



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 21, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0318

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties, 5.001 – POL-11 Employees Will Be Truthful and Complete in All Communication	Not Sustained - Inconclusive
# 2	5.001 – Standards and Duties, 5.001 – POL 6 Employees May Use Discretion	Not Sustained - Unfounded
# 3	15.080 – Follow-Up Unit Notification & Follow-Up Investigation, 15.080-POL-2(1) Follow-Up Investigations Will Include Certain Minimum Components	Not Sustained - Unfounded
# 4	5.140 – Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	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.

ADMINISTRATIVE NOTE:

The Office of Inspector General certified this OPA investigation as thorough, timely, and objective.

EXECUTIVE SUMMARY:

The Complainants alleged Named Employee #1 (NE#1) inadequately investigated their daughter's reported sexual assault. The Complainants also alleged NE#1 invented an unsupported theory about the incident. They further alleged NE#1's investigative failures were based on "anti-victim bias."

SUMMARY OF INVESTIGATION:

The Complainants mailed OPA a letter (dated September 21, 2022) outlining their concerns about NE#1's investigation. That letter included five attachments: 1) the Complainants' assessment of NE#1's investigation, 2 - 4) the Complainants' assessment of the King County Prosecuting Attorney's Office's (KCPAO) review, and 5) the Complainant's assessment of the case. After reviewing those documents, OPA opened an investigation. During its investigation, OPA reviewed NE#1's case file, photographs, incident and supplemental reports, medical records, lab reports, NE#1's interviews, email exchanges, NE#1's training records, and a KCPAO declination letter. OPA also interviewed the Complainants, NE#1, and NE#1's sergeant.



a. Incident Report

Witness Employee #1 (WE#1) wrote the incident report and a statement. In summary, WE#1 wrote:

On September 6, 2021, a hospital social worker flagged officers to report a minor's—Community Member #1 (CM#1)—sexual assault. WE#1 volunteered to respond. WE#1 conducted a primary investigation, which included interviewing CM#1, Community Member #2/CM#2 (CM#1's friend), and Complainant #1 (CM's mother). WE#1 wrote CM#1 had dirt, dust, and foliage on her clothes and hair. WE#1 also saw redness around the front of CM#1 neck and wrists. CM#1 said she, CM#2, and two other friends went to Magnuson Park for a party on September 5, 2021, around 8:50 PM. CM#1 admitted to drinking at the party. She was unsure how much she consumed but recalled having mixed drinks and Truly Hard Seltzers. Community Member #3 (CM#3), also with friends, physically bumped into CM#1. CM#1 did not know CM#3, but they talked. CM#1 said CM#3 encouraged her to drink by tipping her drink into her mouth and making her drink faster. CM#2 reportedly intervened a few times, but CM#3 continued. After that, CM#3 got close to CM#1 and hugged her. CM#1 said around 9:45 PM, CM#3 grabbed her wrist and led her down an isolated trail. CM#1 estimated her intoxication level as 8/10. CM#1 said CM#3 brought her to a bench, where they sat and kissed. CM#1 said others were within earshot and eyesight. CM#1 said she left her Truly drink on the bench, and CM#3 led her east toward the water.¹

CM#1 said she collapsed and sat on a dirt patch near a tree. She said CM#3 mounted and kissed her. CM#1 said she laid down, and they continued kissing. She said CM#3 started removing her pants, and she stated, "I don't feel like doing this. I don't want to do this." CM#1 said CM#3 asked whether she was on birth control, to which she replied, "No. I'm a virgin." CM#3 told CM#1 he did not have a condom but continued to initiate intercourse. CM#1 said she was scared and "didn't want to get hurt and let it happen." She said CM#3 digitally penetrated her after an unsuccessful attempt to insert his penis. CM#1 said CM#3 performed oral sex on her and successfully penetrated her with his penis. CM#1 said it "hurt very bad." CM#1 said CM#3 removed his penis, put her hand on it, and said, "Give me a handjob." CM#1 said she was uninterested, which caused CM#3 to say, "give me a blowjob," while grabbing her. CM#1 repeatedly pushed CM#3 off. CM#1 said CM#3 re-penetrated her vagina with his penis for about 20 minutes. She said CM#3 initially held her wrists and, during intercourse, flipped her and vaginally penetrated her from behind. CM#1 said he struck her back and buttocks several times and flipped her onto her back before choking and vaginally penetrating her. CM#1 estimated her breathing was obstructed at a level of 5/10.

CM#1 said she pushed CM#3 off her and looked for her phone. She said she found her phone and saw several missed messages and calls from her friends. CM#1 said she pinned her location for her friends around 10:50 PM so they could find her. She said she asked CM#3 whether he ejaculated, but he did not answer. CM#1 heard her friends, ran toward them, and cried, "I was raped." CM#1's friend called Complainant #1, who picked up CM#1 and CM#2, went home to grab belongings, and then went to a hospital.

¹ Before going into further detail, CM#1 asked Complainant #1 to leave the room. Complainant #1 complied.



CM#2 told WE#1 that after CM#1 and CM#3 separated from the party, CM#3's friend told CM#2 that CM#3 bumped into CM#1 purposefully. CM#2 said she and others unsuccessfully searched for CM#1. CM#2 gave WE#1 CM#3's social media account information.

WE#1 and other officers relocated to Magnuson Park, where they processed the scene and collected evidence. WE#1 found probable cause for Rape 2nd Degree.

b. NE#1's Investigation

On September 7, 2021, NE#1 was assigned to investigate the case. NE#1 wrote a Case Investigation Report. In summary, NE#1 wrote:

On September 8, 2021, NE#1 reviewed WE#1's incident report. That day she also spoke to Complainant #2—CM#1's father—about the investigative process and scheduling an interview with CM#1. NE#1 interviewed CM#1 the next day. It was video and audio recorded. That interview generally mirrored CM#1's account as captured in WE#1's report. CM#1 further stated she had 1 ½ vodka shots and two Truly drinks at the party. She said someone also poured an unknown liquid into her Truly can. CM#1 said she had to hold onto CM#2 to steady herself. She recounted CM#3 bumping into her and eventually consensually kissing her. When CM#3 led her onto the trail and toward the water, CM#1 said she had to hold CM#3 to maintain balance. She said when they reached the apparent destination, CM#3 released her, causing her to fall. CM#1 said they kissed, and CM#3 removed her pants and fondled her breasts under her shirt. CM#1 recalled telling CM#3, "I don't think I want to," and him asking whether she was on birth control. CM#1 told NE#1 she asked CM#3 whether he had a condom, and he said no. CM#1 said she believed CM#3 would continue regardless, so she wanted to prevent disease or pregnancy. She thought, "I don't want this to happen." CM#1 also recalled CM#3 performing oral sex and unsuccessfully trying to penetrate her vagina with his penis. She further told NE#1 about CM#3 grabbing her neck. She said it was uncomfortable, but her breathing was unrestricted. CM#1 said she pulled away when CM#3 tried to get her to use her hand on him. She said CM#3 laid on his back and pulled her on top of him. CM#1 said her body was limp and she could not yell or run. She explained they were far from others, and she still felt the effects of alcohol. CM#1 said when she located her phone, a friend—Community Member #4 (CM#4)—Facetimed her while CM#3 digitally penetrated her vagina. At that time, CM#1 did not tell that friend what happened or what was happening. CM#1 dressed, reunited with her friends and outcried about her encounter with CM#3.

On September 13, 2021, NE#1 sent preservation requests to Snapchat for CM#1's and CM#3's accounts.² NE#1 directed another detective to search CM#1's phone.³ NE#1 also requested CM#1's hospital records. On September 17th, NE#1 went to Complainant #1 and CM#1's home to administer a photo array. CM#1 did not identify her attacker in the photo array but stated number 4 looked "a little" like him. On September 27th, NE#1 requested CM#3 and his parents' contact information from Seattle Public Schools. That day she also emailed Complainant #1 to arrange an interview. That recorded interview happened the next day.

In summary, Complainant #1 said CM#1 had permission to attend the party and was supposed to get a ride home from a friend at 10:30 PM. Complainant #1 said she looked at a GPS app and saw CM#1 was still at Magnuson Park. She texted CM#1 but got no response. About 10 minutes later, CM#1 texted Complainant #1 to pick her up. Complainant

² NE#1 originally sent those requests on September 10, 2021, but did not have access to a scanner to send signed requests.

³ CM#1 provided signed consent.



#1 called CM#1, who was crying. Complainant #1 drove to CM#1, who was sobbing with dirt on her face and clothes. CM#1 told Complainant #1 she was raped. In the car, Complainant #1 recorded CM#1 and CM#2 as they explained what happened. Complainant #1 took CM#1 to a hospital. Complainant #1 told NE#1 she could tell CM#1 consumed alcohol but was not slurring words.

On September 29th, Complainant #1 and NE#1 had a follow-up conversation. Complainant #1 told NE#1 during the ride from the party CM#2 talked about how CM#3 encouraged CM#1 to drink more and faster, but CM#2 told him to stop. On October 5th, NE#1 picked up CM#1 sexual assault kit and related items from the hospital, which she inventoried as evidence. On October 6th, NE#1 requested the Washington State Patrol Crime Lab test the sexual assault kit. On October 21st, NE#1 recorded an interview with CM#2. In summary, CM#2 stated Complainant #2 drove her and CM#1 to the party. CM#2 said she had little alcohol there, but CM#1 appeared impaired. She recalled CM#3 bumping into CM#1. CM#2 said they started talking and eventually kissing. She said CM#1 and CM#3 walked away together. CM#2 said she thought everything was okay, but as the party ended, she went looking for CM#1. CM#2 called CM#1's phone, but there was no answer. CM#2 said when she found CM#1, she was sobbing and dirty and said, "I think I was just raped."

NE#1 also interviewed CM#4. CM#4 said he separated from CM#1 at the party. He said as the party ended, friends unsuccessfully searched for her and called her phone. CM#4 said CM#1 eventually called back and said she was with a guy, and she was okay. CM#1 pinned her location, and her friends found her. When they saw CM#1, she ran towards them crying. CM#4 also said CM#1 appeared intoxicated.

On November 12th, NE#1 interviewed Community Member #5 (CM#5)—another friend of CM#1 who was at the party. However, CM#5 added nothing to what CM#1, CM#2, and CM#4 provided.

On November 23rd, NE#1 made separate unsuccessful phone calls to CM#3 and his mother. She also mailed them a letter requesting contact. On November 30th, NE#1 spoke to Community Member #6—CM#3's mother—to arrange an interview with CM#3. On December 8th, CM#3's lawyer emailed NE#1 to advise they were considering her interview request. On December 12th, NE#1 followed up with CM#3's lawyer about the interview. His lawyer indicated CM#3 would participate in an interview in 1-2 weeks. On January 13th, they scheduled the interview for January 25th. The January 25th interview was rescheduled due to a reported illness. On February 1st, NE#1 interviewed CM#3 at his lawyer's office. CM#3 was issued Miranda warnings and acknowledged he understood them. In summary, CM#3's story about how he met CM#1 at the party, talked, kissed, and relocated away from others with her matched CM#1's account. He also admitted to removing her pants. CM#3 said he got on top of CM#1 but could not get an erection. He believed his penis penetrated CM#1's vagina "but not very much." CM#3 said CM#1 got on top of him but could not perform. He said they stopped trying to have sex and talked and cuddled. CM#3 stated the encounter was consensual. CM#3 also consented to a DNA swab.

On February 2nd, NE#1 requested the crime lab test CM#3's sample. That day, NE#1 interviewed Community Member #6 (CM#6)—CM#3's friend who also attended the party. CM#6 corroborated CM#3's account. Specifically, he said after he reunited with CM#3 at the party, CM#3 told him he and CM#1 were too drunk to have sex. On February 3rd, NE#1 sent the case to KCPAO.



c. OPA Interviews

On November 7, 2022, OPA interviewed the Complainants. Complainant #2 stated they decided to make an OPA complaint after conferring with several people who suggested SPD lacked adequate training for juvenile sexual assault investigations. The Complainants believed NE#1's investigation into CM#1's sexual assault exemplified that training deficiency. Complainant #2 provided data and referenced articles outlining best practices for sexual assault investigations (like conducting suspect-focused investigations, as opposed to victim-centered investigations.) Complainant #2 also raised NE#1's failures to follow up on Snapchat records, request a search warrant for CM#3's phone, and interview everyone CM#3 spoke to the night in question. He also thought NE#1 should have pressed CM#3 harder during their interview, particularly about the redness observed on CM#1's neck and wrists and CM#3's lies. Overall, Complainant #2 described NE#1 as unprepared for the interview, which consisted of softball questions. Further, he suggested it was inappropriate for NE#1 to interview CM#1 in a criminal interview room, especially when CM#1 was sleep deprived. Complainant #1 thought NE#1 should have gathered hospital records about CM#1's emergency room visit before interviewing CM#1 rather than solely relying on WE#1's report. She also believed NE#1's interview with CM#3 constituted a "hall pass."

OPA interviewed Witness Employee #2 (WE#2)—NE#1's sergeant. WE#2 was an SPD Sexual Assault Unit (SAU) detective before she was promoted to SAU sergeant. WE#2 said all SAU detectives, including NE#1, received Victim Centered Engagement and Resiliency Training (V-CERT) and Alliance for Child Welfare Excellence (child interviewing training) at the Washington State Criminal Justice Training Commission. WE#2 said SAU detectives specialize in sex crimes and child abuse. She said SAU detectives produce Case Investigation Reports (CIR), which note investigative efforts and collected evidence. WE#2 reviews CIRs before they are sent for prosecutorial review. WE#2 said NE#1 sent preservation requests to Snapchat for CM#1 and CM#3's accounts before she confirmed the suspect's identity. However, WE#2 said since NE#1 identified the suspect (CM#3) without those records, she decided against pursuing a warrant. WE#2 said there was no SPD policy for interviewing suspects, but there are laws covering juvenile interviews. WE#2 also said there are no department guidelines or requirements regarding questions to ask during an interview or where the interview takes place. She said NE#1 interviewed all necessary parties. WE#2 also said forensic interview specialists were primarily used for children 5-10 years old, whereas SAU detectives interviewed teenagers like CM#1. She said state law outlines training requirements for SAU detectives, and NE#1 met all requirements. WE#2 further stated that in addition to her review, the prosecuting attorney would request additional investigation, which KCPAO did not do here.

The KCPAO prosecutor assigned to CM#1's case declined to participate in an OPA interview. Through her attorney, she told OPA she believed NE#1 provided KCPAO with all information needed for prosecutorial review.

OPA interviewed NE#1. She was assigned to SAU for about six years, investigating about 250 sex crime cases before being assigned to CM#1's case. NE#1 estimated about half of her prior cases involved juvenile victims. She said she completed all training required by state law. NE#1 said while the department has minimum standards for follow-up investigations, there were no requirements specific to sex crime investigations. She said she requested the preservation of Snapchat records before confirming CM#3's identity, and since she confirmed his identity before



applying for a warrant, the issue was moot. Moreover, NE#1 did not believe a warrant would be granted based on the available information. She said when she interviewed CM#3, she aimed to build rapport and elicit information and thought confronting him about CM#1's physical injuries was unnecessary. NE#1 said Complainant #1 arranged CM#1's interview. NE#1 said she suggested they postpone it, but Complainant #1 wanted it to happen as soon as possible.

d. Training Records

NE#1's relevant training records reflected:

- November 2019 – Sexual Assault Investigations, Victim-Centered Engagement, and Resiliency Tactics
- May 2019 – P.E.A.C.E. Investigative Interviewer
- February 2019 & May 2019 – Cold Case Sexual Assault Investigations Training
- August 2018 – Drug Facilitated Sexual Assault Investigation
- February 2017 – Child Abuse Interviewing and Assessment

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties, 5.001-POL-11 Employees Will Be Truthful and Complete in All Communication

The Complainants alleged NE#1 was dishonest during CM#3's interview by stating CM#1 resisted CM#3 by holding her pants.

Department employees must be truthful and complete in all communications. SPD Policy 5.001-POL-11. However, deception may be knowingly used: (1) where there is an exigent threat to life safety or public safety; (2) the deception is necessary due to the employee's assignment (i.e., undercover); or (3) there is a need to acquire information for a criminal investigation. Even if the deception is permitted under an exception, Washington state law states the ruse must not be so "shocking" to violate "fundamental fairness." Further, under the Seattle Police Officers' Guild's collective bargaining agreement (SPOG CBA), a sustained complaint involving dishonesty during an officer's official duties carries a "presumption of termination." SPOG CBA, at § 3.1. For termination cases where the allegation is stigmatizing to a law enforcement officer, the standard of review is elevated (i.e., more than a preponderance of the evidence). *Id.*

Here, particularly where the department affords detectives great latitude for interviewing strategies, there is insufficient evidence NE#1's mischaracterization of CM#1's account was not a misstatement or strategic choice. During the interview, CM#3's lawyer asked about CM#1's account. NE#1 replied she did not have her notes, so she had to rely on her memory. That effort likely caused her to misspeak. On the hand, it was possibly a strategic choice, where she hoped CM#3 would correct her misstatement with an account consistent with CM#1's account (providing corroboration). Either way, there is insufficient evidence NE#1 was unjustifiably untruthful, where policy allows deception for criminal investigative purposes or simply mistaken.

Accordingly, OPA recommends this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**



Named Employee #1 - Allegation #2

5.001 - Standards and Duties, 5.001-POL-6 Employees May Use Discretion

The Complainants alleged NE#1 abused discretion by interviewing CM#3 at his lawyer's office.

"Employees 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." SPD Policy 5.001-POL-6. Further, "[d]iscretion is proportional to the severity of the crime or public safety issue being addressed." SPD Policy 5.001-POL-6. Additionally, juveniles subjected to custodial interrogation must be provided access to an attorney before waiving constitutional rights. See RCW 13.40.740.

Here, state law required NE#1 to provide CM#3, a juvenile, access to a lawyer before he waived Miranda for custodial interrogation. Moreover, NE#1 told OPA she aimed to build rapport and elicit information during that interview, which she may have strategically decided was most likely to occur with CM#3 in the comfort of his lawyer's office. However, even if it was not a strategy, the evidence does not demonstrate NE#1's choice was unreasonable or inconsistent with her assignment to investigate a highly severe crime—child rape.

Accordingly, OPA found no abuse of discretion and recommends this allegation be Not Sustained - Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #3

15.080 - Follow-Up Unit Notification & Follow-Up Investigation, 15.080-POL-2(1) Follow-Up Investigations Will Include Certain Minimum Components

The Complainants alleged NE#1's investigation failed to include minimum components.

SPD conducts follow-up investigations in certain cases, as determined by either Criminal Investigations Bureau or precinct personnel. While the course of an investigation depends on the particular facts of the incident, the goals may include the identification, apprehension, and prosecution of involved suspects. SPD Policy 15.080-POL-2. Follow-up investigations will include analysis and review, where the employee reviews prior reports, collects the suspect's criminal history and attempts to link the suspect to other crimes through a modus operandi analysis. SPD Policy 15.080-POL-2(1)(a). The follow-up investigation must also include investigative operations, where the employee must interview the suspect, witnesses, and victim and consider viewing the crime scene. 15.080-POL-2(1)(b). Last, follow-up investigations must include case preparation, where the employee prepares case files "to satisfy standards established by the prosecuting attorney's office" and respond to requests for additional information from the prosecutor. 15.080-POL-2(1)(c).

Here, NE#1's sergeant and the KCPAO found her investigation thorough and complete. NE#1's analysis and review included reviewing WE#1's report. CM#3 had no apparent criminal history and no indication of other crimes. Her investigative operations included interviewing CM#1, CM#3, Complainant #1, and several circumstantial witnesses (including CM#1 and CM#3's separate friend groups.) Although NE#1 did not visit the crime scene, she told OPA she reviewed photographs taken by an evidence technician. Last, as confirmed by KCPAO, NE#1's CIR satisfied prosecutorial review standards.



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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #4

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainants alleged NE#1 engaged in bias-based policing based on anti-victim bias.

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.

Here, OPA found no evidence supporting NE#1’s alleged anti-victim bias.

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

Recommended Finding: **Not Sustained - Unfounded**