



## **CLOSED CASE SUMMARY**

ISSUED DATE: JULY 15, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0051

### **Allegations of Misconduct & Director’s Findings**

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.280 - DUI Investigations 15.280-TSK-2 Officer Task-Reporting	Not Sustained - Training Referral
# 2	7.010 - Submitting Evidence 1. Employees Secure Collected Evidence	Not Sustained - Training Referral
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained
Imposed Discipline		
Oral Reprimand		

***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 (NE#1) may have destroyed evidence relating to a Driving Under the Influence (DUI) packet during a DUI and Hit and Run investigation. It was further alleged that NE#1 may have abused his discretion during the investigation when he took over two (2) hours to obtain a breathalyzer reading (BAC 2) and chose to charge an arrestee, Subject Driver #1 (SD#1), with Negligent Driving in the 1st Degree, instead of DUI.

### **SUMMARY OF INVESTIGATION:**

This complaint was made by a senior Assistant City Prosecutor. It was reported that NE#1 initially processed SD#1 for a DUI but then destroyed partial evidence (BAC machine document and/or the DUI packet). The Prosecutor’s Office also had concerns about NE#1 (1) citing SD#1 for negligent driving in the 1st degree instead of DUI, (2) telling SD#1 that he would be released if he blew under a 0.07, (3) taking 2 ½ hours to get SD#1 to blow into the BAC machine, (4) allowing SD#1 to speak with his mother, and (5) whispering to another officer.

OPA commenced an investigation and reviewed all the associated documentation with this complaint. OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report and Supplement, In-Car- Video (ICV), and Body Worn Video (BWV). NE#1’s entire response to, and investigation of, this incident was recorded on his BWV. As such, these underlying facts are not in credible dispute. OPA interviewed NE#1.



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**1. The Original DUI Complaint**

The underlying DUI complaint originated as a result of the SD#1's driving. The associated CAD for the incident stated that a possible intoxicated male hit a parked vehicle, and that the vehicle was swerving into oncoming traffic for about one mile prior to hitting the parked vehicle.

NE#1 was dispatched to the call as the Primary officer. NE#1 activated his BWV and ICV on arrival at the scene. NE#1 spoke with an independent witness, Community Member #1 (CM#1). CM#1 explained, to NE#1, that he witnessed a Blue Honda CRV strike a red Chevy and continued driving. CM#1 further stated that he followed the Blue CRV for about a mile and then witnessed the Blue CRV cross the center line of the street as it drove. CM#1 also reported that he saw the driver, SD#1, exit the Blue CRV and reported to NE#1 that SD#1 appeared intoxicated and unsteady on his feet.

**2. Detention of Subject**

After speaking with CM#1, NE#1 then contacted SD#1 and subsequently reported that he detected the odor of Alcohol on SD#1's breath, SD#1's eyes appeared watery droopy and blood shot, SD#1 appeared unsteady on his feet, SD#1 would forget to answer questions, and when SD#1 did answer questions his responses were repetitive.

SD#1 consented to Standard Field Sobriety Tests (SFSTs) and NE#1 later reported that, "I conducted the HGN test and observed 4 clues. I conducted the Walk and Turn Test and observed 4 clues. I conducted the One-Leg Stand Test and observed 3 clues. During the HGN test, [SD#1] was unable to maintain his balance and fell into a chain-link fence. SD#1 swayed back and forth during the HGN test. During the Walk and Turn test, I had to repeat the instructions several times and SD#1 missed heel-to-toe and used his arms to balance." SD#1 refused to provide a breath test into a PBT. NE#1 then placed SD#1 under arrest for investigation of DUI.

During his detention at the scene, SD#1 was permitted to have a cigarette. SD#1 stated that he was already upset with himself and that he worked for a living and had children to support. When NE#1 discovered SD#1's history of DUI, NE#1 stated to SD#1, "I'm gonna do what I can...but there are certain things I can't make promises for, and we will talk about it, we will talk about it man to man at the precinct, about what's going on, about what I have to do ok and what my options are for you, Ok. If you are working with me, I will work with you, ok."

SD#1 was transported to the Southwest Precinct for processing. SD#1 asked NE#1 what was going to happen. NE#1 stated, "I do a lot of things, but I don't make promises and I don't keep secrets." NE#1 stated that he would go through options and that "There may be a decision I have to make, but if I can work my way around that, and that decision is spending the night in jail. If I don't have to do that than I am not going to."

**3. DUI Processing**

In his report, NE#1 noted that "At approximately 02:57 hours, SD#1 provided two independent breath samples into the Draeger Alcotest 9510. The test results returned being 0.077 (IR), 0.081 (EC), 0.074 (IR), and 0.078 (EC). I issued a Criminal Citation . . . to [SD#1] for Negligent Driving 1st Degree (SMC 11.58.005(A)) and Hit and Run Unattended Vehicle (SMC 11.56.430). I referred the Criminal Citation to the prosecutor's office." SD#1 was released from the precinct.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***15.280 - DUI Investigations 15.280-TSK-2 Officer Task-Reporting***

SPD Policy 15.280-TSK-2 requires officers to complete certain tasks during a DUI/PC investigation. These tasks include, completing a packet that contains the following, a Criminal Citation, unless this is a felony, a Notice of Infraction, if applicable, Relevant portions of the Washington State DUI Packet, if any, a completed search warrant hard-copy, if applicable, Medical professional credentials, if applicable, a collision report, if applicable, a Tow/Impound form, unless submitted electronically and a medical Professional Affidavit. The Officer completes the report with entities and an incident narrative and then forwards the packet to the data center via department mail.

NE#1 arrested SD#1 on suspicion of DUI. NE#1 partially completed some of the above tasks up to the point where SD#1 was to sign the document for implied consent. NE#1 was seen on BWV ripping out and discarding some pages from the DUI packet. NE#1 explained that these were the blood warrant, exigent circumstances to a blood warrant, the narrative portion of the DUI (not used as typed up in Mark 43) along with a continuation sheet that goes with the packet. In interview, NE#1 stated that he intentionally destroyed this part of the packet by throwing it in the shredder at the Southwest precinct.

NE#1 stated that he completed the DUI packet minus the DUI arrest report because he did not believe, at this juncture, that he was doing a DUI investigation but was instead examining a negligent driving case. NE#1 further stated in interview that, "The reason behind that [destruction of part of the packet] is per policy it states that we have to use relevant portions of the Washington State DUI packet, and it needs to be submitted to the data center, which includes the DUI packet, the breath test for alcohol, the BAC reading, and the refusal to submit to breath for alcohol if the subject's over 21 years of age, which this subject was, and three of the four breath samples are at an .08 and above. Three -- or only one of the samples was a .08 or above."

OPA notes that NE#1's response speaks to SPD policy 15.280-POL-14 ("Officers Use Relevant Portions of the Washington State DUI Packet"). However, this policy relates to how "Officers will complete and submit to Data portions of the WSP DUI Packet that apply to the investigation" and speaks to whether the portions pertain to whether blood or breath were tested. NE#1 has interpreted and appears to have used this section of policy as a decision whether or not to include the full test results to the data center, the inclusion of which is required by policy. Whether intentional or not, NE#1 improperly assumed the prosecutor's role in deciding what evidence should be considered and evaluated in this case.

Nothing in policy indicates that breath samples are the sole determinates of whether impairment exists or whether a DUI prosecution should proceed or not. Indeed, based on all of the available evidence, all the necessary indications for a DUI prosecution were present which resulted in the initial arrest of SD#1 on suspicion of DUI and for a hit and run. SD#1's driving was also witnessed by an independent witness, who noted him crossing the median approximately seven times and hitting a parked vehicle. NE#1 stated, both in his report and to SD#1, that he was able to detect the distinct odor of alcohol from SD#1's breath, that he was slurring his words and that he was both repetitive and forgetful in his answers. NE#1 noted that SD#1's eyes were droopy, watery, and bloodshot. SD#1 further submitted to standard field sobriety tests of which the following clues were noted, HGN- 4 clues, One Legs stand- 3 Clues. OPA noted that even though NE#1 used the breath samples to execute on his decision, when asked he was unable to



interpret their actual relevance. NE#1 stated that it was not a DUI, because the breath as under a 0.8. This does not factor in all the other impairment factors noted.

OPA finds that NE#1 is misguided in his interpretation of current policy. Based on review of NE#1's conversations with SD#1, from his initial detention throughout his DUI screening, OPA does not believe that there was a willful intent to interfere with the tasks that NE#1 was required to do by policy as outlined in 15.280-TSK- 2. Moreover, there appears to be a misinterpretation and knowledge gap with respect to what is required under this section of policy. OPA believes that this allegation would be appropriately addressed through a training Referral. However, NE#1s practice of failing to forward the complete package to the Data Centre should cease immediately, with the noted exceptions as outlined in subtitle 14 mentioned above. Moreover, NE#1's failure to do so in this case is sufficiently addressed by Allegation #3 below. OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 15.280-TSK-2 and provide any further retraining and counseling that it deems appropriate. Specifically, NE#1 should be trained on the required tasks that must be completed under this policy. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

#### **Named Employee #1 - Allegation #2**

##### ***7.010 - Submitting Evidence 1. Employees Secure Collected Evidence***

SPD Policy 7.010-POL-1 requires that employees secure collected evidence. The policy further instructs employees that they must place that evidence into the Evidence Unit or an authorized evidence storage area before they end their shift.

The facts are as stated in Allegation #1 above. RCW 46.61.502 indicates that "breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving that a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section" (emphasis added). As such the fact that SD#1 blew under 0.08 is irrelevant with respect to the retention of available evidence.

NE#1 did not have the authority to destroy any evidence relating to this case. NE#1 stated that he effectively cited SD#1 for a negligent driving case where NE#1 interpreted this violation as "Basically in short it is driving a motor vehicle on a public roadway with any amount of alcohol in your system that is not above a .08." Regardless, this does not permit the failure to secure, or as is the case here, the willful destruction of evidence. Moreover, it is entirely possible that some of the evidence that NE#1 destroyed would have still been relevant in a prosecution of a negligent driving case. For similar reasons as outlined above, OPA recommends that this allegation be addressed via a training referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 7.010-POL-1 and provide any further retraining and counseling that it deems appropriate. Specifically, NE#1 should be trained on the required tasks that must be completed under this policy. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.



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

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.”

From available BWV, it is apparent that NE#1 developed and maintained good rapport throughout the evening in his engagement with SD#1. OPA recognizes that this is often desirable, i.e. building and maintaining rapport to ensure that no situation is unnecessarily escalated. However, the manner in which this rapport was created causes some concern for OPA. For example, when SD#1 was initially detained, NE#1 stated: “I’m gonna do what I can...but there are certain things I can’t make promises for, and we will talk about it, we will talk about it, man to man at the precinct, about what’s going on, about what I have to do ok and what my options are for you, Ok. If you are working with me, I will work with you, ok.” OPA finds that statements like these can as easily be misconstrued as an abuse of discretion as a use of discretion.

Indeed, throughout the detention of SD#1 while at the precinct, NE#1 further states that he “wasn’t trying to ruin his life... and was going to do everything in his power to assist...that he would note all the things in his report such as he was being cordial and had children to care for.” When these statements are taken in conjunction with NE#1’s failure to include all relevant evidence to the prosecutor one must take a closer examination of the case.

SD#1, the arrested subject, was given privileges that are rarely, if ever are offered to other detainees. He was given a cigarette, facilitated with several phone calls, and given several drinks of water. The fact that SD#1 continually referred to his thirst was another indication for intoxication which appeared to be ignored by NE#1, willfully or otherwise. Moreover, it took over two-and-a-half hours to process SD#1 for a breathalyzer test. Such a delay could also impact breath sample findings. RCW 46.61.502 indicates that “breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving that a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.”

OPA recognizes that NE#1 has previously acted as a Field Training Officer and has assisted other SPD officers in processing DUIs. From his interview it is apparent that NE#1 finds a sense of professional fulfillment in these types of arrests and cases. However, OPA believes that the manner in which NE#1 exercised his discretion was neither reasonable nor consistent with the mission of the department and duties of their office and assignment. NE#1 downgraded the severity of the crime in which SD#1 could have been ultimately charged, destroyed evidence of that crime, and appeared to ignore all elements which pointed to his impairment. The decision to prosecute SD#1 should have been left, as is appropriate, to the prosecutor in the case and should not have been predetermined by the arresting officer.

Accordingly, OPA recommends that this allegation be Sustained

Recommended Finding: **Sustained**