



## **CLOSED CASE SUMMARY**

ISSUED DATE:      SEPTEMBER 8, 2018

CASE NUMBER:     2018OPA-0394

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 2	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Unfounded)
# 3	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Shall Include Certain Minimum Components	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 by the Named Employee’s chain of command that she was dishonest, that she failed to make a domestic violence arrest where there was probable cause to do so, that she failed to include the minimum components in her investigation, and that the totality of her conduct in this case was unprofessional.

#### **STATEMENT OF FACTS:**

On May 2, 2018, OPA received a complaint from the then Assistant Chief of the Investigations Bureau. This complaint was based on an investigation that the supervisors of the Domestic Violence (DV) Unit had performed into how a detective, Named Employee #1 (NE#1), had handled a case. In a memo submitted to the Assistant Chief, the DV Unit Captain wrote: “Based on all the information [NE#1’s] Chain has gathered regarding this case, I believe [NE#1] was untruthful in how she characterized the known facts of this criminal case and how she represented those facts and her actions during the time the case was assigned to her.” The Captain suggested that NE#1 had violated Department policies concerning dishonesty, professionalism, and DV investigations.

Based on these allegations, this investigation ensued. OPA’s investigation including reviewing the various documentation generated concerning this case, the investigatory documents created by NE#1’s chain of command, and various email exchanges. OPA further interviewed NE#1, her entire chain of command, and two prosecutors.

#### **A. The Underlying DV Incident**

On March 9, 2018, SPD patrol officers responded to a possible domestic violence incident. They went to the victim’s mother’s home where the victim was staying. The victim appeared to the officers to have been crying. The victim



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described a domestic violence assault committed on her by her boyfriend (referred to here as the “perpetrator”). The victim also stated that the perpetrator told her that if she talked to the police he would “pop” her and that he was suicidal. At that time, the victim’s mother stated that the perpetrator had committed a robbery involving a firearm at her residence. She stated that the victim was a witness to the robbery but had lied to the police.

When asked whether she was afraid that the perpetrator was going to harm her, the victim stated that she loved him and she wanted him to change. According to the officers, the victim did not seem to be taking the threats seriously and seemed more upset about breaking up with the perpetrator and having to live with his grandparents. She stated that she “did not want police to contact [the perpetrator] at his home.” The officers wrote that the victim “reluctantly” agreed to provide a recorded statement.

During her recorded interview, the victim stated that she and the perpetrator got into an argument. The argument escalated quickly and he grabbed her hair and her neck. He let go and began pacing the room. He stated that he was going to throw his things outside of the window. They continued to scream at each other. He picked up her belongings and she picked up one of his shoes and said that she was going to damage it. He then grabbed her neck and pressed her against a shelf in her room. She stated that it became hard to breathe and he could not get him off of her. She said that she punched him in the head and, at that point, her roommate came in and tried to pull them apart. They continued to swing at each other, but were ultimately broken apart. She further stated that she was willing to testify in court if asked.

## **B. The Initial DV Investigation**

This case was assigned to NE#1 on March 12, 2018. NE#1’s Case Investigation Report (CIR) indicated that, after receiving the case, she performed the following tasks on March 12: she reviewed the underlying General Offense Report (GOR) and reports of criminal histories of the involved parties; she spoke with a robbery detective who was investigating a robbery, also allegedly committed by the perpetrator, that was referenced in the GOR; she contacted a detective who was investigating another assault by the perpetrator in which a gun was involved and obtained the Real Time Crime Center bulletin for that case; she tried to contact another detective working on that case but was unable to reach him; she requested the 9-11 call audio, the In-Car Video (ICV), and the Body Worn Video (BWV); and she sent out an officer safety bulletin on the perpetrator, primarily due to the victim’s statements in the GOR that he was suicidal and had firearms. On March 12, she also called the prosecutor assigned to the robbery case (referred to here as the “robbery prosecutor”). She wrote that she altered the robbery prosecutor of new information that had stemmed from her case and that “he agreed to merge” the DV case with his robbery case and that he told NE#1 that he was “adding it as discovery to the robbery case.” Lastly, the CIR indicated that the next day, March 13, 2018, NE#1 emailed the prosecutor who was responsible for all juvenile filings (referred to here as the “juvenile filing prosecutor”) to discuss the DV case.

## **C. The Chain of Command Investigation into NE#1’s Actions**

On March 12, the Captain reviewed the safety bulletin for the perpetrator. He reported (in a memo to the Assistant Chief, dated March 27, 2018) that he believed that the case might be appropriate for an Extreme Risk Protection Order (ERPO) and he wanted to make sure that the Violation of the Uniform Firearm Act (VUFA) aspect of the case (a violent felon in possession of a firearm) was being worked up. He tried to access NE#1’s CIR, but could not locate it in the unit’s shared drive. He notified the DV Lieutenant of this issue. On March 13, NE#1 emailed both the Captain and the



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Lieutenant and informed them that she had been saving her documents in a private drive because her files had previously been moved into another detective's folder and altered last time she had left them in the shared drive. She stated that she was saving the documents in a private drive while IT looked into the matter.

The Captain reported in his memo that he also reviewed the GOR and that this increased his urgency concerning the case. The Captain requested additional information concerning this case from both the Lieutenant and the Sergeant. On the morning of March 13, the DV Unit Sergeant emailed NE#1 regarding the request for information made by the Captain. He asked NE#1 if she had photographs of the perpetrator's guns, whether she was working up a VUFA case, and whether she thought she would get a decline for the VUFA. In her response to this email, NE#1 indicated that she had "screened this with the prosecutors and they are merging [the DV] case with an existing robbery case already filed as part of their discovery." She further told the Sergeant that she would screen the DV assault with the juvenile filing prosecutor but that she did not think there was "enough to file a felony assault." She lastly wrote that she did not have photographs of the firearms, but that she would review the BWV to see if the guns appeared on that video. The Sergeant forwarded NE#1's response to the Captain.

The Captain responded to the Sergeant and Lieutenant, but not NE#1, and wrote: "Strong indications of strangulation so let's make sure we work that up and the VUFA portion if that's applicable." The Sergeant wrote back around 20 minutes later and indicated that he had spoken with the detective handling the robbery, who he claimed told him that no one at SPD was in possession of the photographs, that she had no current evidence of guns in the perpetrator's home, and that, at that time, "she won't be able to complete a VUFA."

The Captain then requested that the Sergeant confirm whether the DV and robbery cases were being merged. The Sergeant responded that he spoke with the prosecutor's office and the paralegal he talked with did not know why the cases would have been merged as the perpetrator was an adult at the time of the DV assault (notably, the birthdate listed for the perpetrator in SPD databases indicated that he was 17 on the date of the incident). She suggested that NE#1 speak with the prosecutor handling the robbery, who was the same person that NE#1 mentioned speaking with in her CIR. The Sergeant left the robbery prosecutor a voicemail.

The Sergeant followed up with the Lieutenant and Captain and provided them information learned from the robbery detective's supervisor. The Sergeant stated that he was informed that there was no evidence of a firearm in the perpetrator's home and that the witness to the firearm – the victim's mother – was potentially making this up because she wanted the perpetrator to stay in juvenile detention. Lastly, the Sergeant noted that the victim denied seeing the subject with a gun.

The following morning, March 14, the Sergeant sent one more email in which he detailed a conversation he had with the robbery prosecutor. The Sergeant wrote the following concerning their discussion: "[The robbery prosecutor] said that [NE#1] called him about the possibility of merging the cases. [He] said that he requested that the case information be sent over so he could use the Robbery portion for his case but the DV should still be worked up independently." The Sergeant also indicated that the robbery prosecutor "believes that he can charge one of these three felonies for the DV case: DV Assault 2 for Strangulation, DV Harassment, or DV intimidation." The Sergeant further stated that the robbery prosecutor told him that the victim was uncooperative. The Sergeant told his supervisors that he listened to the victim's audio recorded statement and heard her describe what happened in the assault and say that she would testify at trial. The Sergeant contended that the victim was, in fact, cooperative. Lastly, the Sergeant wrote that "[NE#1's] update shows that she e-mailed the case to the KCPAO Juve[nile] filer." The Sergeant stated that he spoke



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to the juvenile filing prosecutor and contended that this individual said that NE#1 “told him that she didn't believe there was PC for the DV” and that the juvenile filing prosecutor “told her not to send the case if there's no PC.” The Sergeant concluded his email by writing that the juvenile filing prosecutor “said that the case was not e-mailed to him.”

The Sergeant later documented that the information from the juvenile filing prosecutor referenced above was incorrect. The juvenile filing prosecutor later told the Sergeant that he was referring to the wrong case. With regard to the DV case at issue here, the juvenile filing prosecutor purportedly relayed to the Sergeant that NE#1 had asked for a call concerning the case. He stated that, when he spoke to NE#1, she “told him that she had no way to contact the [victim].” The Sergeant did not send an email to his supervisors correcting his previous statement with the new information that he had learned from the juvenile filing prosecutor.

The Sergeant also documented that he called multiple phone numbers attributed to the victim and was able to speak with her. The Sergeant stated that the victim confirmed that she was “strangle[d]” by the perpetrator, that “she was not able to breath[e] for at least three seconds,” and that she would be willing to “cooperate and give an additional statement.” The victim further told the Sergeant, however, that she did not want the perpetrator to “serve any juvenile jail time” and that she “wants him to get assistance for his issues.”

The Lieutenant also put together a memo that he provided to the Captain. The Lieutenant memorialized the investigation conducted into NE#1's actions and specifically identified two main issues: first, that NE#1 told the robbery prosecutor that the victim was not cooperative; and, second, that NE#1 purportedly told the juvenile filing prosecutor that she did not believe that there was probable cause for the arrest.

After receiving this information, as well as information compiled by the Lieutenant, the Captain reassigned the case from NE#1 to another detective at approximately 2:22 p.m. on March 14. This was done via an email from the Sergeant to NE#1 that did not contain any explanation for the transfer. NE#1 wrote the Sergeant back shortly thereafter asking for an explanation for the transfer, but no explanation was provided at any later point. In his memo, the Captain stated: “What was discovered by [the Sergeant] as to how [NE#1] was handling the case was unacceptable, especially for a case with strong victim safety indicators.” Moreover, he wrote the following: “Based on very little work having been done on the case and my sense that there was no sense of urgency to help the victim, I directed [the Lieutenant] to have the case immediately reassigned.”

#### **D. Additional DV Investigation**

On March 14, the case was transferred to a newly assigned detective. The newly assigned detective did not attempt to contact the victim until a day after receipt. He left her a voicemail on March 15 and she returned his call the next day, leaving a responsive voicemail. The newly assigned detective did not call the victim back until five days later, on March 20, 2018. This was the case even though the perpetrator was still at large until March 19, 2018 and, thus, under the same logic as applied to NE#1's conduct, the victim was still at risk of harm from the perpetrator. At that time, the victim stated that she believed her family was trying to throw the perpetrator under the bus. When asked about the assault, she further stated that “things got blown out of proportion and advised that her mom has lied in the past.” She also stated that on the day she gave her recorded statement, her mother was “in her ear” trying to convince her to proceed.



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The newly assigned detective wrote that: "In speaking with [the victim], she minimized the assault and advised the fight was somewhat mutual" He further wrote that: "[The victim] stated she antagonized [the perpetrator] and got in his face. [She] did not feel like she was a victim, advising she swung on him too. [The victim] stated she thought about it after the report and she now thinks it's not fair that [the perpetrator got] in trouble for something she started."

The victim further defended the perpetrator's actions to the newly assigned detective, denied that the perpetrator was involved in the robbery, and denied that he ever threatened her.

The night of their phone conversation, the victim was again assaulted by the perpetrator. The newly assigned detective learned this from the victim's sister. He again spoke to the victim on March 22, 2018, and she now was willing to testify against the perpetrator. She no longer defended the perpetrator or claimed that she was a mutual aggressor during the March 9 incident.

The newly assigned detective referred the case to the prosecutor's office based on his belief that there was probable cause for multiple DV assaults.

## **E. OPA's Interviews**

### **1. OPA's Interview of the Robbery Prosecutor**

During its investigation, OPA spoke to the robbery prosecutor on four occasions. The latter two conversations were recorded and transcribed. The robbery prosecutor recalled that NE#1 called him on or around March 12, 2018. NE#1 told him that she was investigating a DV assault case where the alleged victim had been grabbed by the throat. She further told him that her alleged victim had made statements about the robbery (where she was a witness). NE#1 informed him during that call that "she wasn't sure that the victim was on board with the prosecution." The prosecutor recalled that they brainstormed during the call and that he mentioned (several times) the possibility of merging the robbery case with the DV case. The robbery prosecutor stated that he may have been unclear with NE#1 concerning the merging of the case and that she may have interpreted him as stating that this was definitively going to happen. He also asked NE#1 to send him the reports from the DV case so that he could produce them as discovery in the robbery case. She did so and he produced the reports.

The robbery prosecutor explained that he was not surprised by NE#1's statement that the victim was unwilling to cooperate in the prosecution. He knew that the victim was still in a relationship with her boyfriend, who was the suspected perpetrator of both the DV assault and the robbery, and believed it likely that she would not be inclined to testify against him.

The robbery prosecutor recalled that on March 14, 2018, at approximately 8:30 a.m. or 9:00 a.m., he spoke with NE#1's Sergeant. He recalled the Sergeant as "tense" and "amped up." The Sergeant asked the robbery prosecutor questions concerning why he was not going to file the DV matter as a standalone case. This was the point when the robbery prosecutor realized that he may have been unclear with NE#1 concerning his intentions. Specifically, during their phone call, he had not made the decision to merge the cases, but had simply requested the DV reports in order to produce them as discovery. He told the Sergeant that he had just requested the reports and had not made a decision to merge the cases. He further stated that he told the Sergeant that he believed that what he told NE#1 might have been confusing.



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After the robbery prosecutor got off the phone with the Sergeant, he emailed NE#1. He told her that he had just spoken to the Sergeant and he apologized to NE#1 for being unclear in his previous communication with her. He asked NE#1 to send him the DV matter as a standalone case and indicated that it could be appropriate to charge DV assault in the second degree, DV felony harassment, and DV witness intimidation.

Later that day, NE#1 called the robbery prosecutor. She asked him if he wanted her to send the case as a felony and the robbery prosecutor said yes. He told her that he had spoken to her Sergeant. NE#1 appeared not to be aware of that conversation and responded that there were “some other things going on.” The robbery prosecutor inferred that this meant that there was tension between NE#1 and her Sergeant, but she did not provide him with any details. He again apologized to NE#1 for being confusing.

The robbery prosecutor also informed OPA that, on March 22, 2018, he received an email from a Victim Advocate who indicated that the victim was now willing to be a cooperating witness. The Victim Advocate wrote the following: “[The victim] said she made another DV report about two weeks ago but then backpedaled; she now regrets that.”

OPA shared an email written by the Sergeant with the robbery prosecutor. Specifically, OPA asked the robbery prosecutor whether the following portion of the email was accurate: “[The robbery prosecutor] said that he requested that the case information be sent over so he could use the robbery portion for his case, but the DV should be still worked up independently.” The robbery prosecutor said that, while he did tell the Sergeant that he requested the reports, he did not tell the Sergeant he clearly and explicitly indicated to NE#1 that the DV assault was to be worked up independently. Indeed, he stated that he told the Sergeant that he was unclear with NE#1 concerning the merging of the cases. OPA also read the robbery prosecutor the potential charges that the Sergeant attributed to him. The robbery prosecutor agreed that he offered that these charges were appropriate, but he stated that this was largely based on the additional information provided to the robbery prosecutor by the Sergeant during their phone call and due to the fact that the Sergeant “seemed pretty confident about it.” The robbery prosecutor told OPA that the Sergeant’s email to his chain of command appeared “incomplete,” particularly due to the fact that it failed to make any reference to the lack of clarity that the robbery prosecutor repeatedly referenced.

In a follow-up interview, OPA read the robbery prosecutor an email between NE#1 and another detective. In that email, NE#1 told the other detective that the robbery prosecutor was going to merge the cases. When asked whether this was accurate, the robbery prosecutor explained that it was consistent with the confusion that he believed he caused. NE#1 also told the robbery detective that there was not enough evidence to file the DV assault charge. The robbery prosecutor could not say whether this was inaccurate because he did not have all the details about the case. The robbery prosecutor stated that, at the time of their initial conversation, he did not think that NE#1 called him in order to get a verbal decline on her DV case.

OPA also read the robbery prosecutor two lines from NE#1’s CIR. The first line stated that NE#1 provided the robbery prosecutor with information and that the robbery prosecutor asked her to send the reports from the DV case to add those reports to discovery. The robbery prosecutor confirmed that this was accurate. The second line stated that she received an email from the robbery prosecutor, had a phone call with him, and that she subsequently emailed other detectives to clear up confusion. The robbery prosecutor stated that he felt that this related to the confusion he had caused and that this portion of the CIR was also accurate.



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**2. OPA's Interview of the Juvenile Filing Prosecutor**

OPA also interviewed the juvenile filing prosecutor, who declined to provide a recorded statement. He did not have a clear recollection of the incident. For example, he stated that NE#1 ultimately referred the case to him for prosecution when she was already reassigned from the investigation at that time. His testimony was ultimately not particularly helpful.

**3. OPA's Interviews of NE#1 and the Sergeant**

The substance of NE#1's interview and the Sergeant's interview is set forth with substantial detail in the Case Summary attached to OPA's file. In addition, specifics of these interviews are heavily referenced in the Analysis and Conclusions below.

**4. OPA's Interview of the Lieutenant**

The Lieutenant testified consistent with the memo that he submitted to the Captain. It was clear at his interview, however, that his information was based virtually entirely on what was relayed to him by the Sergeant. For example, when asked whether he was aware of some of the inconsistencies between the Sergeant and the robbery prosecutor, the Lieutenant stated that he was not. He was further not aware whether the robbery prosecutor had learned that the victim was uncooperative from sources other than NE#1.

He pushed back, however, on the significance of these inconsistencies, stating that it was immaterial to the outcome of this case and "a shiny object that needs to be ignored." He asserted that NE#1, based on her years of experience, should have known that it was inappropriate to try to transfer her case to another unit, to get it merged with another case, or to get it dismissed without doing any investigation. He stated that NE#1 trying to get cases off her desk was something her chain of command was trying to address. He concluded that she acted contrary to the mission of the DV Unit as conveyed by both the Assistant Chief and the Chief of Police.

**5. OPA's Interview of the Captain**

The Captain, like the Lieutenant, reiterated much of the content of his memo. A substantial portion of the information contained in his memo concerning the chain of command's investigation into NE#1's actions came from the Sergeant and the Lieutenant.

The Captain stated that he believed that NE#1 was dishonest in a number of respects. He pointed to the Sergeant's notes concerning the discussion with the robbery prosecutor as establishing this dishonesty, at least in part. The Captain was not aware that the robbery prosecutor told the Sergeant that he may have been unclear during the conversation with NE#1 concerning merging the cases. The Captain was also not aware that the robbery prosecutor stated that the Sergeant's email was incomplete. He stated that he decision to transfer the case from NE#1 was based on the information that the Sergeant provided to him.

The Captain further stated the following:



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I think what I've outlined here shows her dishonesty by much more than a preponderance indeed the higher threshold for these cases. And—in my many years as a Lieutenant, and/or Captain over an investigative unit, I've never heard of a workup felony case being re-assigned due to dishonesty and ho—dishonesty and wholly inappropriate investigative steps. The remedy I'm seeking is if the reviewer—reviewers are in agreement, and hopefully an expedited review to stay within the 180-day timeline, is both the appropriate level of discipline based on what allegations might be sustained, and at a minimum, a disciplinary transfer from DV and her not being allowed to do follow up investigations as a Detective in the future.

He told OPA that, after the case was reassigned, the newly assigned detective fully worked up the case. When OPA raised the investigatory steps that were memorialized in NE#1's CIR and that were relied upon by the newly assigned detective based on his CIR, the Captain stated that he did not know for sure that those tasks were actually completed by NE#1. He was not aware that the newly assigned detective did not talk to the victim until six days into his investigation and stated that he could not opine as to whether this was appropriate.

The Captain told OPA that while the newly assigned detective indicated that the victim was initially hesitant, the Captain did not believe that she was uncooperative. Moreover, he criticized NE#1's determination that the victim was uncooperative without her having ever spoken to the victim.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

As a general matter, the following issues were alleged by NE#1's chain of command as possibly indicating dishonesty:

- NE#1's assertion in her CIR that she screened the case with the robbery prosecutor and that he "agreed to merge" the DV case with a robbery case involving the same perpetrator and her similar statement to the robbery detective;
- NE#1's assertion to the robbery prosecutor that the victim was not cooperative, given that NE#1 never spoke with the victim;
- NE#1's alleged failure to actually complete some of the tasks that she listed in her CIR;
- NE#1's statement to the juvenile filing prosecutor that she did not believe that there was probable cause for the arrest; and
- NE#1's purported intent to inappropriately push this case to another unit or to get it dismissed in order to lessen her workload.

With regard to the first issue, the robbery prosecutor told OPA that NE#1's assertion was accurate. He stated that he was confusing during his conversation with her and that that it was very possible that she could have believed that there had been an agreement to merge the cases. The robbery prosecutor conveyed to the Sergeant that he had been unclear and that he later sent an email apologizing to NE#1. He stated that the manner in which the Sergeant described





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their conversation was inaccurate. Specifically, the robbery prosecutor stated that he did not, as the Sergeant indicated, explicitly tell NE#1 that the cases were not going to be merged and that he did not say this to the Sergeant. Notably, the Sergeant did not include the information concerning the clarify issues in any of his emails to his supervisors or in his timeline that he created, including failing to mention the robbery prosecutor's admissions concerning the confusion that he believed he caused.

The Sergeant further contended that the robbery prosecutor told him that NE#1 wanted to merge the cases. However, this was again inconsistent with what the robbery prosecutor told OPA. He stated to OPA that it was a mutual decision between them borne out of brainstorming together.

The Sergeant claimed to OPA that, based on NE#1's email to him in response to his questions, he believed that NE#1 was finished with her investigation. He contended that detectives "don't merge [their case] with someone else's case and continue to work on it." NE#1 disagreed and stated that she was not intending on passing off the DV assault portion of her case to the robbery detective. She stated that when she wrote to the robbery detective about merging their cases, she was referring to the portion of her case that discussed the robbery. Indeed, that was a significant part of the GOR that was generated by patrol. She stated that her intention was as follows:

I wasn't intending to hand the whole entire case to her, I was intending for her to take the robbery portion and just reference it. That's what I was explaining earlier. I would work this case like I would work any other case, and in—do the investigative steps that we would deem fit to, to get it to a prosecutor, and, and at this point, you know, the assault portion of it, the only thing that we could possibly prove would be problematic.

I find that the evidence weighs towards a finding that NE#1 genuinely believed that the robbery prosecutor had agreed to merge the cases. Moreover, I find that the Sergeant's recitation of what the robbery prosecutor told him was incomplete, if not inaccurate. In summary, I do not find that NE#1 was dishonest with regard to this first issue.

Concerning the second issue, NE#1 stated that she did not fabricate that the victim was not cooperative and contended that she was aware of this information based on her review of the GOR and conversation with the robbery detective. Specifically, NE#1 stated the following: the victim was reluctant when speaking with the officers and providing her recorded statement; the victim repeatedly stated that she loved the perpetrator and did not want him to be arrested; the victim texted the perpetrator while the police officers were at the apartment and informed him that she was speaking with the police; the victim appeared to be under significant pressure from her mother to cooperate instead of being self-motivated to do so; the victim seemed more upset about the break-up with the perpetrator and having to live with her grandparents than she was about the assault; the victim minimized the assault and indicated that it was potentially a mutual altercation; the victim was possibly implicated in the robbery and in providing previous false statements to the police concerning the perpetrator's involvement; and the victim had a history of recanting and not cooperating with police when she failed to provide promised evidence in prior cases. Moreover, NE#1's beliefs in this regard were ultimately correct. When the newly assigned detective spoke to the victim on March 20, she significantly backed off of her previous account. She stated that she had been coerced by her mother to accuse the perpetrator, that it was a mutual assault, and that she started the altercation. Were it not for the fact that the victim was unfortunately again assaulted by the perpetrator, it seems likely that the newly assigned detective would not have been able to establish probable cause based on the victim's recanting to him.



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In a perfect world, NE#1 would have contacted and tried to speak with the victim prior to characterizing her as uncooperative. Even after reviewing NE#1's OPA interview, I am unsure why she did not do so under the circumstances of this case. That being said, I find NE#1's explanation concerning why she believed the victim was uncooperative to be largely reasonable. Moreover, the issue here is whether this statement was dishonest. Applying the heightened burden of proof for this allegation, I find insufficient evidence to determine that this was the case here.

With regard to the third issue, which was raised by the Captain at his OPA interview, there is no evidence establishing that NE#1 did not actually perform some of the investigatory tasks listed as completed in her CIR. In fact, the evidence, and particularly the newly assigned detective's CIR in which he relied on the investigatory tasks performed by NE#1 and the information she procured, conclusively disproves this allegation.

As discussed more fully below, the fourth issue, which concerns NE#1's assertion that there was likely insufficient probable cause to charge this matter, also does rise to the level of dishonesty. Indeed, based on the limited investigation that she was able to conduct in one and a half days and based on the information that she knew at the time, I do not believe it was unreasonable for her to believe that she did not have sufficient probable cause at that stage.

With regard to the fifth issue, there is insufficient evidence to prove that NE#1 intended to get this case off of her desk, whether by merging it or having it declined. NE#1 denied that this was the case and, as discussed above, justified her handling of this case in the limited time that it was assigned to her. I find these justifications reasonable and, at the very least, do not believe that the evidence in this case establishes that NE#1 acted with an improper motivation as suggested by her chain of command.

Lastly, I find that this whole investigation is complicated by the fact that NE#1 was involved in at least one prior EEO case involving her chain of command. At her OPA interview, NE#1 stated that she believed that this investigation was retaliatory. She stated her belief that the Sergeant thought that she may have done something wrong and used this incident as an opportunity to seek revenge against her. She also noted that this entire incident could have been avoided had her chain of command simply spoken to her about it. She asserted that any other chain of command would have done so.

Buttressing her assertions is the fact that, as the robbery prosecutor asserted, the Sergeant's emails concerning NE#1's conduct and his conversations with the robbery prosecutor were incomplete, if not inaccurate. I also find troubling the robbery prosecutor's description that the Sergeant was "amped up," tense, and aggressive during their phone call. While not conclusive, when combined with the inaccuracy of the Sergeant's emails and his leaving out of details that supported a finding that NE#1 did not engage in misconduct, it supports NE#1's theory that he may have acted with an improper motive in this case. Moreover, this is particularly troubling given that both the Lieutenant and the Captain relied heavily, if not exclusively, on the Sergeant's investigation and his characterization of the information he learned from various witnesses.

Moreover, as NE#1 referenced, I am unclear as to why no one in NE#1's chain of command ever discussed this matter with her prior to transferring the case only one and a half days after it had been assigned. Perhaps the chain of command would still have transferred the case, but I do not believe that this investigation would have necessarily ensued or, at the very least, I do not imagine that a dishonesty allegation would have been alleged. I also find the in-depth, months long investigation conducted by NE#1's chain of command to be outside of the norm. Notably, even



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though the supervisors were aware of potential misconduct on March 14 at the latest, this matter was not referred to OPA until May 2, 2018. As a general practice, allegations of misconduct are sent to OPA by Department supervisors within days (or at the most one or two weeks in rare circumstances) of the potential misconduct being discovered. It is unclear from the chain of command's investigation why there was a more than month long gap from when the investigation was submitted to the Assistant Chief of the Investigations Bureau to when it was sent to OPA (March 27 to May 2).

I also find some of the statements made by the chain of command during their OPA interviews to be out of the ordinary. While I do not conclude that this establishes any retaliatory motive or behavior on the part of NE#1's chain of command, it creates complex and unanswerable questions concerning what actually occurred in this case, the reasons for the initiation of this investigation and the reasons behind the referral to OPA, and whether NE#1 actually acted in violation of any Department policies.

Ultimately, based on the facts and evidence in this case, I do not find that NE#1 engaged in dishonesty in this matter. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)***

SPD Policy 15.410-POL-2 concerns domestic violence investigations generally and, specifically, requires that officers make arrests in such cases where there is probable cause. The policy references RCW 10.31.100 and notes that, where probable cause exists to make a domestic violence arrest, such an arrest is required by Washington State law.

During her OPA interview, NE#1 stated that she did not believe that probable cause existed to arrest prior to the case being taken from her. She explained that the victim confirmed that the only uninvolved witness did not see the choking and only observed her and the perpetrator exchanging blows. Notably, there was no independent evidence of the assault, including no video or photographs. I note that NE#1 was also aware at that time that the victim had been uncooperative in the context of the robbery investigation and had recanted on other occasions. While NE#1 was not sure whether she knew it at that time, she was also aware that the Victim Advocate characterized the victim as uncooperative in the context of the March 9 assault. She was also aware, as discussed more fully below, of the victim's reluctance to provide a recorded statement and that she stated repeatedly that she loved the perpetrator and wanted him to get help and not to be arrested.

Based on my review of the information available to NE#1, I do not find it unreasonable that she would not have believed that there was probable cause to arrest and charge a domestic violence assault this early in the investigation.

It is very possible that such probable cause would have developed over time. Indeed, NE#1 told OPA that, when the case was taken from her, she was still working on it, there had been no decision made to not file, and that it was still possible that the victim's position could fluctuate. NE#1 stated that the day and a half that she had the case was simply not enough time to have conducted a sufficient investigation.



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For these reasons, I find that NE#1 did not act unreasonably when she did not cause the arrest of the perpetrator or refer the case for filing within the one and a half days that she had it. As such, I recommend that this allegation be Not Sustained – Unfounded as against her.

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

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

***15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Shall Include Certain Minimum Components***

SPD Policy 15.080-POL-2(1) states that follow-up investigations shall include specified minimum components and the policy sets forth what those components are. As a general matter, the policy has three general categories. First, it sets forth the analysis and review that it expects follow-up unit detectives to conduct. This includes: reviewing previous and related reports; collecting the criminal history of the subject and including it in the file; and making an attempt to link the subject to other crimes using a “modus operandi analysis.” Second, the policy provides guidance for investigations. This guidance includes: contacting and interviewing witnesses, victims, and suspects all when appropriate, as well as interviewing uniformed personnel when necessary; and, as a general matter, viewing the scene of the crime, conducting searches in a systematic and thorough manner, and collecting and properly processing any evidence located. Third, the policy sets forth preferred practices for case preparation. These practices include: preparing the case files to meet standards set forth by prosecuting attorneys’ offices; and responding to requests for additional information from prosecutors.

I am unsure how I can determine that NE#1 violated this policy given that she was only assigned the case for less than two days. As she discussed in her CIR, she performed a number of investigatory tasks and obtained various case-related information. Indeed, the newly assigned detective relied on much of this information when he took over the investigation, writing in his CIR that NE#1: reviewed reports, obtained criminal history information, conferred with the robbery detective, screened the case with multiple prosecutors, requested the -911 call, requested Department video, and published a safety bulletin.

Moreover, while the policy states that interviews of victims should be conducted when appropriate, it does not mandate such interviews. NE#1 explained at her OPA interview that when a victim provided a prior statement, such as the victim in this case did, she would only interview the victim as part of her investigation 50% of the time. As such, she contended that, in these cases, the victim interview would not be “appropriate” as contemplated by the policy. She further explained that this was not just her practice, but was the practice of the DV Unit. There is no evidence in the record that establishes NE#1’s interpretation of her obligation under the policy to be unreasonable or that conclusively disproves that this was the general practice of the unit. Moreover, I have no way to tell that NE#1 would not have tried to interview the victim at some point during her investigation. Notably, she stated that she was still working the case when it was taken from her.

When asked by OPA, the Sergeant stated that he expected that contact with the victim would occur “immediately...within the first several days.” In response to a follow-up question from OPA, the Sergeant contended that NE#1 should have contacted the victim the first day instead of contacting the robbery detective. He did not, however, point to any policy that required this. Similarly, the Lieutenant asserted that in out of custody cases, such as this one, the detective was expected to make contact with the victim and to ensure the victim’s safety. However, he



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stated that this was not memorialized in policy and that there was no official checklist for the detectives to follow in this regard.

All of the supervisors stated that, by failing to immediately interview the victim or to take steps to ensure the victim's safety, NE#1 did not act consistent with the missions of the Investigations Bureau ("To seek justice for victims and our community through comprehensive investigations and active relationships with patrol operations and external partners") and the DV Unit ("The Department is dedicated to assisting and protecting the people victimized by domestic violence and to identify and arrest the people who commit crimes of domestic violence"). NE#1 stated that she sent the officer safety bulletin, in part, to ensure the victim's safety. Other than that, however, she stated that she treated this case like she would have treated any other similar case. Even if NE#1 fell short in this regard, which I am not necessarily finding that she did, I do not think that this would constitute a policy violation. Moreover, I note that the newly assigned detective also did not immediately interview the victim (waiting six days) or take any affirmative steps to ensure her safety. This was the case even though the perpetrator was still at large for the vast majority of this time. However, the actions of the newly assigned detective were lauded by the supervisors.

With regard to the other elements of this policy, had NE#1 been assigned the case for more than one and a half days, she may have interviewed other witnesses and the subject, she may have interviewed uniformed personnel, she may have gone to the scene of the crime and looked for evidence, and she would likely have prepared the case consistent with the prosecutors' standards given her skill level and experience. Stated differently, there is insufficient evidence in the record and under the circumstances of this case to allow me to find that she would not have conducted these steps and that what she did do in a day and a half violated this policy.

In his memo, the Lieutenant identified that approximately 66% of NE#1's cases had been declined in 2017 and 59% percent in 2016. This was among the highest, if not the highest, out of all DV detectives. This number is interesting but, without knowing more, I cannot determine its significance. Those cases are not before OPA and, as far as I know, there could be numerous reasons why her rate is the highest. Perhaps she handles the most complex cases or has more experience to properly evaluate when cases are not sufficient to proceed to filing. Her chain of command suggests a more nefarious answer to this question, but I simply cannot prove or disprove this and it is ultimately irrelevant to the case before me. I am required to reach recommended findings based on the facts of this case, not the facts of other undefined cases that are unavailable to me.

For these reasons, and given the work NE#1 did on the case in the limited time that she had it, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #4**

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

SPD Policy 5.001-POL-9 instructs that SPD employees shall strive to be professional at all times. It further states the following: "Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers."



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This allegation was classified based on NE#1's supervisors' belief that, if she was dishonest in this case, that would have undermined the public's trust in her and the Department, thus violating the professionalism policy.

As discussed in more detail above, I find that NE#1 did not engage in dishonesty or violate or violate any of the policies at issue in this case. As such, I recommend that this allegation be Not Sustained – Unfounded as against her.

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