



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 26, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0541

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 (Inconclusive)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 3	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events	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 that the Named Employees may have engaged in unprofessional conduct during an off-duty incident and that they failed to report this matter to their chains of command, potentially in violation of policy. It was further alleged that Named Employee #1 may have engaged in actions that constituted a violation of law.

SUMMARY OF INVESTIGATION:

Officers from the King County Sheriff's Office (KCSO) responded to a potential domestic violence (DV) dispute. A female had called 911 to report that a male was sitting behind her car and was preventing her from leaving. When the KCSO officers responded, they made contact with both parties, who were still at the scene. The KCSO officers determined that both the male and the female were employed by SPD. The female – Named Employee #2 (NE#2) – was interviewed separately from the male – Named Employee #1 (NE#1).

NE#2 told the KCSO officers that she and NE#1 were not in a dating relationship, even though he was interested in this. She said that she came over to NE#1's residence and had a drink. She then decided to leave but NE#1 sat behind



her car temporarily preventing her from doing so. The KCSO officers described both of the Named Employees as polite and cooperative. Neither was identified as appearing intoxicated.

The KCSO officers determined that no crime had been committed. They did not detain or arrest either of the Named Employees and no report was completed. Neither of the Named Employees reported this incident to their SPD chains of command.

An anonymous Complainant later alleged to OPA that the Named Employees had been contacted by police but failed to report that this occurred. The Complainant asserted that this constituted misconduct.

OPA interviewed both of the Named Employees. NE#1 said that NE#2 came over to his apartment and they had a drink. He said that things were going well until NE#2 got upset all of a sudden and said that she wanted to leave. NE#1 stated that he tried to get her to speak with him to explain what happened; however, she walked out. He followed her outside, both because he wanted to know what was bothering her and because he was worried that she had consumed too much alcohol to safely drive. He did not know that she had called police until they arrived. He was cooperative with the KCSO officers and was not arrested, cited, or detained. He did not believe that he engaged in unprofessional or illegal activity. He further stated that he did not believe that he was required to report this incident to his chain of command.

NE#2 told OPA that she came over to NE#1's residence and had a drink. She said that she wanted to leave but he reminded her that she had promised to smoke a cigar with him. NE#2 described NE#1 as being irritable that she wanted to leave. Ultimately, she decided to go. She said that NE#1 grew upset and followed her. She got in her car to leave but, when she looked behind her, NE#1 was sitting on the ground and was blocking her. She felt that his conduct was erratic and concerning. She got out of her car and powerwalked to the apartment to see if he would follow her with the plan that she would quickly get back into her car and leave. He did follow her and she then returned to her car. However, when she tried to leave, he was again behind her. She then called the police. She, like, NE#1 denied engaging in unprofessional or illegal activities. Moreover, again like NE#1, she did not believe that she was required to report this incident to her chain of command.

NE#2 told OPA about one prior time where NE#1 acted similarly towards her. On that occasion, she, NE#1, and another officer spent the night on the other officer's boat. She stayed in one area with the other officer and NE#1 planned to sleep on the couch. She recalled that NE#1 started behaving oddly and left the boat. He then came back but would only speak with NE#2. She felt that this was the same type of erratic and jealous behavior he engaged in during this incident. OPA spoke with the other involved officer who corroborated NE#2's account.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

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.)



If NE#1 engaged in the activities attributed to him by NE#2, this would constitute a violation of the Department's professionalism policy. However, NE#1 denied that he blocked NE#2's vehicle for some improper motive and stated that, instead, he did so because he was concerned that she was impaired and could not drive safely. If his account was true, this conduct would not violate SPD policy. While NE#2's account makes more sense to OPA – particularly given the past interaction between her and NE#1 and because NE#1 did not appear to report NE#2's potential intoxication to the KCSO and no KCSO officer identified her as impaired – OPA cannot definitively credit it over NE#1's recitation of the facts.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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. If NE#1 engaged in the conduct alleged by NE#2, it could plausibly have constituted criminal activity.

As a starting point, that the KCSO did not determine that there was probable cause to believe that a crime was committed by NE#1 does not preclude OPA from reaching a different conclusion on this question. However, for the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events

SPD Policy 5.002-POL-8 requires employees to report certain events. Relevant to this case, officers must notify their chains of command if: "They are the subject, or they believe they may be the subject of a criminal investigation, criminal traffic citation, arrest, or conviction."

NE#1 stated that he did not believe that he needed to report this incident because he felt that he was not the subject of a criminal investigation given that the KCSO determined that no crime had been committed. He further noted that he was not detained, cited, or arrested at any point.

OPA finds the question of whether NE#1 was the subject of a criminal investigation to be a close call. Certainly, he was the subject of a 911 call made by NE#2 and the KCSO responded to investigate whether NE#1 standing behind NE#2's car and preventing her to leave rose to the level of criminal conduct. While the KCSO determined that it did not, OPA believes that NE#1 still should have reported this incident to his chain of command.

This being said, because NE#1 was a new officer at the time and due to the fact that OPA understands why he may have interpreted the policy as he did, OPA recommends that he receive a Training Referral rather than a Sustained finding.



- **Training Referral:** NE#1's chain of command should discuss his decision not to inform them of this incident and counsel him that he should have done so. The chain of command should provide any further retraining and/or counseling that it deems fit. This counseling and any retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #1

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

NE#2 denied engaging in unprofessional behavior. Under NE#1's account, NE#2 may have done so when she attempted to drive away from his residence while potentially impaired. However, OPA does not believe that there is sufficient evidence in the record to establish this, particularly given that there was no indication that NE#1 raised her intoxication level with the KCSO officers and no officer reported believing that she was impaired.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events

As NE#2 called 911, she was not the subject of the criminal investigation conducted by the KCSO. Moreover, she was not detained, cited, or arrested. Accordingly, she had no obligation to report this incident to her chain of command and OPA recommends that this allegation be Not Sustained – Unfounded.

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