
Issued Date: MARCH 18, 2024**From:** Director Gino Betts JR., Office of Police Accountability**Case Number:** 2023OPA-0433

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional
Finding: Sustained
 2. **Allegation #2:** 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy
Finding: Not Sustained - Unfounded
- **Imposed Discipline:** Oral Reprimand and Mentoring

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 Named Employee #1 (NE#1) was unprofessional and violated the law when he challenged Witness Officer #1 (WO#1)—another SPD officer—to fight and later said, “If I was off duty, I would drag [WO#1] out the car and beat him to death.”

Administrative Note:

On February 22, 2024, the Office of Inspector General certified this investigation as thorough, timely, and objective.

Summary of the Investigation:

The Complainant—an SPD lieutenant—filed an OPA complaint concerning a September 27, 2023, altercation between NE#1 and WO#1. It stated that NE#1 threatened to fight WO#1 and, later, told Witness Officer #2 (WO#2), “If I was off duty, I would drag [WO#1] out the car and beat him to death.” The Complainant also filed a complaint with SPD’s Equal Employment Opportunity Office (EEO).

OPA opened an investigation, reviewing the OPA Complaint, WO#1's written statement, a computer-aided dispatch (CAD) call report, body-worn video (BWV), and in-car video (ICV). OPA also interviewed NE#1 and three witness officers.

1. OPA Complaint

The Complainant wrote that an acting sergeant informed him of the following circumstances underlying the complaint.

There was a 9-1-1 call concerning narcotics activity. WO#1 and another officer, Witness Officer #3 (WO#3), responded. WO#1 contacted the 9-1-1 caller and went to observe the narcotics activity firsthand. WO#1 informed other officers of this, warning them to stay out of the area. Instead, NE#1 drove into the area and stopped in front of the suspected narcotics activity, causing the possible suspects to leave.

Via radio, WO#1 asked which officer entered the area. NE#1 responded affirmatively. WO#1 asked to speak in person. Face-to-face, WO#1 accused NE#1 of ignoring his request to stay out of the area and ruining his investigation. NE#1 indicated that he felt disrespected by WO#1's confrontation and challenged WO#1 to fight: "I swear on my two kids, I got you on anything physical, jiu-jitsu, wrestling, etc." WO#1 asked whether NE#1 was threatening him. NE#1 responded, "See, you're the type to run to a supervisor. In [another state], we do things differently." WO#2 stepped between NE#1 and WO#1.

WO#1 left the area, and WO#2 coached NE#1 on accepting constructive criticism. NE#1 responded, "[WO#1] is lucky I am not off duty. If I was off duty, I would drag him out [of] the car and beat him to death." WO#2 asked, "but why, though?" NE#1 replied, "It would make me feel good." The complaint suggested that WO#2's questions upset NE#1. WO#2 later told WO#1 about NE#1's threat to beat WO#1 to death.

2. Witness Officer #1's Written Statement

WO#1 submitted a written statement concerning the incident to SPD's Human Resources/EEO Office. According to that statement:

WO#1 asked NE#1 to meet. NE#1 arrived, and WO#1 spoke with NE#1 through NE#1's lowered passenger window. WO#1 asked, "What happened?" NE#1 responded, "What?" WO#1 told NE#1 that NE#1 drove through "a narcotics offense scene" and "ruined" WO#1's investigation. WO#1 asked whether NE#1 checked the CAD details before arriving. NE#1 said no. WO#1 also confirmed that NE#1 did not log on to the call or radio to make his presence known to other officers. WO#1 told NE#1 to do those things next time before responding to another officer's call. NE#1 agreed and apologized.

WO#1 was walking away when NE#1 said, "Let me pull over so we can talk man-to-man." WO#1 responded, "No. It's settled." NE#1 replied, "What did you say?" and asked whether he "needed to get a supervisor involved?" WO#1 responded, "No," and walked towards WO#2 and WO#3.

WO#1 thought NE#1 planned to escalate the situation, so he wanted WO#2 and WO#3 present. NE#1 called WO#1 a “pussy,” and said he was afraid to speak man-to-man. NE#1 accused WO#1 of disrespecting him. They argued about NE#1’s inability to accept feedback and which officer had more seniority. WO#1 told NE#1 he was “at the bottom of this metaphorical totem pole” and needed to accept constructive criticism.

NE#1 “escalated even further and swore on the lives of his two children that he could take [WO#1] physically in anything,” like jiu-jitsu and wrestling. WO#1 stated that he felt threatened. NE#1 said WO#1 was the “type of officer to run to OPA or a supervisor” and possibly called WO#1 a “rat.”

WO#2 stepped between NE#1 and WO#1. WO#2 told NE#1 that he was out of line and that this was “not how we do things.” NE#1 responded, “They handle things like this differently,” where NE#1 is from.

Later, WO#2 told WO#1 that NE#1 said, “If [WO#1] had spoken to me that way off duty, I would have pulled him out of the car and beat him to death.” WO#2 asked, “Why?” NE#2 responded, “Because it would feel good.” WO#2 also told WO#1 that NE#1 was “triggered” by WO#2’s follow-up. WO#2 said NE#1’s veins bulged and eyes glazed during the altercation.

3. CAD Call Report, BWV, and ICV

The CAD call report showed that NE#1, WO#1, and WO#3 responded to the narcotics call.

BWV and ICV did not directly capture NE#1 and WO#1’s altercation.

WO#3’s BWV depicted WO#1 and WO#3 speaking about the call after the fact. WO#3 stated, “There were a lot of people over there.” WO#1 responded, “I know man. It’s this guy.” WO#3 said he was unfamiliar with NE#1. Later, WO#2 and WO#3 discussed the call. WO#3 laughed, saying, “He was trying to be sneaky.” WO#2 responded, “He’s not sneaky at all. He’s fucking Leroy Jenkins this fucking call, bro.” “Leroy Jenkins” refers to an internet meme where a video game player lost a game for his team by ignoring a plan and, instead, charging in alone. WO#2 stated, “This fucker turned on 24th [Avenue] and rolls right up on these fucking dudes.” WO#3 responded, “Yeah, he should just gone back here somewhere.” WO#2 replied, “Fucking idiot. What the fuck. I called [WO#1], and I was like, this guy blew your fucking call, dog.”

ICV recorded the confrontation from a distance, without sound. Rain blurred a significant portion of the confrontation. It showed WO#2 stepping between NE#1 and WO#1, extending his hand towards NE#1’s chest. NE#1, WO#1, and WO#2 pointed at each other repeatedly throughout the incident. WO#1 appeared to have stepped towards NE#1 before walking away. NE#1 and WO#2 stayed behind and seemed to converse. WO#3 walked away.

4. OPA Interviews

OPA interviewed NE#1 and the three witness officers.

a. Witness Officer #1

WO#1's interview was consistent with his written statement to SPD HR/EEO.

b. Witness Officer #2

WO#2 described NE#1 and WO#1 as having a heated conversation. WO#2 said NE#1 and WO#1 approached and spoke with WO#2 and WO#3, with WO#1 saying he wanted witnesses and NE#1 saying he wanted a supervisor. WO#2 recalled NE#1 accusing WO#1 of disrespecting and talking to NE#1 like a child. WO#2 said he told NE#1 that WO#1 was not disrespectful but was upset about NE#1 spoiling the narcotics investigation. WO#2 said NE#1 began talking about "taking this to the mats," at which point WO#2 stepped between them. WO#2 recalled saying, "This is not how we do this," and NE#1 responding, "This is how we do this in [another state]. If you want things to get physical, they can get physical." WO#2 said the discussion shifted to talking about NE#1 needing to let go of his ego and being able to talk things through without a supervisor.

WO#2 described speaking with NE#1 afterward. WO#2 described NE#1 as becoming red in the face and stating, "I need you to understand that if we were off duty, I would have pulled him out of the car and beat him to death." WO#2 said he had never heard this statement at work, but WO#2 said he could "kinda talk [NE#1] down by the end." WO#2 thought NE#1 was not controlling his emotions. WO#2 said he called WO#1 to tell him about NE#1's comments.

c. Witness Officer #3

WO#3 stated he only had a partial recollection of this incident, which occurred several months prior to his interview. He had no notes or BWV to refresh his recollection.

WO#3 described meeting with WO#1, WO#2, and NE#1 after responding to the call to debrief what had occurred. WO#3 stated that WO#1 seemed upset with NE#1. WO#2 described NE#1 as upset and that NE#1 said he did not want to be spoken to "like a child." WO#3 recalled WO#1 saying he was the senior officer and NE#1 should be humble and accept advice. WO#3 described NE#1 getting more upset and telling WO#1 they should take their uniforms off and do some jiu-jitsu matches outside of work. WO#2 said that when WO#1 tried to clarify whether that was a threat, NE#1 denied it but said that jiu-jitsu would help them "find out who is a better man." WO#3 described hearing later that NE#1 threatened to beat WO#1 to death.

d. Named Employee #1

NE#1 stated he had never met WO#1 before WO#1 requested to speak with him after the call. NE#1 described driving by WO#1, who was on foot. NE#1 said he rolled down his window and extended his hand to WO#1, who refused to shake hands. NE#1 said that WO#1 just looked at his hand and started questioning him like he was NE#1's supervisor. NE#1 said WO#1 asked, "What the fuck are you doing?" NE#1 apologized to WO#1 and accepted WO#1's criticism. However, NE#1 said WO#1's comments continued to the point that he felt WO#1 was trying to bully or belittle him. NE#1 said WO#1 spoke to him like a child. NE#1 apologized again, but WO#1 called him a "New boot" and "bottom of the barrel."

NE#1 described feeling angry and wanting to speak further outside the car to "address the

situation.” NE#1 said he and WO#1 walked over to where WO#2 and WO#3 were standing. NE#1 said he told WO#1 that he did not appreciate how he spoke to him and that he wanted to be treated with respect. NE#1 said that other officers had disrespected him in the past, which affected his response to WO#1. NE#1 also stated that he heard WO#1 call him a “punk,” which he interpreted as disrespectful. NE#1 responded, “We can see who the punk is at Park 90/5.” Park 90/5 is an SPD facility that hosts, among other things, the defensive tactics gym. NE#1 said he challenged WO#1 to a physical feat, like wrestling, to earn respect.

NE#1 said he stayed to speak with WO#2. He told WO#2 that he and WO#1 were teaming up on him. NE#1 said he thought that all the blame came on him for how the conversation went despite WO#1 failing to acknowledge his disrespect.

NE#1 disputed the statement he allegedly made to WO#2. NE#1 said his actual statement was, “If both of us weren’t police officers, I’d drag him out and bash his head in.” NE#1 said he meant it was something he might have done when he was immature but that he had about nine years of law enforcement experience and would not act that way. NE#1 said he apologized to WO#2 and asked WO#2 to apologize to WO#1 on his behalf. NE#1 said his statements to WO#2 were made in anger and that he is only human. NE#1 described his statements as a build-up of years of different treatment as a new officer and a minority.

NE#1 stated that he was “100% in the wrong” for his comments. NE#1 admitted he violated SPD’s professionalism policy but disagreed he violated the law. NE#1 stated he had no intention of acting on his words and was speaking out of anger and hurt.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

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

The Complainant 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.* Employees must also “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.* “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.* Last, while on duty or in uniform, employees will not publicly ridicule “the Department or its policies, other Department employees, other law enforcement agencies, the criminal justice system[,] or police profession. This applies where such expression is defamatory, obscene, undermines the effectiveness of the Department, interferes with the maintenance of discipline, or is made with reckless disregard for truth.” *Id.*

The evidence established that NE#1's statements were unprofessional. As WO#1 walked away, NE#1 unnecessarily escalated the dispute by suggesting they fight. The evidence indicated that WO#1 was upset about the ruined surveillance, and NE#1 was upset about being confronted. While WO#1's tone may have been less than friendly, like telling NE#1 he was "at the bottom of this metaphorical totem pole," it did not warrant NE#1's reaction. NE#1 should have followed his instinct and sought a supervisor if he felt disrespected. Similarly, NE#1 telling WO#2, "If I was off duty, I would drag [WO#1] out the car and beat him to death," was indefensible—which NE#1 acknowledged, telling OPA he was "100% in the wrong."

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 violated the law.

Employees must adhere to laws and City and Department policies. SPD Policy 5.001-POL-2.

While unprofessional, it was not unlawful for NE#1 to challenge WO#1 to mutual combat. See Seattle Municipal Code 12A.06.025 – Fighting (outlawing fights in a public place only if they create a risk of injury or property damage "to a person who is not actively participating in the fight.") Moreover, although WO#1 and WO#2 thought violence was imminent, NE#1 made no gesture or action to indicate it.

Similarly, although troubling, NE#1's comments to WO#2 about beating WO#1 to death did not constitute a crime. Threatening to hurt another may constitute harassment under RCW 9A.46.020. "(1) A person is guilty of harassment if: (a) Without lawful authority, the person knowingly threatens: (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or (ii) To cause physical damage to the property of a person other than the actor; or (iii) To subject the person threatened or any other person to physical confinement or restraint; or (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical health or safety; and (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. 'Words or conduct' includes, in addition to any other form of communication or conduct, the sending of an electronic communication." RCW 9A.46.020. Harassment is a felony if the threat is to kill the person threatened. See *id.* However, the First Amendment requires that a criminal penalty for words alone can only be imposed where the words constitute a "true threat." See *State v. Kilburn*, 151 Wash.2d 36 (2004). There is no requirement that the speaker intend to carry out the threat. See *id.* at 46. The State of Washington applies an "objective test" to determine whether a "true threat" occurred. *Id.* at 45. "A true threat is a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be

interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person.” *Id.* (quotation marks and citations omitted). Here, witnesses to the confrontation described a heated exchange between NE#1 and WO#1, during which NE#1 suggested they fight. No one accused NE#1 of doing anything beyond challenging WO#1 to a fight, like inappropriately touching him. After WO#1 left, NE#1 made several statements to WO#2—who said he talked NE#1 down. NE#1’s statement was not made to WO#1 or in WO#1’s presence, nor did NE#1 tell WO#2 to relay it to WO#1. Perhaps most importantly, WO#2 and NE#1 described the statement as subjunctive, that NE#1 *would have* “beaten” or “bashed” WO#1 *had they* been off-duty or not police officers. That qualification suggested that NE#1 was momentarily incensed rather than expressing a serious threat. *Cf. id.* at 43 (“A true threat is a serious threat, not one said in jest, idle talk, or political argument.”).

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

Recommended Finding: **Not Sustained - Unfounded**