



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 6, 2018

CASE NUMBER: 2018OPA-0347

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)

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 victim’s advocate, and the victim alleged that the Named Employee made unprofessional comments, may have acted with bias, and failed to conduct a thorough and complete search for evidence.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) responded to the University of Washington to investigate an assault. NE#1 met the victim and the Complainant, who is a victim’s advocate. The victim indicated that she had gone out with friends and two men. Later in the evening and after she had consumed alcohol, she engaged in a verbal dispute with one of the men that resulted in her throwing a glass of water in his face. She claimed that he then slapped her in the face, pushed her to the ground, and dragged her out of the room. The victim stated that she suffered injuries and that she had photographed some of those injuries using her cell phone.

NE#1 asked the victim questions to determine more detail regarding what had occurred. At several points, NE#1 advised the victim that she should be careful to not consume as much alcohol when going out. Specifically, NE#1 told the victim that, with regard to prosecution of her assault, her intoxication was a “problem” as her recollection was impaired. NE#1 told her that there was a lesson to be learned, namely not going out drinking, and that she needed to be responsible for her safety. He told the victim to not drink so much where she cannot take care of herself and the go home with someone she does not know. He continued to tell her to watch her drinking, ending the conversation by stating: “that’s your fatherly advice for today.”



Both the Complainant and the victim told OPA that they believed NE#1's statements to be inappropriate, unprofessional, and to constitute "victim blaming." NE#1 stated that he offered his comments in good faith and in an attempt to provide the victim with advice. He denied that he was "victim blaming" and noted that he listed the victim as such on the General Offense Report. He told OPA that he did believe that the victim was at least somewhat at fault as well in this incident.

SPD Policy 5.001-POL-9 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-9.) 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.*)

While I have no doubt that NE#1 meant well when he offered his "advice" to the victim, I find that it was tone-deaf and ill-considered. Notably, not only did the victim view these comments as critical, unhelpful, and as constituting "victim blaming," the Complainant, who was an experienced victim advocate who often worked with law enforcement, did as well. NE#1 should have considered that the victim, who had just been slapped, knocked to the ground, and dragged across the floor, wanted sympathy, reassurance, and investigatory action from NE#1, not counseling on her consumption of alcohol and her going home with people she did not know.

Even though I believe that NE#1's comments were not appropriate under the circumstances, I do not believe that this rises to the level of a violation of the Department's professionalism policy. In reaching this decision, I rely heavily on my belief that NE#1 did not mean to be insulting or dismissive. I also counsel him to learn from this situation, to consider how poorly received his comments were, and to avoid engaging in the same behavior in the future.

- **Training Referral:** NE#1 should be retrained as to the Department's professionalism policy. His chain of command should remind him of their expectations of his conduct when he is interacting with victims. NE#1 should be counseled concerning his comments to the victim in this case and how both she and the Complainant perceived those comments as insulting, dismissive, and as constituting "victim blaming." NE#1's chain of command should go over some alternative approaches that he could have used in this scenario and encourage him not engage in such conduct in the future. Lastly, NE#1's chain of command should contact the Complainant and the victim and inform them of what steps they took to address this case and how they have ensured that similar situations will be avoided in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

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

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal



characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Both the victim and the Complainant asserted that NE#1 may have engaged in biased policing. The victim alleged that NE#1 was biased because he “dismissed” her claim that she had been assaulted. The Complainant alleged that NE#1 did not take photos of the Complainant’s injuries because her skin was too dark and the injuries would not show up. The Complainant believed that NE#1’s statements in this regard were “racially charged.”

With regard to the victim’s allegation, while I find that NE#1 certainly could have been more empathetic and that his statements to the victim were largely inadvisable, I do not believe that he engaged in biased policing. From my review of the record, including the BWV and NE#1’s OPA interview, I conclude that he formed his opinion of the likelihood that the victim’s case would be prosecuted based on his experience and evaluation of the evidence. Moreover, even if NE#1 could have been more tactful during his interaction with the victim, he did generate a General Offense Report that was passed on to a follow-up unit and this case was later referred to the City Attorney’s Office to evaluate filing charges and prosecution. The City Attorney’s Office ultimately made the decision not to move forward.

With regard to the Complainant’s allegations, the BWV indicates that NE#1 did not actually refuse to take photos. As he explained, he did not have a camera and could not do so. He told OPA that it had nothing to do with the color of the victim’s skin and, had he had a camera, he would have documented her injuries. The BWV further indicated that, when NE#1 referenced the victim’s skin tone, he did so in the context of providing her advice on how to later document her injuries. While again inartful and while interpreted negatively by both the victim and the Complainant, I do not believe that this constituted biased policing.

Ultimately, the evidence is insufficient to establish that NE#1 treated the victim disparately or in a discriminatory fashion due to her race or her membership in a protected class. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 concerns primary investigations and directs officers to conduct a thorough and complete search for evidence. Where there is available evidence, officers must collect the evidence unless doing so would be impractical. In such cases, officers are required to photograph the evidence.

During his conversation with the victim, NE#1 became aware that she had pictures of her injuries saved on her cell phone. He did not, however, collect that evidence.

NE#1 explained to OPA that he was not going to take her cell phone into evidence. When OPA asked him why he did not have the victim text the photos to him, NE#1 stated that he did not believe that it was appropriate to give her his personal cell phone number and that he did not have a work cell phone.



When asked why he did not have her email the photos to him, NE#1 did not provide any explanation. Moreover, NE#1 was recording Body Worn Video on the date in question and he could have pointed his camera at the photos to document them; however, he did not do so.

SPD policy required him to take steps to collect the victim's evidence. He did not do so. Instead, he simply told her to provide the photos to the follow-up unit. However, the photos could very well have been lost or deleted in the meantime and early collection of the photos could have influenced the priority placed on the case and how that case was handled moving forward. When he failed to do so, he acted contrary to the express requirements of the policy.

That being said, I believe that a Training Referral is the more appropriate result here for two main reasons. First, NE#1 did not have a work cell phone on the date in question, so it was not possible for him to photograph the photos or to have the victim text them to him. I believe that if he had this equipment, he would have done so. It is OPA's understanding that officers Department-wide will be assigned cell phones in the future and this will hopefully remedy this situation moving forward. Second, I find that this is a minor technical policy violation that is better remedied by training. I note, however, that if NE#1 violates this policy again without a reasonable excuse, OPA will recommend a Sustained finding.

- **Training Referral:** NE#1 should receive additional training concerning the elements of SPD Policy 15.180-POL-1. He should be instructed that he is expected to collect evidence where not impractical. Moreover, he should be instructed that where a victim has photos on a cell phone, that he should have that victim email the photos to him or document those photos on his camera. It is unacceptable to simply not do anything. Lastly, NE#1 should be informed that his failure to comply with this policy in the future will result in a Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**