



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 11, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0894

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 (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:

The Complainant alleged that, in 2010, the Named Employee pointed his firearm towards her.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) learned from his daughter that his ex-wife – the Complainant in this case – alleged that he engaged in criminal activity. The allegation was made in a Facebook post from the Complainant to the daughter. In summary, the Complainant reported that NE#1 pointed a firearm at her in 2010. Once he learned of the allegation, NE#1 self-reported to his chain of command and made an OPA referral. OPA then initiated an intake. Given the nature of the claim, OPA sent the case back to SPD to conduct a criminal investigation.

The criminal investigator attempted to locate the Complainant but was initially unsuccessful. The criminal investigator spoke with NE#1. NE#1 denied that he pointed his firearm at the Complainant. He said that he learned of her allegation from his daughter. He pointed to the lack of any contemporaneous reporting of the incident as evidence that it did not occur. NE#1 told the criminal investigator that he was willing to cooperate fully and to provide a statement if needed. He further provided the criminal investigator with his daughter's contact information.

The criminal investigator spoke with the daughter. She said that the Complainant had recently contacted her over Facebook and tried to reconnect. The daughter characterized the Complainant's messages as "all over the place." The daughter indicated that, during that messaging, the Complainant alleged that NE#1 pointed a firearm at her. The daughter said that she had never heard this allegation previously. The daughter identified that the Complainant told her that she was suffering from significant physical health problems. The daughter also noted that the Complainant suffered from diagnosed mental illness.



The daughter provided numerous Facebook messages between her and the Complainant. Some of the messages were attempts by the Complainant to reconnect with the daughter. The daughter largely rebuffed those attempts, citing mistreatment of her and her sister by the Complainant. The Complainant responded, in part, by referencing NE#1 pitting the daughters against her, as well referencing the alleged pointing of the firearm and physical abuse of one of the daughters by NE#1. The daughter noted to the Complainant that NE#1 encouraged her and her sister to maintain contact with the Complainant. She further rebuffed a number of the assertions made by the Complainant. The daughter ultimately again cut off contact with the Complainant, calling out the Complainant's defensiveness and failure to accept responsibility for how she treated her children.

The daughter provided another contact number for the Complainant. The criminal investigator tried to reach the Complainant via that number and left voicemail messages. However, she did not return the criminal investigator's phone call.

The criminal investigator completed his investigation and forwarded the case to the King County Prosecuting Attorney's Office. The prosecutor declined to prosecute, citing the lack of a statement by the Complainant and the expiration of the statute of limitations. This matter was referred back to OPA.

OPA was able to make contact with the Complainant. The Complainant said that, on the date in question, she was sleeping on the couch in the living room when NE#1 entered. She said that she saw him scan the room with his firearm and then point it at her. She said that the firearm was trained on her for about 15 seconds prior to NE#1 putting the gun away in a safe. She told OPA that she later confronted NE#1 about this incident and that he told her that this how he always put his firearm away. The Complainant referenced several other incidents involving the Complainant, including him allegedly slamming a door on the fingers of one of his daughters. She also mentioned a dispute between the Complainant and a neighbor about a dog that necessitated a police response, as well as her being the subject of an involuntary detention based on mental health issues in 2011.

OPA further interviewed the Complainant's lawyer from that time. She had no recollection of the Complainant alleging that NE#1 had pointed a firearm at her. She did remember the Complainant alleging that NE#1 was "poisoning" her daughters against her. The lawyer said that, had the Complainant alleged the firearm pointing, she would have documented it; however, she did not retain files from longer than three years ago. She told OPA that she met NE#1 once and that he seemed angry at that meeting. That being said, she noted that this was normal in contentious divorces such as that involving NE#1 and the Complainant.

Lastly, OPA interviewed NE#1. He confirmed that, at the time of the incident, his wife was sleeping in the living room and that, shortly thereafter, they got a divorce. He said that he stored his firearm in a safe in the living room. He said that he would not manipulate the firearm prior to locking it away and, at the time he would secure the firearm, he would do so with his back facing the couch. He denied ever pointing his firearm at the Complainant. He recalled that, at one point, the Complainant mentioned that his putting away of his firearm scared her. Shortly thereafter, he moved the safe into his bedroom.

NE#1 recalled an incident in which he got in a verbal dispute with a neighbor concerning a dog. He described it as "exchanging words" with an unfriendly neighbor. He acknowledged that Bothell Police Department officers responded to the scene. He also remembered having an interaction with the Complainant's lawyer. He described their meeting as "professional" and said that his lawyer told him that the Complainant's lawyer appreciated his cooperativeness. NE#1 stated that he did at one point call the Everett Police Department and ask them to perform a



welfare check on his wife. He said that he did so because she sent him a text indicating that she was suicidal. He indicated that she was involuntarily committed and that he learned that she fought with officers. NE#1 denied any recollection of slamming a door on one of his daughter's fingers as the Complainant claimed. Lastly, NE#1 said that he did not "poison" his daughters against the Complainant. He explained that, to the contrary, he spoke positively of her, but his daughters chose not to interact with her.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Had NE#1 pointed his firearm at the Complainant as she described, it could potentially have constituted a violation of law and policy.

However, after evaluating the evidence adduced in this investigation, OPA finds an insufficient basis to conclude that this occurred. In reaching this determination, OPA finds it significant that there is no evidence indicating that the Complainant contemporaneously reported this alleged incident. Indeed, there is no police report concerning this matter, and the Complainant's lawyer had no recollection of such a claim. Had this incident occurred as described by the Complainant, it follows that she would have reported it, particularly during a contentious divorce. OPA also finds the Facebook messages between the Complainant and the daughter to be significant. In those messages, the Complainant makes a host of allegations, including against NE#1, and many of these were rebuffed by the daughter. It appears plausible to OPA that the Complainant was making these statements to defend her past actions and to try to rebuild her relationship with the daughter. The motive could further have been to seek redress for NE#1 purportedly "poisoning" her children against her, even though both NE#1 and the daughter indicated that this did not actually occur. Lastly, aside from the Complainant's account, which is rebutted by NE#1, there is no objective evidence indicating that the pointing of the firearm happened. Without more, OPA simply cannot meet the burden of proof necessary to establish this allegation.

For the above reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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