evidence (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees responded to a Domestic Violence (DV) Disturbance call.

COMPLAINT

The complainant reported that he and his neighbors had made several calls to 911 regarding a house in the neighborhood, alleging various crimes over a period exceeding a year. The complainant said that the Named Employees repeatedly failed to take enforcement action. The complainant alleged that despite a community meeting with the Department over a year ago, nothing had changed and the illegal activity continued to occur.

An incident was reported alleging DV and a possible weapons violation. The Named Employees allegedly failed to take enforcement action and failed to document the incident.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Review of In-Car Videos (ICVs)
3. Review of 911 call
4. Search for and review of all relevant records and other evidence
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

While investigating an unrelated case OPA discovered this incident involving the two Named Employees. Named Employee #1 responded as the primary officer for a reported DV Disturbance call with the information that the caller's roommate was shooting at his girlfriend with a pellet gun. Computer Aided Dispatch was updated with the information that the male had the female in the backroom and she was screaming. It also provided the information that there was an allegation of ongoing domestic violence. Named Employee #1 and three back up officers including Named Employee #2 responded to the incident. OPA was unable to locate a DV report, there was no record of the disposition of the pellet gun and no arrest was made.

Named Employee #1 in his initial OPA interview stated that he responded as primary officer. He said he had been to this residence several times on different calls. Named Employee #1 said that when he and the other officers arrived, no one was being assaulted and there was no ongoing disturbance. Named Employee #1 interviewed the suspect and the victim of the DV call to determine if there was probable cause for an arrest. He said that both parties denied any assault or that anyone was shot with a pellet gun. The victim did have marks on her body that Named Employee #1 attributed to her methamphetamine use. Named Employee #1 did not explain how he determined that the marks were from drug use as opposed to welts from being shot with a pellet gun. The male suspect admitted to firing the pellet gun but denied firing it at

the victim. Named Employee #1 said that he did not see pellets around the yard so there was no physical evidence to support the allegation there had been an assault. The original complainant told Named Employee #1 she did not actually see the girlfriend get shot with the pellet gun, but she wanted the male out of her house. Named Employee #1 told OPA that, based on the lack of physical evidence and the conflicting statements from the victim, he (Named Employee #1) determined there was no crime. As a result, he cleared the call without making an arrest or writing a report.

State law requires peace officers who respond to a “domestic violence call” to do the following:

- Make an arrest if the officer determines probable cause exists – 10.99.030 (6)(a)
- If no arrest is made, to inform the victim of his or her right to initiate a criminal proceeding – 10.99.030 (6)(a)
- Take a “complete offense report,” including the officer’s disposition of the case – 10.99.030 (6)(b)
- Advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available.” – 10.99.030 (7)

Named Employee #1 conducted what could be described, at best, as a cursory investigation into this DV call. Named Employee #1 told OPA he determined, based on what he learned, there was insufficient evidence to form probable cause of DV assault. Regardless of whether a fuller investigation might have provided sufficient evidence to form probable cause, an argument could be made that Named Employee #1 was not obligated to make an arrest for DV assault. However, he was clearly obliged to write a “complete offense report” and document the investigative steps he took, his observations, the statements of others, evidence collected and his disposition of the case. He did not accomplish any of this. Furthermore, Named Employee #1 was obligated under State law to provide the reported victim with the information detailed in RCW 10.99.030(6(a) and (7). The preponderance of the evidence from this investigation showed he did not do this either.

The policy in allegation #2 requires officers to “take victim statements in all domestic violence investigations.” Named Employee #1 spoke to the reported victim in this DV call. It was a fairly brief conversation and was not sufficiently focused and detailed to qualify as a “victim statement.” Named Employee #1 should have asked her about the events leading up to the incident that caused a neighbor to call the police, the event itself and reasonable follow-up questions to get as complete a statement as possible. Any inconsistencies or holes in the victim’s statement should also have been addressed. Named Employee #1 did not do this. Finally, the victim statement needed to be documented properly so it could be reviewed by his supervisor, the prosecutor and others. Named Employee #1 did audio record his conversation with the victim via the ICV system, however this was hardly sufficient as a formal victim statement.

Named Employee #1 was required by policy to take victim statements for all DV assault calls, he was also required to write a General Offense (GO) Report for the investigation. On ICV, Named Employee #1 could be heard stating that he was going to write a report. However, Named Employee #1 never completed one. Named Employee #1 told OPA that he changed his mind about writing a report because he did not believe one was required for this incident. During his OPA interview, Named Employee #1 said he now realized he was required to write a GO report whenever he was primary on a call categorized as domestic violence.

SPD policy requires officers to “use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment. The scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” The Washington State Legislature and the Seattle Police Department have made the prevention and prosecution of domestic violence a high priority. Police officers are mandated to thoroughly investigate and document all reports of domestic violence and to make an arrest if probable cause can be found. Neither State law nor SPD policy gave Named Employee #1 the discretion to decide to conduct a less than thorough investigation and fail to write a report concerning this DV call.

In addition to the call to 9-1-1 reporting that a man was shooting a woman with a pellet gun, an airsoft gun was recovered at the scene. Named Employee #2 who was on scene as the backing officer, observed a black airsoft gun with the orange safety tip removed. Named Employee #2 asked the male suspect if the gun was his. The suspect replied that it was and Named Employee #2 asked him if he (Named Employee #2) could take it. The suspect told Named Employee #2 that he could take the air soft gun and Named Employee #2 removed it from the scene. Named Employee #1 told OPA that Named Employee #2 gave him the evidence (the airsoft gun) a couple of days after the incident. Named Employee #2 said in his OPA interview that he gave Named Employee #1 the airsoft gun packaged in a bag at the end of the shift the same day he (Named Employee #2) removed it from the scene. OPA was not able to resolve this difference in recollection. There was agreement that Named Employee #2 turned the airsoft gun over to Named Employee #1, who admitted to OPA that he took the evidence and put it in his personal locker at the Precinct. Named Employee #1 did not place the airsoft gun into the evidence locker and secure it as required.

Named Employee #1 did not collect the airsoft gun from the scene. As such, he was not responsible for documenting its collection by Named Employee #2.

Named Employee #1 did not write an evidence report, package the evidence or properly put it in the evidence lockers at the precinct as required by SPD policy. In fact, the evidence was still in his locker when he went for his OPA interview. Even after receiving the notice of complaint from OPA, Named Employee #1 did not document and handle the airsoft gun as required. During Named Employee #1’s second OPA interview, he was asked if he put the evidence into the evidence room. Named Employee #1 replied that he finally submitted the evidence three weeks after his OPA interview. Named Employee #1 could not explain why it took him so long to submit the evidence. When he finally did submit the evidence, Named Employee #1 wrote a

Found Property Report rather than a DV report, and wrote that the airsoft gun was property “found by governmental employee.” Named Employee #1 stated he did this because he was working “off the cuff” and acknowledged he should have followed policy.

Named Employee #1 was the primary officer on a reported DV assault. As such, he was obligated to make certain that a complete search for evidence was conducted, either by him or by an assist officer at his request. The OPA investigation showed that Named Employee #1 performed a cursory search for evidence. He told OPA he looked for pellets to see if there was evidence to support the caller’s claim that a man was shooting a pellet gun at a woman. He looked at the reported victim and made a comment about “mosquito bites,” but did not carefully inquire into the nature of the marks he observed, document them or describe them. Given the allegation made by the 9-1-1 caller, Named Employee #1 would have been well advised to take photographs of any possible injuries to the victim.

Since Named Employee #2 was the one who collected the airsoft gun, he was responsible for ensuring it was handled according to SPD policy, as evidence seized in a DV investigation. If he gave the airsoft gun to Named Employee #1 shortly after the call during the same shift, Named Employee #2 would no longer have this responsibility as he had transferred it along with the evidence. However, if Named Employee #2 had the evidence at the end of his shift, he should have packaged it properly, placed it into evidence and properly documented his collection and submission of this evidence on a GO Report as required by SPD Policy 7.010. He did none of this. Even if one accepted Named Employee #2’s recollection that he gave the evidence to Named Employee #1 at the end of that shift, Named Employee #2 still had an obligation to document his collection of this evidence in a GO Report. Of course, this would have presented both Named Employee #1 and Named Employee #2 with a problem because Named Employee #1 failed to write a DV GO Report.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that Named Employee #1 did not adhere to policy. Therefore a **Sustained** finding was issued for *Standards and Duties RCW 10.99.030 Duties of peace officers when responding to a domestic violence situation.*

Allegation #2

A preponderance of the evidence showed that Named Employee #1 did audio record his conversation with the victim via the ICV system, however this was hardly sufficient as a formal victim statement. Therefore a **Sustained** finding was issued for *Primary Investigations: Officers Shall Take Statements in Certain Circumstances.*

Allegation #3

A preponderance of the evidence showed that Named Employee #1 did not write a GO report as required documenting his investigation of this reported DV assault. Therefore a **Sustained** finding was issued for *Primary Investigations: Officers Shall Document all Primary Investigations on a General Offense Report*.

Allegation #4

Neither State law nor SPD policy gave Named Employee #1 the discretion to decide to conduct a less than thorough investigation and fail to write a report concerning this DV call. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees May Use Discretion*.

Allegation #5

A preponderance of the evidence showed that Named Employee #1 did not place the airsoft gun into the evidence locker and secure it as required. Therefore a **Sustained** finding was issued for *Submitting Evidence: Employees Secure Collected Evidence*.

Allegation #6

Named Employee #1 did not collect the airsoft gun from the scene. As such, he was not responsible for documenting its collection by Named Employee #2. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Submitting Evidence: Employees Document Evidence Collection*.

Allegation #7

A preponderance of the evidence showed that Named Employee #1 did not adhere to policy. Therefore a **Sustained** finding was issued for *Submitting Evidence: Employees Follow Department Guidelines for Evidence Packaging and Submission*.

Allegation #8

Given the allegation made by the 9-1-1 caller, Named Employee #1 would have been well advised to take photographs of any possible injuries to the victim. Therefore a **Sustained** finding was issued for *Primary Investigations: Officers Shall Conduct a Thorough Search for Evidence*.

Discipline Imposed: 6 Day Suspension (Under Appeal)

Named Employee #2

Allegation #1

There was a lack of a preponderance of evidence to establish when Named Employee #2 gave the evidence to Named Employee #1. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Submitting Evidence: Employees Secure Collected Evidence*.

Allegation #2

A preponderance of the evidence showed that Named Employee #2 failed to document his collection of the evidence in a GO Report. Therefore a **Sustained** finding was issued for *Submitting Evidence: Employees Document Evidence Collection*.

Allegation #3

A preponderance of the evidence showed that Named Employee #2 transferred the responsibility of properly packaging and submitting the evidence to Named Employee #1 when he gave the evidence to Named Employee #1. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Submitting Evidence: Employees Follow Department Guidelines for Evidence Packaging and Submission*.

Allegation #4

A preponderance of the evidence showed that Named Employee #2 did search for and locate evidence. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Primary Investigations: Officers Shall Conduct a Thorough Search for Evidence*.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.