



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 6, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0178

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.150 – Advising Persons of Right to Counsel and Miranda – POL 2. Miranda Warnings Must Precede Custodial Interview	Not Sustained - Training Referral (Expedited)
# 2	15.410 – Domestic Violence Investigation – Pol 2 – Officer Make Arrests with Probable Cause (RCW 10.31.100)	Allegation Removed

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 the Named Employee (NE#1) unlawfully interrogated and arrested a minor.

ADMINISTRATIVE NOTE:

The Complainant also alleged Probation Officer’s (PO#1), the primary officer on this case and NE#1’s partner, police report failed to comply with SPD Policy 15.410 - Domestic Violence Investigation 15.410-TSK-2 Officer’s Report and Narrative. Specifically, PO#1’s report allegedly failed to include witness statements, photographs of the alleged injury, and other requirements. During PO#1’s OPA interview, he indicated the exigency of the call and victim’s uncooperativeness led him to omit certain requirements. The allegedly deficient report was also approved by a supervising officer. Considering PO#1’s inexperience¹ and ongoing training at the time, OPA directed the matter to his chain of command for Supervisor Action:

Requested Action of the Named Employee’s Supervisor: Please document by completing a Chain of Command Report, attaching the report to this case, and sending it to OPA through Blue Team.

- Discuss complaint and department policy with Named Employee.

Generally, Supervisor Actions involve allegations of minor policy violations or performance issues best addressed through training, communication, or coaching by the employee’s supervisor. *OPA Manual 5.4(B)(ii)*. OPA sends a memo mandating the employee’s supervisor take specific, relevant action with the employee. *Id.* The supervisor has 15 days to complete the action and return the case to OPA for review. *Id.*

¹ The alleged violation occurred during PO#1’s yearlong probationary period. See 2.020-POL-3 Probation-2 (The Probationary Period for Sworn Employees Shall Be Twelve (12) Months From the Date a Police Recruit Successfully Completes the Washington State Basic Law Enforcement Training Academy. PO#1 started at the Department about nine months prior.



SUMMARY OF INVESTIGATION:

On June 9, 2022, OPA received copies of the Complainant's City of Seattle Claim for Damages² and accompanying letter. OPA opened an investigation. During its investigation, OPA reviewed the complaint, Computer-Aided Dispatch (CAD) call report, an incident/general offense (GO) and supplemental reports, and Body Worn Video (BWV). OPA also interviewed NE#1 and PO#1. Evidence summaries are below:³

Complainant's letter to the City Clerk's Office (dated June 6, 2022)

The Complainant filed a tort claim for Community Members #1 and #2 (CM#1 and CM#2, hereafter). CM#2 was CM#1's 17-year-old child. The claim was based on Seattle Police Department officers' June 3, 2022 response to a reported disturbance at CM#1's home. That response started around midnight and ended around 3 AM, when CM#2 "was booked in juvenile detention." The letter included the related police report number and indicated discovery was requested. The tort claim intended "to give the City of Seattle proper notice of possible lawsuit." Two minors allegedly present during the police response were also mentioned. The Complainant alleged "officers interrogated (CM#2) behind closed doors" and "(CM#2) was not free to leave the bedroom during the interrogation, nor was her mother (CM#1) free to enter." CM#1 requested entry "at least once, if not several times." Officers refused. Those circumstances constituted "a custodial interrogation." While CM#2 wanted to remain silent, officers extensively questioned her without issuing Miranda rights. Additionally, CM#2 was not allowed attorney consultation prior to questioning as required by state law. CM#2 was arrested for Assault and taken to the King County Juvenile Justice Center. During transport, officers allegedly told CM#2 her arrested was based on statements made during the "custodial interrogation." Officers also allegedly referenced CM#1's criminal history and suggested CM#2 find somewhere else to live. Later, following a court appearance, CM#2 was released without charge.

Complainant's City of Seattle Claim for Damages (filed June 7, 2022)

CM#1 is the listed claimant. It also states CM#1 is "claiming on behalf of minor child (CM#2)." The "Describe Your Injury" section reads: "Nothing physical. Emotional distress, mental anguish, loss of dignity, and similar types of compensable general damages." The Complainant's signature appears at the bottom.

CAD call report

On June 2, 2022 at 11:51 PM, officers responded to CM#1's home. The initial call classification was "ASLTTV1 ASLT – IP/JO – DV." The final call classification was "083 –Dv – Domestic Viol/Aslt (Arrest Mandatory)." The 911 call taker noted: "(Reporting Party) REPORTING POSS 2 MALES AND 2 FEMALES ARGUING AND POSS ONE PERSON HIT ANOTHER PERSON." PO#1 was listed as the primary officer. NE#1, Witness Officer (WO#1), and Sergeant Officer (SO#1) were also "logged to the call."

GO/Incident report⁴

Listed parties include CM#1, CM#2, a 17-year-old victim (Victim#1), and a 17-year-old witness (MW#1). CM#1 told officers CM#2 and Victim#1 used to date. PO#1 was present for portions of NE#1's interview with CM#2. CM#2 initially denied a physical altercation with Victim#1, but later "broke down crying and admitted to physically harming (Victim#1)." Victim#1 "did not want to press charges." Victim#1 stated the altercation occurred after CM#2 learned

² Filed June 7, 2022.

³ Evidence is summarized as presented to OPA. OPA's assessment of the evidence is captured in the 'Analysis and Conclusions' section.

⁴ PO#1 wrote the report.



Victim#1 and MW#1 kissed in CM#1's bathroom. CM#2 "started punching (Victim#1). (Victim#1) fell to the ground, and (CM#2) continued to punch (Victim#1)." Victim#1 sustained "a cut to the top of his left ear."

Supplemental report⁵

This report was largely consistent with the GO/incident report. Additionally, it mentioned CM#2 and Victim#1 dated for about two years. After Victim#1 and MW#1 exited the bathroom, Victim#1 told CM#2 he cheated on her. CM#2 attacked Victim#1, causing his ear to bleed. Victim#1 told police, after CM#2 learned he kissed MW#1, she "beat his ass." CM#2 was arrested for "Assault 4 DV (9A.36.041)."

PO#1's BWV

PO#1 arrived and conferred with NE#1 and WO#1. The officers relocated to CM#1's apartment. Yelling was heard inside the unit. PO#1 knocked several times. CM#1 opened the door and allowed the officers to enter. CM#1 indicated a "misunderstanding" involving the three minors in the apartment. PO#1 directed NE#1 and WO#1 to address the minors while he spoke with CM#1. CM#1 stated she was asleep when she heard CM#2 and Victim#1 yelling. She did not know the whole story but learned CM#2 was upset about Victim#1 kissing MW#1. PO#1 told CM#1 witnesses reported a "thud, loud noise." CM#1 explained "(Victim#1) ran for the door and (CM#2) went to grab him and he fell." CM#2 denied hearing threats, or anyone thrown to the ground. PO#1 told CM#1, "I'm going to have you stay right here." CM#1 did not object or ask to be with CM#2. PO#1 and NE#1 conferred. Both gathered similar accounts. NE#1 noted Victim#1 and CM#2 denied a physical altercation. PO#1 joined WO#1, who interviewed Victim#1 in a separate room. PO#1 relocated to a room with NE#1, CM#2, and MW#1. MW#1 asked to speak with NE#1. PO#1 reentered the room with Victim#1 and WO#1. WO#1 asked whether PO#1 saw Victim#1's injured ear. WO#1 stated Victim#1's ex "kicked his ass." Victim#1 is captured saying, "My mama taught me way better than that...her mother taught her to fucking beat (N-word) up."

PO#1 called SO#1 to discuss the situation. PO#1 also confirmed the minimum age to arrest was sixteen and that the aggressor would go to Youth Service Center. CM#1 asked for an update. PO#1 replied he was "still trying to figure it out right now." CM#1 reiterated she was asleep but added "(Victim#1) was really yelling at her. Calling her the N-word and all kinds of stuff." Victim#1 confirmed with WO#1 that CM#2 hit him during their altercation. Officers arrested CM#2 without incident. Further, CM#2 never asked for her mother or to leave the room during questioning. CM#1 stated, "I don't understand, she didn't do anything." CM#2 replied, "Yes, I did mom and I admitted to it." PO#1 read CM#2 Miranda and the additional juvenile admonishments. CM#2 indicated she understood. Victim#1 and MW#1 left with the officers. Victim#1 refused a domestic violence pamphlet, but MW#1 accepted it. PO#1 also gave MW#1 a business card. PO#1 conferred with NE#1 again. NE#1 indicated:

(CM#2) started breaking down crying and said, 'Yeah I did it, I beat him...all I saw was I pushed him down,' she said, 'after he told me he cheated on me all I saw was red.' CM#2 also claimed Victim#1 pushed CM#1.

NE#1 stated CM#2 broke down after NE#1 confronted her about Victim#1's bloody ear.

WO#1's BWV

After entering CM#1's apartment, WO#1 located a room with MW#1, CM#2, and Victim#1. All appeared calm. CM#2 stated, "it's just a loud fight...just a lot of yelling." WO#1 directed Victim#1 out of the room and told NE#1 to address

⁵ PO#1 also wrote this report.



“the girls.” WO#1 and Victim#1 entered a separate room. Victim#1 sat on a bed and WO#1 stood in a doorway. WO#1 asked what happened. Victim#1 replied, “arguing, arguing, arguing...too much fucking noise.” Victim#1 stated CM#2 was his ex-girlfriend. Victim#1 denied a physical altercation or anyone making threats. Victim#1 refused to “snitch,” but stated his ear and face hurt. Victim#1 stepped toward WO#1 while motioning towards WO#1 BWV camera. WO#1 covered the camera with his hand.⁶ WO#1 removed his hand and Victim#1 was back on the bed. WO#1 asked “open, closed to the face?” Victim#1 approached WO#1 and whispered.⁷ WO#1 replied, “Okay.” WO#1 inspected Victim#1’s ear and stated, “Yeah that’s going to sting a bit.” WO#1 asked the name of the person who hit Victim#1. Victim#1 indicated CM#2. WO#1 pressed for details and suggested no one would be arrested. Victim#1 reluctantly indicated CM#2 hit him three times. Victim#1 reiterated he did not want CM#2 arrested. CM#2 was arrested. WO#1 spoke to CM#2, who was in the backseat of a patrol car. WO#1 told CM#2 state domestic violence law required her arrest. CM#2 asked what Victim#1 reported. WO#1 responded, “(Victim#1) didn’t say anything. His bleeding ear said something, and you told my partner what happened.”

NE#1’s BWV

After entering CM#1’s apartment, NE#1 relocated to a room with CM#2 and MW#1. NE#1 asked, “what’s going on?” CM#2 described MW#1 as a friend and Victim#1 as “basically” her boyfriend. MW#1 stated CM#2 wanted to fight her. MW#1 indicated she wanted to leave. CM#2 denied wanting to fight MW#1. NE#1’s BWV captured CM#2 close the room door.

NE#1’s OPA interview

On September 23, 2022, OPA interviewed NE#1.⁸ NE#1 served the Department over four years. NE#1 described the primary officer as responsible for orchestrating officers and making decisions during a response. Secondary officers assist with investigations. She suggested officers are allowed to question suspects without issuing Miranda warnings until probable cause to arrest is determined. Once probable cause is established, NE#1 would stop the interview and issue Miranda warnings “before questioning a person who is in custody.” NE#1 described probable cause as “beyond reasonable doubt that somebody committed a crime and that they need to be arrested.” NE#1 suggested, following arrest, officers often ask the arrestee “any clarifying questions.” She also indicated arrestees often volunteer “their side of the story after they’re in custody.” NE#1 stated, while enroute to CM#1’s apartment, a dispatch indicated the victim was female. Upon arrival, CM#1 “gave (them) you know permission to come inside to talk to the kids.” The subjects looked “18 plus or a little younger,” so NE#1 was unsure whether they were juveniles. NE#1 spoke with MW#1 and CM#2. She did not separate them, because NE#1 presumed CM#2 was the victim based on her “distressed” appearance. NE#1 thought having MW#1 present would “comfort her.” MW#1 and CM#2 appeared “under the influence of possibly intoxicants.” MW#1 did most of the talking, not CM#2. Both initially denied a physical altercation. Later in the conversation, MW#1 stated she was seventeen and CM#2 gave her date of birth. However, NE#1 “wasn’t really doing the mental math.” After learning about Victim#1’s injured ear, NE#1 confronted MW#1 and CM#2. CM#2 cried and indicated she caused it. Based on the earlier dispatch describing the victim as female and CM#2 having what appeared to be a “carpet burn on her leg,” NE#1 thought CM#2 possibly acted in self-defense. NE#1 continued questioning to clarify whether CM#2 was a victim “trying to defend her boyfriend” or aggressor. NE#1 identified CM#2 as the aggressor after CM#2 indicated she hit Victim#1 “because she was upset.” At that point, NE#1 stopped the interview.

PO#1’s OPA interview

⁶ For roughly 20-seconds, there is no audio or visual of WO#1 and Victim#1’s conversation.

⁷ WO#1’s BWV did not pickup what Victim#1 whispered.

⁸ NE#1’s union representative was present.



On September 23, 2022, OPA interviewed PO#1. His probationary status ended September 10, 2022. PO#1 was the primary officer for the investigation. The primary officer's role is "to investigate the crime, to develop PC (probable cause) and to effect an arrest. The role of a secondary officer is basically to do whatever the primary officer tells him to do...watch his back, interview anyone else that he needs them to." PO#1 objective was to "talk to as many parties as one can and try to find the full scope of what happened." PO#1 assigned secondary officers to help interview those on scene "so the call moves along quickly and smoothly." PO#1 suggested Miranda warnings are required when "you think you're going to arrest (a subject)" and when subjects "start to incriminate themselves." He was taught probable cause required at least 50% certainty a subject committed a crime. Upon arrival at CM#1's apartment, PO#1 directed NE#1 to "find out where the other people that are in the house (are)." PO#1 established probable cause to arrest CM#2 after learning about Victim#1's injury and identification of her as the offender. However, CM#2's admission to NE#1 solidified probable cause.

*The Complainant declined OPA interviews for his clients.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.150 – Advising Persons of Right to Counsel and Miranda – POL 2. Miranda Warnings Must Precede Custodial Interview

NE#1 allegedly failed to issue Miranda warnings prior to a custodial interview of a juvenile.

Officers must give Miranda warnings before questioning a someone in custody. SPD Policy 6.150-POL-2. Custody considerations include: (1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual." *United States v. Bassignani*, 575 F.3d 879, 883 (9th Cir. 2009). A juvenile's age is a consideration in determining whether the juvenile would not feel free to leave. SPD Policy 6.150-POL-2. A child may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not. *Id.* Miranda warnings for juveniles require additional admonishments:

If you are under the age of 18, anything you say can be used against you in a juvenile court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if you are to be tried as an adult.

SPD Policy 6.150-POL-4.

Further, after issuing Miranda warnings, officers will not question a juvenile until the juvenile has consulted with legal counsel. SPD Policy 6.150-POL-5.

Here, NE#1 questioned CM#2 three times for a total of about 30 minutes. Each interview occurred in CM#2's room while CM#2 sat on the floor unrestrained. Unaware of MW#1's role in the altercation, NE#1 allowed her to stay and comfort CM#2, who NE#1 assumed was the victim. NE#1's BWV captured CM#2 close her bedroom door while NE#1 questioned CM#2 and MW#1. Finally, after learning about Victim#1's injury, NE#1 confronted CM#2 and MW#1 about it:

- NE#1: We're going to get to the bottom of this. (Victim#1) has a bloody ear.



- MW#1: What the fuck?
- NE#1: Yeah.
- NE#1: So, (Victim#1) has a bloody ear and he's saying somebody kicked the shit out of him.
- (CM#2 cries)
- NE#1: (CM#2) was that you?
- (CM#2 nods in the affirmative)

NE#1 told OPA she continued questioning CM#2 to clarify whether CM#2 acted in self-defense:

- NE#1: (CM#2), can you tell me what happened?
- CM#2: I trusted him...I hurt so bad...I saw red, and I hit him, and I hurt him...
- NE#1: So, when you say you hit him, did you push him down on the ground?
- CM#2: I pushed him down on the ground and I hit him ...(inaudible)...I don't care...I don't care if you guys have to arrest me, I don't care if I have to spend a night in juvenile detention...yes, I did, I hit him...

Thereafter, NE#1 conferred with PO#1 and PO#1 arrested CM#2. Overall, the totality of the circumstances does not suggest CM#2 was subject to a custodial interrogation, where she felt unfree to leave. Particularly, where CM#2 closed her bedroom door during the questioning, never requested her mother, and was apparently surprised when she was arrested: "Why am I the only one getting in trouble?" While OPA understands CM#2 was a minor, we also note she was roughly eight months from adulthood. Further, NE#1's communications with CM#2 following the issuance of Miranda warnings was primarily to answer CM#2's questions, rather than fishing for additional information:

- CM#2: Why am I the only one getting in trouble?
- NE#1: So, the reason why you're the one getting in trouble tonight is you can't go around beating people up.
- CM#2: He pushed my mom.
- NE#1: Okay.
- CM#2: My mom didn't put hands on him, and he pushed my mom.
- NE#1: Okay, was that before or after he was on the ground, and you were punching him? Cuz he's bleeding from the ear pretty good. No matter.
- CM#2: That was before. My mom said something that set him off and pushed my mom back and she fell into my lamp.
- NE#1: That's not what she told us. Your mom said she didn't see anything, she just heard it.

Undeniably, when questioning should have ceased until CM#2 consulted with an attorney, NE#1 posed a single question then apparently retracted it: "Okay, was that before or after he was on the ground, and you were punching him? Cuz he's bleeding from the ear pretty good. *No matter* (emphasis added)." Ultimately, OPA finds NE#1 would benefit from SPD's 2022 Virtual Classroom Day training which covers questioning juveniles.⁹ NE#1 had not taken that training prior to her interactions with CM#2. Similarly, NE#1 would benefit from counseling on probable cause. During her OPA interview, NE#1 described it as "beyond reasonable doubt that somebody committed a crime."

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained - Training Referral**

⁹ That training was scheduled to run until December 15, 2022.



Named Employee #1 - Allegation #2

15.410 – Domestic Violence Investigation – Pol 2 – Officer Make Arrests with Probable Cause (RCW 10.31.100)

NE#1 allegedly made a domestic violence arrest without probable cause.

Officers will make arrests with probable cause. SPD Policy 15.410-POL-2 citing RCW 10.31.100.

Here, all evidence suggests PO#1, not NE#1, determined probable cause and executed CM#2's arrest. As mentioned above, OPA referred allegations against PO#1 for Supervisor Action.

Accordingly, OPA recommends this allegation be removed.

Recommended Finding: **Allegation Removed**