



CLOSED CASE SUMMARY & SUPPLEMENTAL INVESTIGATION MEMOS

ISSUED DATE: FEBRUARY 13, 2020

CASE NUMBER: 2018OPA-0874

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Inconclusive)
# 3	5.170 - Alcohol and Substance Use 7. No Employee Shall Use or Possess any Controlled Substance, Except at the Direction of a Medical Authority	Sustained
# 4	5.140 - Bias Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Sustained

Imposed Discipline

Termination – Note: The discipline decision involves the Named Employee’s actions in this case and 2017OPA-1326.

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	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:

It was alleged that Named Employee #1 violated the law and Department policy when he physically abused his then partner and used drugs on numerous occasions. It was further alleged that Named Employee #1 made derogatory and pejorative statements based on sexual identity, gender, and race. It was additionally alleged that Named Employee #1 sought an order of protection against the Complainant in order to retaliate against the Complainant for initiating this OPA complaint. Lastly, it was alleged that Named Employee #2 was aware of the physical abuse and drug use engaged in by Named Employee #1 and that Named Employee #2 failed to report that conduct.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Allegations of Misconduct and Criminal Investigation

The Complainant alleged to OPA that Named Employee #1 (NE#1) had engaged in various ongoing misconduct and illegal activity. He specifically alleged that NE#1 had physically abused his mother (referred to herein as the Subject and Subject/Complainant #2 in the supplemental memos that follow the DCM) on multiple occasions over a period of years, used drugs, and made numerous statements suggesting bias against persons of color and disdain for women. The Complainant made this claim when he was discharged from the military in 2018; however, the conduct at issue mostly occurred in 2015 and 2016. As a result of this allegation, OPA referred this matter back to SPD to conduct a criminal investigation. That investigation was overseen by the Domestic Violence Unit.

As part of the criminal investigation, the assigned criminal investigator interviewed the Complainant, the Subject, and the Complainant's sister. The sister and the Subject detailed ongoing verbal abuse of the Subject by NE#1. They also recounted incidents where NE#1 would grab the Subject's upper jaw area and tell her to shut up and use profanities towards her. They further stated that, during one of those incidents of alleged physical abuse, NE#1 tried to make the Subject scratch his face and put his firearm in the Subject's hand in order to get her fingerprints on the weapon. The Subject stated that she was extremely afraid of NE#1 (nine out of ten) and she told the criminal investigator that she sent herself a Facebook message in which she documented that, if anything ever happened to her, it was NE#1 that harmed her. The sister also recounted to the criminal investigator that she observed an incident where NE#1 repeatedly kicked the back of the Subject's legs and then later screamed at the Subject for a period of time. The criminal investigator noted that the Complainant was a witness to some of the hostile language between NE#1 and the Subject, but that he was apparently not present for any of the alleged physical abuse. The criminal investigator documented that the Complainant also alleged that NE#1 used drugs. This was corroborated by the sister, who stated that she smoked marijuana with NE#1 on multiple occasions. She explained that she and NE#1 called marijuana "spice." The Complainant also alleged that NE#1 was biased towards persons of color and women. The criminal investigator wrote that the allegations of bias and drug use were being investigated by OPA.

The criminal investigator ultimately referred the case to the Pierce County Prosecuting Attorney's Office. However, the case was declined for prosecution based on the fact that the conduct occurred outside of the statute of limitations. After this decision was made, the case was referred back to OPA and this investigation ensued.

As part of its investigation, OPA interviewed the Complainant, the Subject, and NE#1. OPA was unable to interview the sister, but reviewed a signed handwritten statement from her and the oral statement she provided to the criminal investigator. OPA reviewed the criminal investigations and well as the decision to decline prosecution. OPA also reviewed numerous emails, pictures, text messages, and other documentation provided by the involved parties.

Alleged Physical Abuse

The statements recounting the physical abuse that were provided to OPA by the Subject were consistent with those provided to the criminal investigator. The Subject again recounted that she was subjected to physical abuse on a number of occasions. The Subject stated that NE#1 had grabbed her by the jaw and, a few times, had grabbed her by



her throat. She stated that, on one occasion, he grabbed her by the throat and pushed her backwards into a closet. She told OPA that, on another occasion, he grabbed her throat and she then threatened to call the police. After she did so, NE#1 allegedly tried to scratch his own face and head with her nails. He further kicked her in her rear and then tried to place her hand on his firearm. The Subject further recalled an incident when she was on the floor and NE#1 was holding her jaw. She stated that the Complainant walked in and observed at least a portion of what was occurring. The Subject also contended that NE#1 would throw and break things around the house. Specifically, she identified that he shattered a vape pen and threw a tablet, breaking it.

NE#1 stated that he never physically abused the Subject. He said that he did not choke her or kick her at any time. However, he told OPA that he was assaulted by the Subject. He specifically identified one occasion where she allegedly threw a stone coaster at his head, causing him to suffer an injury. NE#1 denied shattering a vape pen. When he was shown texts that appeared to show him admitting that he had done so and apologizing, he said that he did not recall that. He also denied purposefully breaking the Subject's tablet. He admitted that he intentionally broke his own tablet and he said that the Subject broke hers.

The sister corroborated the Subject's account. The sister stated that she viewed NE#1 assault the Subject on more than one occasion. She was present for at least portions of the incident where NE#1 tried to force the firearm into the Subject's hand. She told OPA that, at the time, NE#1 was not injured; however, he went outside by himself and, when he came back in the house, he had a gash on his head. As such, the sister believed the injury to be self-inflicted.

The Complainant also corroborated the Subject's recounting of the incident where NE#1 grabbed her jaw when she was on the floor. He stated that he viewed the tail-end of what was occurring and, when he walked in, NE#1 got up from a stooped position and moved away from the Subject.

OPA also reviewed numerous text messages provided by the Subject. In some of those messages, NE#1 apologized for hurting the Subject and for causing her pain. The Subject stated that this was evidence of NE#1's ongoing physical abuse of her. The Subject also provided a text exchange between her and the sister in which they discussed an incidence of physical abuse of the Subject by NE#1. Lastly, the Subject provided a Facebook message that she sent to herself, in which she stated that, if anything happened to her it was NE#1 who did it.

Alleged Drug Use

The Complainant, the Subject, and the sister all confirmed that NE#1 frequently used marijuana. The Subject and the sister stated that they were direct witnesses to this drug use on numerous occasions. The sister stated that she and NE#1 smoked marijuana together." She indicated that NE#1 smoked marijuana several times a week. The Complainant told OPA that he had never seen NE#1 smoke marijuana but that he had heard about NE#1's drug use from his sister. He further recounted that his wife once discussed with NE#1 where to buy marijuana.

OPA was provided with text messages, some including NE#1, that referenced drug use. In one message between the Subject and the sister, they discussed "special stuff" and who purchased it. The sister confirmed that NE#1 had bought the "special stuff." After stating that NE#1 was the purchaser, the sister wrote: "He's the one smoking it. Not me." Both later explained that they were referring to marijuana. In another message, the sister wrote about a "weed pen" owned by NE#1. In a third message, the sister wrote to NE#1: "Tell me if you walk in the front door [and] it smells like weed in here!" In a fourth message, NE#1 wrote to the Subject that he was going out to have a "smoke"



while on duty. However, the Subject contended that he did not smoke cigarettes, only marijuana, and believed that this meant that NE#1 was smoking marijuana while working.

NE#1 denied that he used marijuana in either his personal or professional capacities. He stated that the Subject and the sister did do so, but that he did not partake in those activities. He additionally told OPA that he instructed the sister to not smoke in the house and she agreed that she would not do so. He stated, however, that some marijuana smoke would still get inside the house from outside. NE#1 indicated that the “special stuff” referred to in the email was CBD that was for the Subject. NE#1 denied that he smoked any marijuana, contrary to the assertion made by the sister and the Subject in their messages. He stated that he did have a vape pen, but that he used it to smoke small quantities of tobacco, not marijuana.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. It was alleged that NE#1 violated this policy in two respects: first, when he physically assaulted the Subject; and, second, when he used drugs. After evaluating the totality of the evidence, I find sufficient information to conclude that NE#1 engaged in this conduct and, thus, acted contrary to this policy.

First, I find that the collective statements by the Complainant, the Subject, and the sister, when viewed in concert with the other documentary evidence, establish that NE#1 physically assaulted the Subject on multiple occasions. While it could certainly be argued that the Subject is seeking retribution against NE#1 for some unknown reason, there is no clear evidence in the record conclusively establishing this. Notably, the statements were consistent over time and consistent with each other, while NE#1 stated multiple times that he did not recall aspects of the incident and was significantly less convincing in his recitation of the facts.

Second, I find that the documentary evidence, again coupled with the statements, proves that NE#1 used drugs on numerous occasions while he was employed as a SPD officer. While it cannot be conclusively established that he did so on duty, such drug use is inconsistent with Department policy regardless of when it occurred.

In weighing all of the evidence, I find that the accounts provided by the Complainant, the Subject, and the sister simply outweigh that proffered by NE#1. For these reasons and given all of the above, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant alleged that NE#1 retaliated against him when NE#1 sought an order of protection against the Complainant. The Complainant contended that NE#1 did so as retribution for the Complainant filing an OPA complaint against NE#1.

OPA obtained copies of the documents relating to the order of protection. The order was sought after this OPA complaint was filed and after the Complainant provided information to a Sergeant indicating potential malfeasance on the part of NE#1. This OPA complaint was referenced in the order; however, NE#1 did not explicitly indicate his belief therein that the complaint was filed by NE#1. He did note in the order that he was informed by a colleague that the Complainant delivered a packet of papers to NE#1’s work. However, NE#1 wrote that he did not know what



was in that packet. NE#1 also referenced a number of other reasons for why he was seeking the order, none of which specifically related to this OPA complaint.

At his OPA interview, NE#1 denied that he sought the order as a means to retaliate against the Complainant and/or the Subject. He told OPA that, at the time he filed for the order, he was unaware that the Complainant was the individual who had filed the OPA complaint against him.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

If, as the Complainant asserted, NE#1 sought an order of protection against the Complainant solely due to the Complainant’s initiation of this OPA complaint, that action would likely constitute retaliation under SPD policy. However, there is insufficient evidence in the record for OPA to conclusively determine that this was the case here. While it is certainly possible that NE#1 engaged in such conduct and, in doing so, inappropriately subjected the Complainant to legal proceedings as a form of retribution, it also cannot be disproved that NE#1 took this legal action for other legitimate reasons. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

5.170 - Alcohol and Substance Use 7. No Employee Shall Use or Possess any Controlled Substance, Except at the Direction of a Medical Authority

SPD Policy 5.170-POL-7 prohibits Department employees for using or possessing any controlled substances, except at the direction of a medical authority. For the purposes of this policy, marijuana is considered a controlled substance.

As discussed in detail above, I find that NE#1 used marijuana on multiple occasions while in the employment of SPD. When he did so, he violated this policy and, accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegations #4

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

There were multiple allegations of biased statements made by NE#1. As a general matter, it was alleged that he was biased against others based on race, sexual orientation, and gender.

With regard to race, NE#1 was alleged to have made biased statements towards Black and Hispanic people. The Complainant told OPA that NE#1 referred to another officer as a “lazy Mexican.” The Complainant further asserted that he heard NE#1 use racial slurs towards Black people, which included calling his Sergeant at the time a “coon,” “monkey,” and “n----r.” The Complainant recounted that, on one occasion, he heard NE#1 yell at the Subject,



apparently because NE#1 felt that she was supporting his then Sergeant, who is Black, over NE#1. The Complainant stated that NE#1 yelled the following: “you siding with that monkey you never fucking met?” The Subject corroborated the Complainant’s allegations. She stated that she heard NE#1 make racist and derogatory statements on numerous occasions. She told OPA that these were predominantly directed towards women and Black people. She believed that NE#1 was not just making those statements out of frustration but that he was truly racist and misogynist. She further asserted that, based on conversations and text messages she received from NE#1, she felt it clear that his bias impacted his work and the law enforcement activity that he engaged in. She stated that she heard NE#1 use the word “n---r” on numerous occasions, including towards the Sergeant and in the context of his work. The sister also provided support for the allegation that NE#1 engaged in bias. She stated the following:

Hmm...so this isn't related to my mom. I will comment only because it is a fact and, and because he is who he is, I don't know, maybe attention brought to it. He, he only, he, he likes white people, he favors white people. And in his own little circle of people he, he'll, he'll have a couple, I think he's got like one black friend and one Mexican friend, you know. He has those, those few, but generally speaking, if you are not white, you're, he's not gonna like you. If you're a woman, and, and the fact that he's, I'm surprised at the woman he's dating right now actually, because he even told my mom, he's like if you ever slept with somebody that wasn't a white man, I could never, I would never be with you. So I know that he's a little, he favors the white man a little bit more than anybody else.

NE#1 was further reported to have made statements that conveyed bias towards people based on their sexual orientation. As discussed above, OPA obtained a text message in which he referred to an officer newly assigned to his squad as “an angry Black lesbian.” The Complainant also told OPA that he had heard NE#1 refer to either his Lieutenant or his Chief as “this lesbian whore.”

NE#1 was also reported to be biased towards and disdainful of woman, including women officers. The Subject told OPA that NE#1 “hated” women. Documentation of this was provided to OPA. In one text message, NE#1 wrote concerning a former officer who had passed away: “You know I don't have much regard for female cops? We lost a good one today. A truly legitimate no shit police woman.” OPA also received witness accounts concerning NE#1's disparaging statements regarding women. The Complainant stated that he heard NE#1 use derogatory language when referring to woman on several occasions. As discussed above, the Complainant stated that, on one occasion, he heard NE#1 call his Chief or his Lieutenant: “this lesbian whore.” OPA was also provided messages in which NE#1, referring to a female SPD employee, commented on her physical appearance and stated that she: “looks like if Wendy Lou Hoo became a whore.” In another message, he called a female SPD employee: “that crazy SPD whore.”

NE#1 refuted these allegations. He told OPA that he did not believe that his calling a fellow officer an “angry Black lesbian” reflected any bias on his part. He contended that this officer was not friendly towards anyone in the squad and his statement was a reaction to that. He confirmed that he had not had many positive experiences with female officers, but denied that this meant that he was biased. NE#1 told OPA that he had no recollection of calling another officer a “lazy Mexican,” but also did not deny that he made this statement. When asked about the allegations that he used racist and sexist language during his conversations with the Subject, the Complainant, and the sister, NE#1 stated that he could not recall everything that he said in the past. When asked about whether he used the terms “n---r” or “monkey,” NE#1 did not deny doing so and stated, with regard to saying “n---r,” he did not remember whether he said that. Later during his OPA interview he denied using that term. He contended, however, that, if he did, those statements would have been made in private conversations. NE#1 admitted using the word monkey but



stated that he used that term for all individuals and not just Black people. He did not deny that he called his Sergeant a monkey as alleged by the Subject and the Complainant.

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.*) In addition, and particularly relevant to this case, the policy states the following: “Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.”

When evaluating the totality of the evidence, I conclude that NE#1 did, in fact, make pejorative and discriminatory statements towards women, homosexuals, and persons of color on numerous occasions. I further find that his bias was so significant that it permeated his work as a police officer. In reaching this decision, I rely heavily on the texts NE#1 sent and the statements he admitted making. While the comments attributed to him by the Subject, the Complainant, and the sister were much worse than what he admitted to and are not documented, the evidence that does exist informs my decision to credit the accounts of these witnesses over that provided by NE#1. I further find significant NE#1’s statement to OPA that he did not remember making some of the comments, not that he did not make them at all. This provides additional support for my belief that he did do so. I also note that NE#1 stated on multiple occasions that he meant for his conversations with the involved parties to be private. This again suggests a tacit acknowledgment that he made the statements in question. Moreover, whether private or not, the fact that the statements were made serves to establish bias on NE#1’s part.

In reaching this decision, I recognize that it is no small matter to find that NE#1 engaged in bias. However, I find that the great weight of the evidence supports a finding that he violated this policy. In doing so, he acted inconsistent with his oath of office as a police officer and contrary to the expectations of the Department and of the community that he serves – most notably, communities of color. Moreover, the evidence indicates that his bias is sufficiently pervasive that it cannot be disconnected from his work as a SPD officer. This is established not just by the substantial amount of biased statements made by NE#1, but also by the accounts of the Subject and the sister. The Subject asserted that NE#1 would regularly disparage people of color and, specifically, those that he interacted with during his work. The sister also contended that NE#1 favored White people. The responsibility of a SPD officer is to serve all people, regardless of race, gender, or sexual orientation equally and fairly. The evidence conclusively establishes that NE#1’s bias serves to prevent him from doing so. For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #1

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

It was alleged that Named Employee #2 (NE#2) may have been aware of both NE#1’s alleged abuse of the Subject and NE#1’s alleged drug use. It was further alleged that NE#2 failed to report this conduct, in potential violation of law and of SPD policy. This allegation was based on a letter provided by the Complainant, in which the Complainant stated the following: “every time [NE#1] would hit my Mom and take off over the years [NE#2] is who [NE#1] would go stay with.



At his OPA interview, NE#2 acknowledged that NE#1 had arguments with the Subject and, at times after those arguments, NE#1 would stay at NE#2's home. However, NE#2 denied ever being aware that arguments between NE#1 and the Subject turned physical. He stated that he did not delve into the nature or extent of the arguments, telling OPA that "wasn't [his] business." NE#2 was also generally aware of the order of protection that NE#1 filed against the Complainant, but told OPA that he had not heard that NE#1 was seeking the order because the Complainant initiated this OPA complaint against NE#1.

NE#1 told OPA that, while he would stay at NE#2's house after arguments with the Subject, he did not divulge specifics of the arguments to NE#2. He recalled that he only told NE#2 that he wanted to stay at NE#2's home, that there was some friction between him and the Subject, and that he needed some time away. NE#1 stated that NE#2 did not ask him exploratory questions concerning the arguments and that NE#2 told NE#1 that he respected NE#1's privacy and that NE#1 did not have to explain anything.

The Subject also confirmed that NE#1 would stay with NE#2 after they had arguments. However, she told OPA that she was unaware what, if anything, NE#2 knew about the arguments.

Had NE#2 known of physical abuse or drug use by NE#1, he would have been required to report this information and, as discussed above, the failure to have done so would have violated both law and policy. However, applying a preponderance of the evidence standard, there is no indication that this was the case. Instead, a review of the record suggests that NE#2 was unaware of any conduct on the part of NE#1 that he was required to report. As such, I recommend that this allegation, as well as Allegation #2 that concerns the duty to report potential serious policy violations, be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

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

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

SUPPLEMENTAL INVESTIGATION MEMO #1

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) violated the law and Department policy when he physically abused his then partner – the Subject/Complainant #2 in this case – and used drugs on numerous occasions. It was further alleged that NE#1 made derogatory and pejorative statements based on sexual identity, gender, and race. It was additionally alleged that NE#1 sought an order of protection against the Subject/Complainant #2 in order to retaliate against the Subject/Complainant #2 for initiating this OPA complaint.



OPA's initial investigation resulted in three Sustained findings against NE#1. Specifically, OPA found that NE#1 violated the law when he assaulted the Subject/Complainant #2, that he used marijuana on multiple occasions while employed by SPD, and that he made statements that violated the Department's biased policing policy.

NE#1 subsequently participated in a due process meeting before the Chief of Police. At that meeting, NE#1 raised several arguments in his defense. Most notably, he alleged that OPA had failed to explore the fact that he had made a domestic violence (DV) allegation against the Subject/Complainant #2 that was documented in a police report. He further contended that he had evidence undermining the credibility of the Subject/Complainant #2 and her son that OPA did not sufficiently evaluate. After that meeting occurred, the Chief of Police asked that OPA conduct supplemental investigation. Specifically, the Chief of Police made the following request to OPA:

The issues raised by SPOG and the officer during the Loudermill included contentions that [NE#1] informed others that his former girlfriend assaulted him and made a contemporaneous police report. I ask that OPA review that contention and, if accurate, whether it impacts the recommended finding that [NE#1] assaulted his then girlfriend. In addition, SPOG and the officer raised questions about the credibility of the officer's former girlfriend and her son. I ask that OPA review those contentions and evaluate whether they impact your recommended findings.

SPOG agreed to a sixty-day extension, until August 23, 2019, for this supplemental investigation to be conducted. OPA herein provides the conclusions of that investigation. For the reasons set forth below, OPA's recommended findings are unchanged.

SUPPLEMENTAL INVESTIGATION:

A. Additional Investigation Conducted

1. Pierce County Sheriff's County Report

OPA conducted further investigation into the DV allegations that NE#1 made against the Subject/Complainant #2. OPA obtained and reviewed a report generated by Deputies from the Pierce County Sheriff's Department (PCSD). Based on that report, OPA determined that, on December 12, 2015, Deputies responded to NE#1's residence. When the Deputies arrived, he was standing outside with two other individuals. NE#1 reported that he was involved in a verbal altercation with the Subject/Complainant #2 and that he followed her outside. He stated that, while she was driving away from the residence, the Subject/Complainant #2 struck him with her vehicle, causing him to fall onto the hood. He further reported that, when the Subject/Complainant #2 later returned to the residence, she slashed him in the wrist with a steak knife and threw a stone coaster at him. He contended that the coaster struck him in the head. The Deputies reported observing scratches to NE#1's forehead. NE#1 also stated that, at one point, he was walking upstairs passing the Subject/Complainant #2 and he blocked the stairway. The Subject/Complainant #2's daughter came out of her room and told NE#1 not to put his hands on the Subject/Complainant #2. NE#1 stated that he had not done so, told the daughter that he needed the Subject/Complainant #2 out of the house, and asked her to help the Subject/Complainant #2 pack. He told the Deputies that, when he entered their shared bedroom, the Subject/Complainant #2 reached into their bedside table and grabbed his firearm. He said that he jumped on the bed and wrestled the gun away from her. NE#1 told the Deputies that he left the house and waited for police to arrive.



The following day, NE#1 reached out to the PCSD and requested a phone call. NE#1 stated that he wanted to amend his statement from the previous night and that he did not want to move forward with charges. NE#1 provided another recorded statement in which he claimed that he now had a clear perception of what occurred the previous evening. He stated that the Subject/Complainant #2 did not intentionally strike him with her vehicle and that she did not intentionally throw the coaster at him. He further revised his statement concerning the firearm. He asserted that the Subject/Complainant #2 took a number of his items out of the bedside table, including his gun, and that she wanted him out of the house. NE#1 said that he told her that he did not need her grabbing his stuff like a kid and that he grabbed his items out of her hands. He stated that the Subject/Complainant #2 then left the house with her children. He told the Deputy that he was not under any threats or duress to change his statement.

2. Further Witness Interviews

As part of its supplemental investigation, OPA interviewed a Captain, a Sergeant who was NE#1's direct supervisor at the time, a witness identified by NE#1, and NE#1's current girlfriend.

The Captain told OPA that he did not recall being notified of this incident by the PCSD. The Sergeant recalled that NE#1 self-reported the incident involving himself and the Subject/Complainant #2 detailed above. She stated that NE#1 indicated that he was the victim and the Subject/Complainant #2 was the perpetrator. The Sergeant told OPA that she offered NE#1 DV resources. She did not remember any specific details about the underlying incident.

The witness identified by NE#1 stated that he was a close friend of NE#1. He told OPA that he went to NE#1's home on the night of the alleged DV incident. He stated that he observed marks on NE#1's body consistent with being the victim of a DV assault. The witness stated that he told NE#1 to call the PCSD. The witness told OPA that, after the incident, he saw the Subject/Complainant #2 at a store. He told OPA that she stated that she was going to ruin NE#1's career. He further told OPA that she contended that she had lied to the police before and she was going to do it again. The witness stated that he had never known NE#1 to be abusive towards female partners, that he did not know NE#1 to use drugs, and that he had never heard racist comments from NE#1.

NE#1's girlfriend said that she discussed the alleged DV assault by the Subject/Complainant #2 with NE#1. She stated that he disclosed that she "pulled a gun on him" and that "he had to wrestle the gun away." She told OPA that she had read text messages in which the Subject/Complainant #2 had threatened NE#1 or had been verbally abusive towards him. The girlfriend stated that the Subject/Complainant #2 had also made Facebook postings referring to the girlfriend as a "cunt." The girlfriend stated that she did not know NE#1 to use drugs, to use racist or sexist terminology, or to be physically or emotionally abusive. She told OPA that she had not seen any racist texts by NE#1 but that she did not review all of the texts that he sent. She further stated that she could not attest to what previously happened in the relationship between NE#1 and the Subject/Complainant #2.

B. Analysis

OPA compared NE#1's revised statement to the PCSD to his OPA interview in this case. There were several notable inconsistencies. First, NE#1 again asserted to OPA that he was subjected to a DV assault by the Subject/Complainant #2. This materially contradicted significant portions of the second recorded statement he provided to the PCSD. Second, NE#1 alleged that the Subject/Complainant #2's daughter could not have witnessed the DV assault that he allegedly perpetrated on the Subject/Complainant #2 because the daughter was in her room the entire time. However, NE#1 told the PCSD that the daughter came out of her room when he and the Subject/Complainant #2 were on the stairs and that she told NE#1 not to put his hands on the Subject/Complainant #2.



With regard to this latter point, the Subject/Complainant #2 and the daughter's statements have remained consistent. Both contended that the Subject/Complainant #2 was kicked by NE#1 while on the stairs and that the daughter viewed the assault after coming out of her room and told NE#1 to stop.

While OPA recognizes that there are questions as to the Subject/Complainant #2's, and even her son's, motivations and credibility, there are no such questions with the daughter's account and NE#1 has not raised any legitimate concerns in this regard or proffered any convincing evidence. Indeed, in the initial DCM for this case, OPA reasoned that, even if the Subject/Complainant #2's version of events was discounted, that provided by the daughter was sufficient to establish that NE#1 committed a DV assault and used narcotics. Moreover, the two primary witnesses proffered by NE#1 – his close friend and girlfriend – did not actually witness the events in question and cannot counter the daughter's recounting. Further, given the nature of their relationships with NE#1, could both have their own motives to support NE#1's account. Lastly, given the scope of the biased statements in the text messages reviewed by OPA during this investigation, I find it unlikely that neither has ever heard such comments from NE#1. The fact that both witnesses deny this makes OPA strongly question their credibility.

Ultimately, in OPA's opinion, this further investigation calls more into question NE#1's veracity and credibility than that of the Subject/Complainant #2 or her children. As such, OPA's recommended findings are unchanged.

For the above reasons and after conducting further investigation, OPA's recommended findings for this case remain unchanged.

SUPPLEMENTAL INVESTIGATION MEMO #2

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) violated the law and Department policy when he physically abused his then partner – the Subject/Complainant #2 in this case – and used drugs on numerous occasions. It was further alleged that NE#1 made derogatory and pejorative statements based on sexual identity, gender, and race. It was additionally alleged that NE#1 sought an order of protection against the Subject/Complainant #2 in order to retaliate against the Subject/Complainant #2 for initiating this OPA complaint.

OPA's initial investigation resulted in three recommended Sustained findings against NE#1. Specifically, OPA found that NE#1 violated the law when he assaulted the Subject/Complainant #2, that he used marijuana on multiple occasions while employed by SPD, and that he made statements that violated the Department's biased policing policy. Whether NE#1 retaliated against the Subject/Complainant #2 was deemed inconclusive.

NE#1 subsequently participated in a due process meeting before the Chief of Police. At that meeting, NE#1 raised several arguments in his defense. Most notably, he alleged that OPA had failed to explore the fact that he had made domestic violence (DV) allegations against the Subject/Complainant #2 that was documented in a police report. He further contended that he had evidence undermining the credibility of the Subject/Complainant #2 and her son that OPA did not sufficiently evaluate. After that meeting occurred, the Chief of Police asked that OPA conduct supplemental investigation. SPOG agreed to a sixty-day extension, until August 23, 2019, for this supplemental investigation to be conducted.

OPA's supplemental investigation included reviewing the Pierce County Sheriff's Office (PCSO) Report that documented NE#1's DV allegations against the Subject/Complainant #2. OPA also interviewed two members of



NE#1's chain of command at the time of this alleged DV incident, his current girlfriend, and another witness identified by NE#1.

The PCSO report itemized NE#1's assertion that the Subject/Complainant #2 subjected him to a DV assault. However, the report further indicated that NE#1 recanted that alleged assault the following day. He did so after informing the PCSO that he was not under any threats or duress. Moreover, his new account of what occurred was so diametrically different from what he previously reported that it raised questions for OPA concerning the credibility of his initial allegations.

The Captain interviewed by OPA did not recall this incident. The Sergeant recalled that NE#1 reported that he was the victim of a DV assault, and she accordingly offered him resources.

NE#1's current girlfriend had no personal knowledge of the underlying DV allegations. With regard to the information that she conveyed learning from NE#1 after the fact, it contradicted NE#1's later recantation that he made under penalty of perjury. She denied knowledge of any racist texts sent by NE#1 or any marijuana usage by him. She stated that the Subject/Complainant #2 had sent her and NE#1 threatening and harassing messages over text and social media.

The friend, who is a retired police officer from Tacoma, told OPA that he came to NE#1's home in the immediate aftermath of the alleged DV assault by the Subject/Complainant #2. The friend asserted that NE#1 had injuries consistent with being assaulted. The friend denied knowledge that NE#1 was ever abusive to female partners, that he used drugs, or that he ever made racist comments. The most compelling piece of information revealed by OPA's supplemental investigation concerned a conversation that the friend claimed that he had with the Subject/Complainant #2 at a Target store. The friend said that this conversation occurred after the DV incident. The friend relayed that the Subject/Complainant #2 told him that she was going to ruin NE#1's career. He further stated that she told him that she had lied to the police before and would do it again.

In analyzing the supplemental investigation, OPA ultimately concluded that it did not change the proposed findings for this case. In reaching this determination, OPA reasoned as follows: (1) there were notable inconsistencies between the statements provided to the PCSO and to OPA; (2) in comparison, the statements provided by the Subject/Complainant #2 and her daughter had largely been consistent across investigations; (3) even if the Subject/Complainant #2 and her son were discounted as witnesses given potential credibility concerns, NE#1 had not raised similar concerns regarding the daughter and there was no reason to question her credibility from OPA's perspective; and (4) the fact witnesses identified by NE#1 did not have personal knowledge of what occurred during the DV incident and both had their own interests to testify in the light most favorable to NE#1 given that they were his girlfriend and good friend, respectively.

After this supplemental investigation was completed and OPA's conclusions forwarded to the chain of command and the Chief, a second Loudermill hearing was held. At that hearing, NE#1 and his Guild representatives raised additional concerns regarding OPA's investigation and OPA's purported failure to fully explore the credibility of witnesses. NE#1 also presented a signed declaration from the friend, in which the friend re-confirmed his conversation with the Subject/Complainant #2 at Target. As a result, OPA requested consent from the Guild to conduct additional investigation to explore these issues. The Guild consented to a 60-day extension to permit OPA to do so. This memorandum sets forth the results of OPA's second supplemental investigation.



SECOND SUPPLEMENTAL INVESTIGATION:

A. Additional Investigation Conducted

1. Interview of the Subject/Complainant #2

OPA asked the Subject/Complainant #2 about the friend's account of their encounter at Target. The Complainant asserted that this was 100% false and stated that she had not seen the friend since well before her relationship ended with NE#1.

The Subject/Complainant #2 explained that she filed a lawsuit against NE#1 to recover money that she had invested in the home that they then shared. She stated that, in her lawsuit, she was seeking half of the equity realized in the home. The Subject/Complainant #2 denied that she was trying to extort NE#1. She said that she tried to contact NE#1 numerous times to resolve this issue but that he then sought a protection order against her. She said that she now only contacts him through her attorney. Lastly, the Subject/Complainant #2 asserted that her son, not her, was the initiator of this OPA complaint.

2. Interview of the Son (Complainant #1)

The son stated that he was aware that the Subject/Complainant #2 had sued NE#1 to recover her equity in the house. He stated that she tried to contact NE#1 multiple times before NE#1 got a protection order against her. The son said that, once NE#1 did so, the Subject/Complainant #2 hired an attorney and initiated the lawsuit. The son said that he is not a party to the lawsuit and that he does not have a financial interest in the lawsuit.

3. Interview and Re-Interview of the Daughter

OPA spoke to the daughter twice. On the first occasion, she was cooperative but declined to be recorded. She told OPA that she wanted to put this incident behind her and did not want to provide a statement. She explained that she did not want either NE#1 or the Subject/Complainant #2 to get in trouble and that she just wanted to move on with her life.

However, she referenced her prior statement to the SPD Detective who conducted the criminal investigation and said that she stood by that statement. OPA asked the daughter whether what she told the SPD Detective was truthful and accurate to the best of her knowledge and belief. She said that it was. The daughter again confirmed to OPA that she saw NE#1 kick her mother while on the stairs. She also again confirmed that she observed NE#1 walk out of his bedroom without injuries after being purportedly physically assaulted by Subject/Complainant #2 and that he returned minutes later with an injury on his face that he claimed was caused by the Subject/Complainant #2.

On the second occasion that OPA spoke to the daughter, she placed blame on the Subject/Complainant #2 for the ultimate demise of her relationship with NE#1. She also stated that, while NE#1 "did something dumb," the Subject/Complainant #2 "comes in like a hurricane" and "pushes people's buttons and makes people do things." She asserted that NE#1 was a "good guy."

The daughter acknowledged that the Subject/Complainant #2 did put a lot of money into the house but stated that she did not believe in taking someone to court and thought that the Subject/Complainant #2 should just "let it go." The daughter denied that she had any financial interest in the lawsuit.



When asked by the OPA investigator whether she wanted to amend any of her responses to the questions previously posed about her prior statement to the SPD Detective, the daughter said no. She again confirmed that what she told the SPD Detective was truthful and accurate.

4. Interview of the Friend

OPA re-interviewed the friend to further explore the alleged interaction with the Subject/Complainant #2 at Target. The friend stated that he did not buy anything at Target and left right after he spoke with the Subject/Complainant #2. He said that he was alone at the time, as was the Subject/Complainant #2. The friend could not provide a specific date upon which the interaction occurred and stated that it happened sometime between October 2018 and January 2019. He could not remember if the store was decorated for any particular holiday at the time. He stated that the interaction occurred in the late morning or early afternoon. He further provided a general description of what the Subject/Complainant #2 was wearing – a heavy coat that was potentially light in color. He stated that there were no store employees that he recognized on the date in question and that he was not aware of anyone else that witnessed the interaction.

The friend was asked why he did not have his declaration notarized or why he did not swear to it in front of a judge. The friend stated that NE#1 called him and told him that the declaration was needed by his attorney by the next day. The friend then wrote up the declaration and sent it to him. When confronted about the Subject/Complainant #2's denial that the interaction ever occurred, the friend stated to the OPA investigator: "I can understand the position you're in, trying to put it all together. I don't envy you. All I can say is that it happened."

Lastly, OPA discussed NE#1's recanting of his DV allegations against the Subject/Complainant #2. The friend said that he was not aware of this but that the recanting did not diminish NE#1's credibility in his mind.

B. Analysis

As with OPA's supplemental investigation into this matter, OPA still deems the daughter's account to be determinative. The daughter's statements have been consistent across investigations and are consistent with those provided by the Subject/Complainant #2. The daughter has no discernable motive to lie and no animus towards NE#1. Indeed, the daughter asserted that NE#1 was a "good guy" and stated that the Subject/Complainant #2 also bore fault for their tumultuous relationship. Moreover, the daughter had nothing to gain from the lawsuit and did not even support it being filed. Lastly, the daughter affirmed and re-affirmed that what she told the SPD Detective was truthful and accurate.

OPA also believed the Subject/Complainant #2's and the son's re-interviews to have been credible. The Subject/Complainant #2 provided a rational basis for the lawsuit, which was verified by the son and the daughter, and the son disclaimed any interest in the lawsuit.

The most compelling piece of evidence in NE#1's favor remains the friend's statement and declaration. However, when questioned further about the Target interaction, the friend could provide no actual proof that it occurred – including no date, no witnesses, and no receipts – aside from his unsworn declaration. OPA finds that this incomplete evidence does not overcome the daughter's statements. Indeed, at most, it implicates the credibility of the Subject/Complainant #2, not that of the daughter.

Ultimately, for the reasons stated above and in the other investigation that was conducted as part of this case, OPA maintains its prior recommended Sustained findings.