

Issued Date: OCTOBER 4, 2024

From: Director Gino Betts, Jr. 
Office of Police Accountability

Case Number: 2023OPA-0145

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy, and Department Policy

Finding: Not Sustained – Inconclusive

2. **Allegation #2:** 5.001 - Standards and Duties 10. Employees Will Strive to be Professional

Finding: Sustained

- **Proposed Discipline:** Written Reprimand to 45 Hours (5 Day) Suspension
 - **Imposed Discipline:** 18 Hours (2 Day) Suspension

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Administrative Note on Proposed Findings:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

Executive Summary:

It was alleged that Named Employee #1 (NE#1) had an intoxicated and assaultive incident with his domestic partner in Boston.

Administrative Note:

On June 12, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

An SPD supervisor made an OPA complaint stating that the Boston Police Department (BPD) arrested NE#1. It noted that witnesses reported NE#1 and his domestic partner, Community Member #1 (CM#1), had a physical altercation following a baseball game in Boston. NE#1 reportedly pushed CM#1 and pulled her hair, causing her to fall. NE#1 and CM#1 denied a physical altercation. BPD arrested NE#1 for misdemeanor domestic violence assault.

OPA investigated the complaint, reviewing BPD records, the court docket, and Massachusetts laws. OPA interviewed NE#1 and two witnesses, Witness #1 (W#1) and Witness #2 (W#2).

Boston Police Department Records

In summary, BPD reports stated the following:

On April 1, 2023, at 11:46 PM, BPD officers responded to an in-progress assault and battery near Fenway Park. The 9-1-1 caller reported a male pushing a female and pulling her hair. Later, the 9-1-1 caller stated the couple appeared intoxicated and were pushing each other.

W#1 and another community member waved down the BPD officers. BPD records identified six witnesses, including W#1 and W#2. OPA tried contacting them, but only W#1 and W#2 responded. They said they saw NE#1 pull CM#1's hair and aggressively grab, shake, and push her.

They said they followed NE#1 and CM#1 out of concern for CM#1's safety. NE#1 reportedly grabbed and shook CM#1 again before CM#1 grabbed NE#1, fell, and hit her head against a concrete sidewalk. The community members attempted to intervene. CM#1 grabbed W#1 and repeatedly yelled, "Don't let go."

Four other community members—including W#2—arrived and attempted to assist CM#1, who was on the ground and could not unlock her phone or provide her identifying information.

W#1 stated he tried speaking with NE#1, but NE#1 grabbed W#1's throat and yelled, "Who do you think you are?"

BPD officers spoke with NE#1. NE#1 stated that he and CM#1 were in Boston for a Red Sox game. He said CM#1 was very drunk, and he "might" be drunk too. NE#1 denied there was a fight or argument. NE#1 provided BPD officers with his identification but was "unable to provide the correct birthday shown on his [identification card]." BPD's report described NE#1 as "very inebriated" and unable to understand that the birthdate he told them differed from what his identification card reflected. BPD officers requested another form of identification. NE#1 gave them his wallet. BPD officers found NE#1's police identification inside.

BPD officers spoke with CM#1, who was "unable to stand on her own, could not speak in full sentences, and [was] slurring her words." She also dropped her cell phone and a cup of water and had trouble standing and forming complete sentences. Like NE#1, CM#1 denied having a verbal or physical altercation with NE#1. She appeared distraught and expressed concern about NE#1 getting into trouble, repeatedly saying he was good at his job and received an award.

CM#1 had no observable injury, but an ambulance was requested since her head reportedly hit the concrete.

NE#1 was arrested for assault on a family or household member.

Court Records

On April 3, 2024, NE#1 was arraigned, pleaded not guilty, and released on personal recognizance with conditions. On February 9, 2024, the charges against NE#1 were dismissed at the prosecution's request.

The assistant district attorney (ADA) supervising the Domestic Violence Unit told OPA that W#1 declined to cooperate, so the assault charge concerning W#1 was dismissed. Similarly, the ADA said that CM#1 was clear from the beginning that she did not want to participate in the prosecution. The ADA explained that his office's policy was not to force victims to testify against their will.

Witness #1

W#1 told OPA that he and a friend were exiting a bar when their attention was drawn to NE#1, who was acting aggressively towards CM#1. W#1 described NE#1's voice as raised and aggressive as he pulled CM#1's arm and pushed her.

W#1 said he and his friend approached NE#1 and CM#1 out of concern. W#1 said NE#1 yelled at him that the situation was none of his business and to "Screw off."

W#1 said NE#1 and CM#1 departed, but he followed them to ensure CM#1's safety. W#1 said he and his friend intervened because "what we saw was not right [so we] confronted him about it." W#1 said NE#1 identified himself as a police officer and told W#1 the situation had nothing to do with them. W#1 said NE#1 and CM#1 were "bickering back and forth" when NE#1 pushed CM#1, causing her to fall. W#1 was unsure how hard the push was and described CM#1 as "definitely intoxicated to the point where her balance wasn't very great." W#1 said after seeing the push, "We had to intervene and just get him away from her." W#1 said other bystanders convened and sat with CM#1.

W#1 said he made it "abundantly clear that what was happening isn't okay" and that he would be calling the police. W#1 said NE#1 reiterated that "he was a cop" in Seattle and got in W#1's face. W#1 stated he responded that NE#1's behavior was inappropriate, regardless of whether he was a police officer. W#1 stated that, at that point, NE#1 grabbed him by the throat with one hand and squeezed "slightly."

Witness #2

W#2 told OPA that she recalled the incident, but she was intoxicated.

She said she exited a bar and saw NE#1 and CM#1 in a dispute across the road. W#2 said it looked like NE#1 was trying to "catch" CM#1 or get her to go home with him. W#2 approached

with her friends. W#2 said she spoke to some men nearby watching the incident. W#2 said a male bystander said he was calling the police, and W#2 and her friends stood with CM#1.

W#2 stated neither NE#1 nor CM#1 could “get [into]” their phones. W#2 described NE#1 as identifying himself as a police officer at some point.

Named Employee #1

NE#1 told OPA that he and CM#1—his then-girlfriend, now wife—attended a Red Sox game. After the game, they went to a nearby bar for about two hours before leaving to get food.

NE#1 said CM#1 was very intoxicated and struggling to walk. NE#1 said they grabbed one another for balance and, as they were walking down the street, CM#1 either “kicked the curb or tripped over her feet” and “[fell] pretty hard and almost [pulled] me down with her.” NE#1 said he stayed on his feet, but CM#1 presumably hit her head because “she was out.” NE#1 described her as “lifeless, you know, she was out.”

NE#1 said he crouched down to aid CM#1 as two people approached. NE#1 said he assumed they were there to help, but “Two girls” stood between him and CM#1 to separate them. NE#1 said he was not expecting to be “pushed to the side like that.” He said that someone said they called the police. NE#1 said he thought, “Okay, I have a guess as to what’s happening now.” NE#1 said he stood off to the side when CM#1 got “pretty escalated,” telling others to leave her alone and calling NE#1’s name. NE#1 said he attempted to walk over to CM#1 when:

This guy kind of grabbed my arm and, kind of, to hold me where I’m at, I’m assuming. And I kind of tried to pull away, and he pulls back and keeps me there. And that’s when I kind of like stiff-armed him, and I’m like, “Get off me,” right? Like, I kind of went off on him for a second. I told him, “Get off me, like, I don’t know why you’re putting your hands on me.” Like she’s over here yelling out my name. I’m going over there, like, uhm, he let’s go of me, I let go of him.

NE#1 said he then approached CM#1, who calmed down after she saw him.

When asked how he “stiff-armed” the other man, NE#1 said he extended his right arm and pushed the male's “upper chest” with his right hand.

NE#1 acknowledged that he believed people intervened because they thought there might be a domestic violence situation occurring. NE#1 stated the only time he identified himself as a police officer was when BPD could not find a “return” for his license, so he handed them his wallet containing his police identification.

NE#1 acknowledged he did not tell BPD officers that CM#1 tripped and fell. NE#1 and the OPA investigator discussed this fact in the following exchange:

NE#1: They asked me if there was any [...] physical altercation. I said, no... I didn’t really explain things... At this point, I’m just stressed. I’m kind of freaking out. And I was just like, no, nothing happened.

OPA: Okay, you're stressed, totally understandable. But you also know there are significant ramifications here. Right? Your girlfriend, fiancé, now wife, has been knocked out cold, correct? And you don't take that opportunity to say, "Hey, she was knocked out cold. Maybe we should get an ambulance here?" And you know, take that opportunity to say, "No, absolutely nothing physical happened... She tripped and [fell] on the curb."

NE#1: Like I said, they asked [was] there like a physical altercation. I said no. And that's it at this point. I'm just, you know, I'm freaking out kind of thing. Because, you know...

OPA: [NE#1], did you ever [tell] them, "Hey, guy, she tripped on the curb? Maybe that's what these people misinterpreted?"

NE#1: I don't think so. No.

OPA: [NE#1], have you completed domestic violence conversations or investigations in your role as a police officer?

NE#1: Yes.

OPA: Okay, [that is] fairly pertinent information, correct?

NE#1: Right.

OPA: You know there are ramifications here...and I'm sure you're stressed at this point in time. But I think it's fair to say in that moment, you know what the consequences can be...

NE#1: Correct.

OPA: It's concerning to me that you don't choose to make it known to them. That your fiancé has tripped over the curb, and that's what knocked her out. Maybe people misinterpreted that, and we should really get her looked at.

NE#1: Correct. Like I said, I was super... stressed, and [...] at this point, I'm just like, I don't really know what to think do kind of thing I'm just like, like you said, there's significant ramifications, so like my head to this point, it's just like, you know. Yeah, I should have explained better [at] the moment.

OPA: How many stressful situations have you been in when you've been on the street? And when I say been on the street, just because people who sometimes review these might not know what I mean. I mean, when you're working as an officer.

NE#1: Several.

OPA: Okay. So, stress is a part of our job, right? How we perform under stress is part of our job. How we perform under stress is a significant part of our job, correct? We are often judged [on] how we perform under stress.

NE#1: Correct.

OPA: Okay.

NE#1: I think [...] it's like it's [a] different one... I'm dealing with a situation at work where it's other people, you know? I'm just a third party to it. Now I'm involved. And it's, you know, it's for me, it's a different kind of stress.

NE#1 stated, on a scale of one to ten, that his level of intoxication on the night of the incident was a "six out of ten, like, I was drunk. But like, I wasn't, you know, out of control kind of thing." NE#1 initially stated his level of intoxication did not impact his ability to recall the events of the evening. Later, when confronted with discrepancies between his account and those of witnesses, NE#1 acknowledged, "I think that I probably was a bit more drunk than I thought [at] that moment."

NE#1 said CM#1 was later determined to "probably" have suffered a concussion.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

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

It was alleged that NE#1's actions violated the law.

SPD employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2. The Commonwealth of Massachusetts—like Washington—outlaws assault and battery. See Massachusetts General Law (MGL) c. 265 § 13A ("Whoever commits an assault or an assault and battery upon another shall be punished by [imprisonment or fine].") In Massachusetts, assaulting and battering a "family or household member" is a separate crime. See MGL c. 265 § 13M.

Here, BPD arrested NE#1 on probable cause of domestic battery against CM#1 and battery against W#1. OPA interviewed W#1 and NE#1, offering different accounts about what transpired. W#1 described NE#1 as intoxicated, enraged, and violent, while NE#1 described himself as intoxicated and misunderstood. Specifically, NE#1 suggested that he and CM#1 drunkenly held each other for balance before CM#1 tripped and fell—which onlookers misinterpreted as a violent attack. Without a doubt, W#1's account is most believable. W#1, a stranger, had no motive, other than fearing for CM#1's safety, to insert himself into the situation. Moreover, W#1's account was consistent at each stage. He told the 9-1-1 call taker that a male subject—later identified as NE#1—was pushing a female and "pulling her hair." When BPD arrived, he provided the same account. About a month and a half later, W#1 gave OPA the same report.

Conversely, by all accounts, NE#1 was intoxicated and did not offer BPD the explanation for CM#1's fall that he later provided OPA. For those reasons, OPA finds W#1 more credible. Nevertheless, the matter is ultimately he-said-he-said. Despite W#1's consistency and lack of motive to discredit NE#1, little evidence corroborates his account. CM#1 had no observable injury, no video captured the incident, and W#2's involvement occurred after NE#1's purported

attack against CM#1. CM#1 was on the ground when W#2 approached and separated NE#1 from her. Further, W#2 was also admittedly intoxicated and fuzzy with the details.

Overall, this is a close call. BPD established probable cause that NE#1 committed a crime. However, insufficient corroboration falls short of proving, by a preponderance of the evidence, that NE#1 committed a crime.

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 10. Employees Will Strive to be Professional

It was alleged that NE#1 was unprofessional.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.*

Here, NE#1, while off duty in Boston, was so publicly intoxicated that he and CM#1 had to assist each other with walking. Moreover, NE#1 could not remember his birthdate, unlock his phone, or provide BPD with an alternate identification card—opting to hand the officer his wallet instead. According to NE#1, CM#1 was so intoxicated that she tripped and hit her head against concrete, possibly suffering a concussion. Thereafter, NE#1 “stiff-armed” and was “going off” on W#1, who NE#1 knew was concerned that CM#1 was experiencing domestic violence. During the encounter, W#1 and W#2 recalled NE#1 referencing his Seattle law enforcement status. Moreover, whether due to intoxication or it being a self-serving afterthought, NE#1 failed to inform BPD about what caused CM#1 to “trip.” Overall, NE#1’s conduct fell far short of the department’s standards.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**