



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 3, 2024

FROM: DIRECTOR GINO BETTS, JR. 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0444

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 (Effective March 1, 2018)	Not Sustained - Unfounded
# 2	15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report	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:

Named Employee #1 (NE#1) responded to investigate whether Community Member #1 (CM#1)—the driver of a crashed vehicle—was impaired. NE#1 obtained a search warrant for CM#1's blood. The Complainant—CM#1's attorney—alleged that NE#1's search warrant affidavit was untruthful.

ADMINISTRATIVE NOTE:

On February 29, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On October 6, 2023, the Complainant filed an OPA complaint on CM#1's behalf, writing that NE#1 responded to an accident and "almost immediately determined" that CM#1 was impaired. He wrote that NE#1's warrant affidavit contained a "series of glaring inaccuracies," like suggesting medics treated CM#1 for an opiate overdose and describing CM#1 as having burned lips and "very constricted" pupils. The Complainant wrote that the Seattle City Attorney's Office (SCAO) dismissed criminal charges against CM#1 based on "proof issues." He attached email correspondence with SCAO and a motion to exclude CM#1's blood draw results at trial.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), police traffic collision report, traffic crash report, NE#1's warrant application, Washington State Patrol's (WSP) toxicology test report, the Complainant's motion to exclude evidence, photographs, email correspondence, NE#1's training record, and WSP's drug recognition expert (DRE) manual. OPA also interviewed the Complainant, a Seattle Fire Department (SFD) captain, and NE#1.



B. CAD Call Report, BWV, Police Traffic Collision Report, and Traffic Crash Report

On September 9, 2020, at 10:47 PM, CAD call remarks noted, “2 MIN[UTE]S AGO, CALLER HEARD LOUD CRASH AND GLASS BREAKING, VEH[ICLE] APPEARS TO HAVE CRASHED AND IS BLOCKING THE RIGHT [SOUTHBOUND] LANE. UNK[NOWN] INJ[URIES].”

Witness Officer #1 (WO#1) and NE#1 responded to the incident location and activated their BWV, capturing:

CM#1 was lying on the ground beside his car, which struck a pole. CM#1 appeared unconscious. SFD employees arrived and treated CM#1. An officer told WO#1 that he suspected CM#1 was driving under the influence (DUI) due to CM#1’s glossy eyes and his lying on the ground. WO#1 countered that those facts were also consistent with CM#1 suffering a head injury from the collision, and he needed more information to seek a blood warrant. WO#1 radioed and briefed NE#1. WO#1 denied smelling alcohol or finding evidence of impairment in CM#1’s car. WO#1 also said CM#1 was not answering questions. WO#1 advised NE#1 to respond to evaluate CM#1.

SFD arrived and treated CM#1. SFD told WO#1 that CM#1’s glucose levels and vitals were good, but his eyes were nonreactive. An officer told WO#1 that the collision did not involve heroin.

NE#1 arrived, shone his flashlight at the car, and looked inside. NE#1 asked an SFD employee, “What’d you say his pupils were?” The SFD employee replied, “Three.” NE#1 said there was “dope” in the car and “He’s got the weed there. That’s not going to do that to the pupils, but the foil over here will.” NE#1 went to the car’s passenger side and said, “Oh, that’s not foil. That’s a napkin.” NE#1 told WO#1 that CM#1 would be arrested for DUI. WO#1 said CM#1 did not have insurance, and his license was suspended. WO#1 said two witnesses saw CM#1 “tagging cones.” NE#1 said he would look at CM#1. WO#1 said witnesses described CM#1 as unsteady when he exited his car and laid on the ground. Someone nearby—not captured on BWV—said it looked like a heroin overdose.

NE#1 approached CM#1 and asked the SFD employees, “Can I get in there and look at his eyes just so I can say I did?” An SFD employee said CM#1’s eyes were “way back.” NE#1 opened CM#1’s eyelid and told CM#1 he was being arrested for DUI. NE#1 delegated tasks to backup officers, then reapproached CM#1. NE#1 examined CM#1’s right hand and noted opiate-related soot. NE#1 believed CM#1’s burnt bottom lip and lack of needle marks indicated that he smoked illegal narcotics. NE#1 spoke with backup officers about arranging CM#1’s blood draw and guarding him at a hospital.

WO#1’s police traffic collision report was consistent with the abovementioned evidence. NE#1’s traffic crash report was consistent with the information in his warrant application, described below.

C. NE#1’s Warrant Application

NE#1’s warrant application indicated he was a certified DRE trained to detect and investigate impaired drivers. NE#1 wrote that he investigated thousands of DUI cases and contacted intoxicated people on a nightly basis. NE#1 wrote that he was familiar with how drugs and alcohol affected a person’s behavior.



NE#1 wrote that there was probable cause that CM#1 was impaired. NE#1 wrote that CM#1 reportedly veered and struck a pole with a force that caused his car's airbags to deploy. NE#1 wrote that witnesses reported that CM#1's car was the only vehicle on the road. CM#1 was reportedly unsteady, used his car for support, and laid in the street.

NE#1 documented seeing suspected marijuana in the car's center console. NE#1 described CM#1's pupils as "very constricted," caused by a narcotic analgesic. NE#1 wrote, "SFD began to treat [CM#1] for an opiate overdose." NE#1 also documented that soot on CM#1's right thumb and CM#1's burnt bottom lip were consistent with CM#1 smoking an opiate. NE#1 wrote that CM#1's unresponsiveness impeded the investigation. A Seattle municipal court judge approved NE#1's blood draw warrant application.

D. Toxicology Test Report

In February, March, and June 2021, WSP conducted various tests on CM#1's blood. The toxicology test report reflected a positive test for fentanyl.

E. The Complainant's Motion to Exclude

The Complainant motioned to exclude CM#1's blood draw results. That motion set forth the following:

First, the Complainant disputed NE#1's claim that CM#1's eyes were "very constricted." The Complainant wrote that NE#1 was told that CM#1's pupils were 3.0 mm in diameter. The Complainant cited the WSP May 2018 instructor manual for the DRE program, which purportedly stated that pupils generally constrict below 3.0 mm in diameter. The Complainant wrote that the instructor manual noted that constricted pupils were among the most reliable indicators of a narcotic analgesic. The Complainant also cited average ranges of pupil size for three lighting conditions: 2.5 to 5.0 mm (room light), 5.0 to 8.5 mm (near total darkness), and 2.0 to 4.5 mm (direct light).

Second, the Complainant disputed NE#1's claim that pupil constriction is only caused by a narcotic analgesic. The Complainant cited the WSP's March 2013 student manual for the DRE program, which purportedly stated that if pupils were observably constricted, then the "possibility exists that the subject could be impaired by a narcotic analgesic." The Complainant also cited a web search indicating that several non-narcotic analgesic drugs could cause pupil constriction.

Third, the Complainant disputed NE#1's claim that "SFD began to treat [CM#1] for an opiate overdose." The Complainant wrote that other officers opined that an overdose occurred, but SFD employees refuted it. The Complainant wrote that SFD employees refused officers' offer to treat CM#1 with NARCAN—medication to treat an opioid overdose—because CM#1 did not experience an opioid overdose. The Complainant wrote that NE#1's statement demonstrated a "reckless disregard for the truth" because there was no factual basis.

Fourth, the Complainant suggested NE#1's investigation was inadequate because NE#1 immediately sought a blood draw warrant before examining CM#1's pupils, hands, and lips. The Complainant wrote that NE#1 failed to consider that the airbag deployment caused CM#1's sooty hand and burnt bottom lip. The Complainant wrote that CM#1's booking photograph showed no burn mark on CM#1's lip. The Complainant wrote that SFD employees noted CM#1's vitals were normal, disputing an opiate overdose. The Complainant wrote that there was no evidence of recent consumption, like odors, a warm pipe, or burn residue.



F. Photograph

CM#1's booking photograph showed discoloration on CM#1's bottom lip:



G. Email Correspondence

The Complainant submitted email correspondence with SCAO. A senior assistant city prosecutor wrote, "I'm intending to dismiss this case on Monday for proof issues."

On October 19, 2023, OPA contacted the city prosecutor, asking him to elaborate on the "proof issues." He replied, "The reason this case was dismissed was because the toxicology testing was conducted by a toxicologist who is no longer with the lab and is unavailable as a witness. Without their testimony, the test results were inadmissible. And without the test results, it was impossible to prove that [CM#1's] behavior (laying in the street outside his wrecked car, marginally unresponsive to the investigating officers) was the result of anything other than a significant collision." He did not raise concerns about the investigation, warrant, or other evidentiary issues.

H. OPA Interviews

On October 12, 2023, OPA contacted the Complainant. He said he had no information to provide beyond his OPA complaint.

On November 1, 2023, OPA contacted an SFD captain, who wrote CM#1's patient care record. The SFD captain said his report did not note treatment for opiates.

On November 30, 2023, OPA interviewed NE#1. NE#1 said he had worked for SPD since 2008. He said he was a certified DRE and instructor, requiring at least 85% conclusion accuracy to maintain certification.¹ He said his probable cause decision was based on training, experience, and observations. NE#1 said a single car striking a stationary object presented a high likelihood of impairment. He said witnesses saw CM#1 run over a cone, veer to the right, hit a pole, sway from his car, and lay on the ground. He said CM#1 had soot on his right hand and a burned lip, indicating CM#1 smoked an opiate. He said his investigation, at minimum, established CM#1's impairment.

NE#1 said CM#1's eyes should have been dilated, between 5.5 to 7.0 mm, since they were closed at night. However, NE#1 said CM#1's 3.0 mm pupil size meant CM#1's pupils were constricted. He said a "three" meant something else for SFD employees because they were "not looking for impairment that would cause somebody [not to be] able to operate a motor vehicle." He refuted the Complainant's claim that non-narcotic analgesics could cause pupil constrictions, saying that narcotic analgesics are "the only drug category in the DRE program that constricts the pupils" and noted that some depressants cause dilation.

¹ NE#1 noted the distinction between a "conclusion" and a probable cause determination. NE#1 said a "conclusion" is made by a DRE after a full evaluation in a controlled environment, whereas a probable cause determination is made in the field based on experience.



NE#1 said the airbag deployment did not cause CM#1's burnt lip since airbags emit a powder that may cause a reddish, itchy, and bumpy skin rash. He said it was "very apparent" that an opiate caused the black soot on CM#1's hand. He noted that CM#1's booking photograph or BWV would not adequately capture NE#1's firsthand observations. NE#1 denied seeing physical signs of a head injury. He said a head injury would dilate the pupils, not constrict them.

NE#1 assumed SFD treated CM#1 for an opiate overdose based on what he considered overt signs of an opiate overdose. He also noted that toxicology tests found fentanyl in CM#1's body.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-11. Employees Shall Be Truthful and Complete in All Communication (Effective March 1, 2018)

The Complainant alleged that NE#1's blood draw warrant application was untruthful.

Department employees shall be truthful and complete in all communications. SPD Policy 5.001-POL-11 (effective March 1, 2018).

The Complainant alleged that NE#1's warrant application contained untruths. The Complainant suggested that NE#1 failed to gather facts about the collision before arriving at the incident location, but BWV showed that WO#1 briefed NE#1 while NE#1 was en route. Specifically, NE#1 learned that CM#1 struck a pole and laid on the ground, which suggested impairment to NE#1. The Complainant also challenged whether NE#1 "saw a jar of marijuana in the center console" or found it after searching the console. However, BWV captured NE#1 announcing "dope" and "weed" in the car while looking through the car's window. The Complainant said NE#1 concluded that CM#1 was impaired despite signs indicating that CM#1 suffered a head injury and another officer ruling out a heroin overdose. NE#1 said he saw no indication of a head injury, particularly when CM#1's pupils were constricted when a head injury would cause pupil dilation. NE#1 also said the totality of circumstances suggested CM#1's impairment, including it being a single-car collision, marijuana in the car, and CM#1's actions after the crash. OPA found no indication that NE#1's probable cause determination was untruthful or otherwise misleading.

The Complainant disputed NE#1's description of CM#1's pupils as "very constricted." WSP's DRE instructor manual supports NE#1's account that CM#1's pupils were constricted. WSP instructed that a non-impaired person in near total darkness should have pupils ranging between 5.0 to 8.5 mm. An SFD employee said CM#1's pupils were 3 mm. The Complainant's motion acknowledged that constricted pupils were among the most reliable indicators of a narcotic analgesic. NE#1 also refuted the Complainant's contention that several non-narcotic analgesic drugs could cause pupil constriction, saying that narcotic analgesics are "the only drug category in the DRE program that constricts the pupils." Overall, the evidence established that NE#1 reached conclusions, like CM#1's pupils were "very constricted," based on his training and experience.

The Complainant disputed NE#1's suggestion that smoking an opiate caused soot on CM#1's hands and burnt bottom lip. The Complainant believed NE#1 failed to consider other causes, like the airbag deployment. CM#1's booking photograph showed discoloration, possibly a burn, on his bottom lip. NE#1 also disagreed that airbags could have caused a burned lip or soot on CM#1's hand, saying it was "very apparent" that the black soot on CM#1's hand was from an opiate, particularly after finding no needle marks on CM#1's arms. NE#1 also cited his experience seeing black



soot on hundreds of people who smoked an opiate. He said the foil and drug burning caused soot on their hands. He also said the burning came from the vapors in the straw heating up and burning the user's skin. Again, NE#1's conclusions were based on his observations, training, and experience rather than untruthfulness.

The Complainant disputed NE#1's statement that SFD treated CM#1 for an opiate overdose. BWV captured SFD employees treating CM#1, but the scope of treatment was unspecified. While an officer appeared to have ruled out heroin, SFD did not explicitly rule out other opiates. NE#1's BWV also captured NE#1 discussing soot on CM#1's hand and likely opiate use, determinations that nearby SFD employees did not challenge. NE#1 told OPA that his conclusions were based on experience and indications consistent with an opiate overdose, like the single-vehicle collision and CM#1 laying on the ground. While inaccurate, there is insufficient evidence that NE#1 was intentionally untruthful when he documented that SFD treated CM#1 for an opiate overdose rather than mistaken.

Overall, NE#1's blood draw warrant application articulated his observations and impressions that established probable cause, a reasonable belief that a crime—CM#1 drove under the influence— was committed based on the available facts and circumstances.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #2

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

The Complainant alleged that NE#1's traffic crash report was not complete, thorough, and accurate.

Officers must document all primary investigations in a report. SPD Policy 15.180-POL-5. All reports must be complete, thorough, and accurate. *Id.*

NE#1's traffic crash report was consistent with his blood draw warrant application, discussed above in Named Employee #1 – Allegation #1.

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

Recommended Finding: **Not Sustained - Unfounded**