



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 16, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0518

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Sustained
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Lawful and Proper
# 5	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Inconclusive

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained

Imposed Discipline

Written 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:

The Complainant alleged that Named Employees failed in their duty to protect her daughter, Community member #2 (CM#2) from harm. The Complainant further alleged that Named Employee #1 (NE#1) was racially biased towards her daughter and that NE#1 and Named Employee #2 (NE#2) failed to conduct a complete investigation.

ADMINISTRATIVE NOTE:

A discipline meeting was held with NEs chain on command on June 15, 2022. At the discipline meeting, a robust discussion was held concerning the conduct of both NEs with respect to allegation #1, 15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence. As a result of this conversation, OPA amended



its recommendation with respect to Named Employee #1, Allegation #1 and clarified its reasoning with respect to Named Employee #2, Allegation #1. These changes are set forth in more detail below.

SUMMARY OF INVESTIGATION:

On 10/30/21, NE#1 was working a foot beat shift with NE#2. Officers noticed a fight disturbance and contacted both involved parties, the suspect, Community Member#1 (CM#1) and the Complainant's daughter, Community Member #2 (CM#2). CM#1 told NE's that her brother was trying to talk to CM#2, who was intoxicated.

CM#2 stated that she did not want to talk to CM1's brother who "would not leave her alone." In response, she pushed him. CM#1 then confronted CM#2 after this push, to which CM#2 responded by pushing CM#1. CM#1 then punched CM#2 in the face, knocking her to ground before walking away. CM#2 suffered an abrasion on her knee, and a scratch above her right eye. CM#2 declined medical attention by the attending Named Employees on the night.

On 11/3/21, the Complainant CM#2's mother, contacted NE#1 to report that CM#2 went to the hospital following the assault by CM#1. The Complainant stated that she spoke with both NE#1 and NE#2 and said she spoke with them a couple of days after the assault. The Complainant stated that CM#2 was diagnosed with four (4) facial fractures, a concussion and her right eye was swollen shut. Photographs of CM2's injuries were subsequently forwarded to SPD.

CM#2's mother contacted OPA on 11/17/21 and OPA initiated an investigation. During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report and Supplement, and Body Worn Video (BWV). OPA also interviewed the Complainant, CM#2 and a witness Community member #3 (CM#3) who was present and who gave her details to NE#2 that night.

CM#3 told OPA that as she and CM#2 walked from one bar to another, they were approached by a man who began to harass them. They told the man that they wanted to be left alone. CM#3 stated the man left their presence and returned with CM#1. The man then told CM#1 "These are the Bitches that were talking shit earlier". CM#1 became aggressive toward the group, and as CM#2 and CM#3 walked away, CM#1 pulled CM#2's hair from behind, slammed her on the pavement and struck her several times on the face. CM#3 described the scene as hectic, and that CM#2 was acting "hysterical" after the assault. CM#3 stated that she was the least drunk in the group and provided an explanation of what happened to NE#2. This comports with BWV.

NE#1 and NE#2 attended to take a report of the incident. Their total engagement with the group was approximately 9 minutes. CM#2 refused medical attention at the scene. BWV from the Named Employees shows they obtained information from two of the three parties involved, and one witness.

NE#1's and NE#2's entire response to, and investigation of, this incident was recorded on his BWV. As such, these underlying facts are not in credible dispute.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

A stated above, NE#1 investigated the complaint for approximately 9 minutes. NE#1 interviewed CM#1, the alleged suspect in the case. NE#1 spoke with CM#1, the alleged attacker and obtained her version of events. NE#1 did not get details of the male who was in her company. NE#2 spoke with CM#2, the injured party in the complaint, and a witness CM#3. NE#1 spoke with NE#2 but did not obtain any of the details that he had gathered. NE#2 stated that he could not get a clear understanding of what had occurred after speaking with CM#2 and CM#3.

NE#1 stated that he did not photograph because CM#2's injuries because they were minor, and the result of a street fight. However, OPA notes that NE#1 did not have any contact with CM#2 to determine the extent of the alleged injuries and come to this conclusion. NE#1 stated that he is aware that the area where the incident took place does not have surveillance cameras. NE#1 stated he could have been more thorough, but he did "enough for this case, at the time". NE#1 did not take a recorded statement from CM#1 and stated that, "Because that's not common practice for us for simple assaults or even fight disturbances".

Implicit in this policy—and SPD Policy 15.180-POL-5, is that officers must take the time necessary to search for, collect, and comprehend the import of relevant evidence and witness statements. Where officers receive information that suggests the existence of other evidence that is not impractical to collect, policy requires the officer to seek and collect that evidence as well. This was not done. The resultant injuries sustained by CM#2 underline that this was not a simple assault. The expectation is that NE#1 would complete a thorough and complete investigation. Unfortunately, NE#1 did not do so here and, to the contrary, conducted an inadequate investigation and search for evidence. This is simply inconsistent with the Department's expectations of his conduct.

For the above reasons, OPA originally recommended that this allegation be sustained. However, at the discipline meeting, NE#1's chain of command noted that the failure to search for evidence were intertwined with the concerns surrounding poor record keeping in the documentation allegation #2. Both NE#1 and NE#2 independently collected information from people present but never collectively collated this information. Based on this discussion with the chain of command, OPA believes that this allegation is most appropriately addressed through a focused training referral.

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

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with him and the requirements of SPD Policy 15.180 (1), as well as any other training and counseling the chain of command deems necessary. The retraining and counseling conducted should be documented, and this documentation should be maintained in BlueTeam.



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

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department's expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

NE#1's Incident Report only contains information provided by the suspect. The Incident Report does not contain the names and contact information of any of the witnesses present nor the name of the third involved party. BWV from the Named Employees shows that they obtained statements from two of the three parties involved, and one witness.

NE#1 was asked his reason for not asking CM#2 for her brother's information. NE#1 said he didn't think about it at the time and that he didn't think it reasonable to leave CM#1 alone to look for additional witnesses.

NE#1 stated that he did not include CM#2's version of events because he wrote the report a few days later. This issue speaks to the concerns as when documentation of an incident is not thorough from the outset, the memory gets diluted, and facts get lost. NE#1 accepted that he could have been more thorough with his investigations. NE#1 said he should have taken the time to speak with CM#2, her friends/witnesses, and taken photographs of the injuries.

NE#1 report of this incident was not complete, thorough or accurate. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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." (SPD Policy 5.001-POL-6.)

NE#1 stated that he did not develop probable cause to make an arrest. NE#1 indicated that a lot of small fights, like this one, happen all the time at bar closing. NE#1 was the primary officer but did not speak with the alleged victim, CM#2 and relied on NE#2's version of what he was told.

NE#1 acknowledged that it would have been important to speak with CM#2 to determine if a crime had been committed. NE#1 believed that the incident was the result of a "mutual fight" and did not refer the case to the prosecutor's office. Considering that NE#1 did not speak with the victim, CM#2, and that he admitted that he could not decipher events, OPA does not know how NE#1 came to this conclusion that this was a "mutual fight" based on what information he had, which was limited to say the least.



Based on his interpretations, NE#1 appeared to rely on the aspect of policy which indicates that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” However, this is predicated on the fact that the use of such discretion is in a reasonable manner consistent with the mission of the department and duties of their office and assignment. The duties of the office are to investigate the complaint received. NE#1 failed to investigate the complaint without any reasonable discretionary explanation.

As such, OPA finds that NE#1’s decision-making here was so deficient as to violate policy, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

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-POL.) This includes different treatment based on the race of the subject. (See id.)

The Complainant alleged that NE#1 acted with racial bias against her daughter. When the Complainant contacted NE#1 she informed NE#1 that she understood Black Lives Matter and felt officers had done nothing to protect her daughter, CM#2. NE#1 reportedly said to her, “don’t play the race card with me, I’m the same race.” This phone call was not recorded. OPA asked NE#1 whether he made this comment. NE#1 stated, “I wouldn’t say I made that statement for verbatim. But she did bring up race. And I did say I said something along the lines of like, like race has nothing to do with it. You don’t have to bring up race with them. I don’t understand why you bring it up race”. NE#1 had no recollection of any comment made by the Complainant about Black Lives Matter.

NE#1 is the same race as the suspect, but not the Complainant. NE#1 believed that he did not violate SPD Policy 5.140. and that his “decisions had nothing to do with race, it wasn’t based on race of the individual”. A review of all available evidence does not indicate, nor suggest that NE#1 treated any party differently because of their respective races. The alleged utterance of the comments, however, are further addressed in the professionalism allegation below. Accordingly, OPA recommends that this allegation be Not Sustained, Lawful and proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #5

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

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) 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.)



As explained above, OPA alleged that NE#1 may have violated the Department's professional policy during his interactions with the Complainant. BWV shows that SPD Dispatch provided the incorrect case number. NE#1 determined that the Complainant had been incorrectly provided with the wrong case number and provided the Complainant with the correct number. NE#1 stated that when he spoke with the Complainant the naming of the incident, i.e., a "fight disturbance" was questioned. NE#1 stated that the Complainant would not listen to him, and he subsequently created a supplemental report based on the additional information provided.

Relative to the information above, it was alleged that NE#1 stated, "don't play the race card with me, I'm the same race" to the Complainant in a follow up call. OPA acknowledges the upset that this caused Complainant. The initial call between the Complainant and the NE's were not recorded. OPA does not find that this statement in itself to be a policy violation. Owing to the lack of record, the manner in how it was used in a conversation, if these words were spoken, cannot be conclusively determined. Accordingly, OPA recommends that this allegation be Not Sustained Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #2 - Allegation #1

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

NE#2 and NE#1 attended this call and spent approximately 9 minutes investigating the matter. NE#2 interviewed CM#2 and CM#3. NE#2 stated that he found it difficult to determine what had actually occurred owing to the level of yelling and screaming being done by those present. NE#2 stated that "It could have easily been a mutual combat situation between the two from what I heard from CM#2 and her friend. It could have easily been an assault, a simple assault" NE#2 believed that the call was a bar fight, "and that it was "a crazy scene out there a lot of drunk people out there". NE#2 said he did not photograph Cm#2's injuries or take a recorded statement because he had his BWV activated. NE#2 said that did not identify Cm#2's friends because they were "very drunk".

Having BWV activated does not dilute the requirement, per policy, to conduct a thorough and complete search for evidence. The level of intoxication does not dilute the requirement for obtaining individuals names. No efforts were made to obtain names from those present by NE#2. NE#2 did not search for independent footage. NE#2 did not provide NE#1 with witness information. NE#2 stated that he did not take photographs because, "I just didn't feel like it was feasible right then and there to take all the pictures". No recorded statement was taken from CM#2 or CM#3. NE#2 stated that he relied on his BWV in lieu of a taking a recorded statement.

OPA recognizes the chaos of the scene that NE#2 and NE#1 were met with. However, this points to the importance of looking for evidence to stabilize what they were presented with. If witness names had been recorded, and statements taken they could have been later contacted. Similarly, by making enquires in the immediate vicinity, NE#2 may have identified an independent witness to the original assault. This was not done. One punch assaults are common and often result in later more serious injuries, particularly when alcohol has been involved. In this instance several facial fractures occurred. OPA finds that NE#2 failed in conducting a thorough search for evidence. Indeed NE#2 failed in obtaining basic information from witnesses and the alleged victim.

For the above reasons, OPA originally recommended that this allegation be sustained. However, at the discipline meeting, NE#2's chain of command noted that the failure to search for evidence were intertwined with the concerns surrounding poor record keeping in the documentation allegation #2. Both NE#1 and NE#2 independently collected



information from people present but never collectively collated this information. Based on this discussion with the chain of command, OPA believes that this allegation is most appropriately addressed through a focused training referral.

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

- Training Referral: NE#2's chain of command should discuss OPA's findings with him and the requirements of SPD Policy 15.180 (1), as well as any other training and counseling the chain of command deems necessary. The retraining and counseling conducted should be documented, and this documentation should be maintained in BlueTeam.

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

Named Employee #2 - Allegation #2

5.001- Standards and Duties 6. Employees May Use Discretion

OPA alleged that the Named Employees may have violated Department policies related to primary investigations and discretion based on how they chose to investigate, document, and classify the incident.

On the night, NE#2 was candid in his discussion with NE#1 that he could not get clear insight into the incident itself. NE#2 stated that he was unable to identify what had occurred owing to the level of intoxication of all individuals involved. NE#2 also used a similar phrase as NE#1 and referred to the incident as "a mutual combat". However, NE#2 further stated that, "But I just didn't know the other side of the story. And since we didn't, I didn't speak with the alleged suspect to figure out what was going on". As such OPA must question why NE#2 came to an unsubstantiated conclusion about what had actually occurred. NE#2 had a recollection of telling NE#1 that CM#2 said that CM#1 was antagonized by CM#1's brother, and that CM#1 came out if no where and grabbed her by the hair and punched her. Ne#2 stated he relayed this information to NE#1 and that he and NE#1 came to a collective decision to write the matter up rather than arrest.

Similar to the analysis for Named Employee #1 - Allegation #3, NE#2 appeared to rely on the aspect of policy which indicates that "[d]iscretion is proportional to the severity of the crime or public safety issue being addressed." However, this is predicated on the fact that the use of such discretion is in a reasonable manner consistent with the mission of the department and duties of their office and assignment. The duties of the office are to investigate the complaint received. NE#1 failed to investigate the complaint without any reasonable discretionary explanation.

As such, OPA finds that NE#1's decision-making here was so deficient as to violate policy, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**