



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 1, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2015OPA-1395

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	Not Sustained (Timeliness)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Timeliness)
# 3	5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Inconclusive)

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, a Port Orchard police officer, alleged that the Named Employee committed an assault at a bar. In addition, he stated that the Named Employee was intoxicated and rude during his interview.

ADMINISTRATIVE NOTE:

OPA issues findings in this case outside of the 180-day timeline imposed by the collective bargaining agreement between the City and SPOG. OPA regrets the delay in completing this case, which has been pending since 2015. For this reason, two findings in this case are issued as Not Sustained for reasons of timeliness. Had OPA timely issued its findings, it would have recommended that these two findings be Sustained.

SUMMARY OF INVESTIGATION:

On September 12, 2015, at approximately 0300, a night duty captain at SPD received notification that a Department employee had been arrested in Port Orchard. After speaking with Port Orchard Police Department (POPD) employees, the captain made a report in Blue Team. This OPA investigation ensued.

On the previous night, Named Employee (NE#1) was off duty and in civilian attire. He and a group of friends were at the National Public House bar in Bremerton. NE#1 was drinking and one of his friends was the designated driver. While at the bar they met an individual, referred to here as the victim. They interacted cordially at the National Public House. As they were leaving, the victim was involved in a minor collision between his car and that of one of NE#1’s friends when both vehicles attempted to back out of parking spaces at the same time. The police were not called and there was no interaction at that time.



Later, NE#1 and his friends were at the MoonDogs, Too bar in Port Orchard when they encountered the victim again. According to the POPD investigation, NE#1 and the victim were in the restroom of the bar when they were observed by a witness. The witness reported that the victim and NE#1 were speaking about the accident. He stated that the victim attempted to leave the restroom and that NE#1 blocked him from doing so. NE#1's friend, who was nearby, rushed over and an altercation ensued. During the altercation, the victim was struck multiple times resulting in facial injuries, and the bathroom sink was smashed such that it fully detached from the wall. NE#1 and his friends left the bar immediately after the altercation in two vehicles, and bar staff called POPD. The call was placed shortly after midnight. When POPD responded, they encountered the victim, who had a laceration on his eyebrow and was bleeding. He stated that he was assaulted by two men.

A witness, who did not know either party but was in the bathroom at the time, gave three accounts to POPD. The first account was summarized by two officers. According to POPD Officer #1, the witness stated that he observed the victim try to leave the bathroom when NE#1 blocked him. He stated that NE#1's friend, the second assailant, rushed over and went into the bathroom. He stated that "they" began punching the victim causing him to fall to the ground.

According to POPD Officer #2, summarizing the same statement delivered orally at the scene, the witness stated that NE#1 prevented the victim from leaving the bathroom. The assailant then entered and pushed the victim down, causing the sink to fall off the wall. The assailant then started punching the victim while he lay on the ground.

The witness also gave a written statement, which differed slightly. In his written statement, he stated that NE#1 prevented the victim from leaving the bathroom and that NE#1's friend, the assailant, knocked the victim down and punched him. In his written statement, the witness did not allege that NE#1 himself hit the victim.

Later, POPD Officer #2 re-interviewed the witness. In his second interview, the witness stated that NE#1 and the victim had a verbal confrontation in the bathroom. The witness reported that the conversation lasted "about a minute," and that the victim told NE#1 "come on, man, I just want to leave," and that NE#1 prevented him from exiting. The friend entered and pushed the victim down and began to punch him. The witness stated that he left to inform security but that he could "hear punches" as he left.

POPD also obtained security footage from the bar. The footage, which OPA viewed, depicted the victim going into the restroom. Shortly after, NE#1 walked into the bathroom. His friend, the second assailant, stood outside the bathroom for several minutes. The video then showed NE#1 exit the bathroom at approximately the same time as NE#1. Moments later, NE#1 shoved the victim back inside the bathroom and the second assailant ran over while the two struggled. NE#1 and the friend pushed the victim inside the bathroom. The friend went in first, and NE#1 followed. Moments later, the friend ran out of the bar. NE#1 followed, walking. The video, which did not show the interior of the bathroom, is inconclusive as to the question of whether NE#1, the victim, or the friend initiated violence.

POPD stopped a white Toyota 4-Runner containing the friend involved in the assault. A bar employee who remembered the group identified the friend as one of the assailants during a show up. After the bar employee identified the assailant, he was arrested for assault and several outstanding warrants. She also stated that another man was involved in the fight and that people at the bar told her that he had identified himself as a police officer and displayed his badge. POPD interviewed the men in the 4-Runner, who provided NE#1's first name.

At approximately 0200 hours, around two hours after the incident took place, NE#1 called 911 to report that he had been in an altercation with an individual at a bar. He provided the call taker a phone number at which he could be



reached and the address of the home he was staying in, which belonged to a friend and was in Bremerton. A POPD officer, who is the Complainant in this case, contacted NE#1 at 0243 hours. The conversation, including quotations, was documented in his police report. NE#1 confirmed that he was in an altercation but refused to answer clarifying questions. When asked if he was a Seattle police officer, NE#1 refused to answer and became argumentative. He stated that if the Complainant wanted him to answer questions or be photographed, he could drive out to Bremerton. The Complainant said that he would not drive to Bremerton and that NE#1 could come to the POPD station if he desired to give a statement. NE#1 responded, "the last time I saw a Port Orchard cop, he was accused of rape!" The Complainant asked again if NE#1 was a police officer. NE#1 stated that he was. The Complainant said that if their roles were reversed, he would not treat NE#1 in the manner NE#1 was treating him. He provided NE#1 the address of the POPD station and ended the call. The Complainant then called SPD and reported the incident to the night duty captain.

At approximately 0350 hours, NE#1 arrived at the POPD station. The Complainant, as well as a POPD sergeant, gave him Miranda warnings and commenced the interview. The Complainant noted in his written statement that NE#1 smelled strongly of intoxicants. In his interview, NE#1 exercised his right not to provide a statement. He stated, however, that he had been hit in the head. The POPD sergeant and the Complainant examined his head and saw no swelling, redness, or indication that he had been struck. They also examined and photographed his hands. They stated that there was a slight redness visible on his knuckles consistent with being in a fistfight. OPA examined the photos of NE#1's head and hand and determined them to be inconclusive. NE#1 then placed a phone call to an individual later identified as Witness Officer #1 (WO#1), an SPD officer. During the call, he stated that POPD was "denying" him medical treatment for his head injury. This statement was documented in the offense report narrative by both the POPD officer and the sergeant. The POPD sergeant stated that this was not accurate. They asked if NE#1 wanted to be seen by EMS. He stated that he did and a call was placed for EMS. They responded, examined NE#1, and noted no injuries. After the interview, POPD issued NE#1 a citation for assault in the fourth degree, a misdemeanor. In a later interview with OPA, the POPD sergeant stated that he also received a call later that evening from an SPD assistant chief, who apologized to POPD based on the call that the Complainant made to the night-duty captain earlier.

On August 8, 2016, the Port Orchard City Prosecutor dismissed the charges against NE#1 under the Compromise of Misdemeanor statute. See RCW 10.22. Under the Compromise of Misdemeanor statute, the party injured in the commission of certain misdemeanors may receive financial compensation from the defendant, after which the court will dismiss the charges. In explaining the disposition of his case to OPA, NE#1 stated that the victim approached him requesting payment in exchange for dropping the charges. NE#1 stated that he declined to pay.

OPA interviewed NE#1. In his interview, NE#1 denied assaulting the victim. He stated that as he was leaving the bar bathroom, the victim punched him in the side of the head. He stated that he shoved the victim, and that subsequently his friend, the second assailant, ran over and helped him defend himself. He stated that he was not carrying his badge or gun on that evening and did not state to bar patrons that he was a police officer. He also stated that he assumed the case was dismissed because the victim did not want to testify. He also stated that the individual he spoke to on the phone from the POPD station was an SPD officer, Witness Officer #1 (WO#1).

OPA interviewed WO#1. WO#1 stated that he received two phone calls from NE#1. The first phone call was to inform him of the situation. An SPD lieutenant was also on the first call. WO#1 explained that he was a training officer for NE#1 and that NE#1 contacted him as a witness officer after the incident. On the second call, which occurred at the POPD station, WO#1 recalled NE#1 saying that he was being denied medical attention. He recalled that one of the POPD officers on the call was initially rude but that after WO#1 explained that he was an SPD officer, the POPD officer explained that medical aid was not being withheld. WO#1 stated that he believed NE#1 was professional on the call.



WO#1 also produced text messages corroborating NE#1's statement that the victim was seeking money. The text messages were sent by NE#1 as screenshots to WO#1. The texts, between NE#1 and his attorney, showed NE#1 directing his attorney to take the case to trial. NE#1 stated in the text messages that he believed SPD may have viewed payment of money as an admission of fault.

OPA also spoke to the Port Orchard deputy city prosecutor assigned to the case. The prosecutor stated that the case was dismissed pursuant to the Compromise of Misdemeanor statute. She stated that it was not dismissed for lack of evidence and that in her opinion, the case was evidentiarily strong. The prosecutor stated that it was possible NE#1 misunderstood the reason for the case's dismissal. She theorized that NE#1's attorney may have done a poor job explaining the case disposition.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Based on OPA's investigation, there is sufficient evidence to find that NE#1 violated the law as well as Department policies.

A person is guilty of assault in the fourth degree if he intentionally assaults another. *See* RCW 9A.36.041. In addition, Washington state law makes it a crime to be an accomplice to an assault. *See* RCW 9A.080.020. An individual may be liable for the acts of another if he knows that his action will promote or facilitate the commission of a crime, and he aids another person in the crime's commission. *Id.*

OPA reaches its conclusion for the following reasons. First, the only witness who saw the altercation consistently stated that NE#1 prevented the victim from leaving the bathroom and said that NE#1 and his friend, not the victim, initiated violence. Second, photographs taken by POPD at the station show no visible evidence that NE#1 was struck on the head. OPA acknowledges that photographs taken after the fact are not necessarily dispositive evidence of whether an individual was assaulted, but finds that in combination with other evidence the photographs do not support NE#1's statement that he was defending himself. Third, surveillance video showed that NE#1 made no effort to de-escalate the situation, rather he followed his friend inside the bathroom and either participated in an assault or watched one occur. That assault was serious enough to leave the victim bleeding and caused a sink to be torn from the wall. Rather than summon assistance, NE#1 departed with his friends. Combined with the witness statement, OPA finds that the preponderance of the evidence suggests that NE#1 was party to an assault and thereby violated the law. At minimum, OPA finds that the preponderance of the evidence shows NE#1 stopped the victim from leaving the bathroom and struggled with him briefly, and that he then stood by while his friend, the second assailant, beat the victim. It is uncontroverted that NE#1 at no time summoned aid, as would be expected of a law enforcement officer.

In addition, OPA places no weight on the fact that this prosecution was dismissed under the Compromise of Misdemeanor statute. As in a civil matter, parties are entitled to settle such cases, and it would be improper for the dismissal to later prejudice either party. Here, the dismissal does not indicate a lack of evidence in the prosecution's case. Likewise, it does not indicate that NE#1 would have been found guilty. OPA accepts the deputy prosecutor's statement that she believed her case was strong for what it was: the opinion of a qualified professional who judged that she had probable cause to maintain a prosecution for the underlying offense.



Finally, even if the evidence suggested that the victim threw the first punch—which OPA stresses it does not—the violence of the assault was plain from destruction evident in the bathroom afterward. Such conduct goes well beyond that necessary for self-defense and meets the elements of the two crimes noted above. For these reasons, had the 180-day timeline not run, OPA would issue a sustained finding for this allegation. As OPA missed its deadline, it instead recommends that this allegation be Not Sustained for reason of timeliness.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the reasons stated in the above allegation, there would be grounds for OPA to sustain a violation of this policy. However, OPA find independent reasons to do so as well.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

OPA finds that NE#1’s conduct while being interviewed by POPD was sufficient basis to issue a sustained finding. OPA expressly notes that NE#1 was not under any obligation to make statements that could be used against him and does not factor his silence into its finding. Rather, OPA notes that in the process of declining to cooperate, NE#1 made several statements that were demeaning and derogatory to the POPD officers and their department. First, and most egregiously, NE#1’s statement that the last time he interacted with a Port Orchard officer, that officer was “accused of rape,” a statement wholly unrelated to this incident and which could only have been intended to demean the listener and POPD. Second, NE#1’s statement to WO#1 that he was being denied medical attention was also a serious accusation in the context of custodial interrogation. Taken alone, it would not necessarily be grounds to sustain findings. However, in the context of NE#1’s other statements, OPA finds that it contributed to an overall pattern by NE#1 of demeaning the work of officers who were doing their duty. Such conduct reflected poorly on NE#1 and the Department of which he is a member, causing an SPD assistant chief to call POPD to apologize for NE#1’s conduct. For these reasons, had OPA issued its findings within the timeline, it would issue a sustained finding here. Instead, as above, it recommends that this allegation be Not Sustained for reason of timeliness.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.) This allegation, which is based on statements by the bartender that she heard from others about an individual waving a badge, cannot be proven one way or the other. No witness was found who specifically recalled NE#1 state that he was a police officer, and that was not the focus of POPD’s investigation. Insofar as NE#1 did ultimately



identify himself as a police officer, he did not seem to do so to obtain any benefit. However, OPA likewise cannot rule out that NE#1 did so. For this reason, OPA recommends that this allegation be Not Sustained – Inconclusive.

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