



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 2, 2024

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

CASE NUMBER: 2023OPA-0487

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations, 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral
# 2	6.150 Advising Persons of Miranda and the Right to Counsel 6.150-POL-1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights	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:

The Complainant alleged that Named Employee #1 (NE#1) conducted an inadequate primary investigation by allowing Community Member #1 (CM#1), a DUI suspect, to leave the scene. It was also alleged that NE#1 failed to timely issue Community Member #2's (CM#2) *Miranda* warnings.

ADMINISTRATIVE NOTE:

On May 9, 2024, the Office of Inspector General certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant—an SPD lieutenant—filed an internal OPA complaint. He wrote that, during a use-of-force review, he observed NE#1 “failed to properly investigate a DUI and allowed the DUI suspect [CM#1] to leave the scene after taking her keys.” The Complainant noted that NE#1 admonished CM#1 that she could be arrested but failed to investigate whether there was probable cause that she committed a DUI.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, incident report, body-worn video (BWV), and performance review documents. OPA also interviewed NE#1 twice.

Incident Report

OPA reviewed the incident report written by Witness Officer #1 (WO#1). OPA found supplemental reports written by other officers but none by NE#1. However, since the underlying incident was not charged as a felony, SPD's policy did not require NE#1 to write a report.

WO#1 documented the following:

NE#1 was parked when he saw a disturbance between three subjects. During his investigation, NE#1 determined there was a valid No Contact Order (NCO) protecting CM#1 from her son, CM#2. When officers attempted to take CM#2



into custody for violating the NCO, CM#2 resisted, and officers used reportable force¹ to arrest him. CM#2 kicked several officers, resulting in their injury. NE#1, among the injured officers, was transported to a hospital for a medical evaluation.

Body-Worn Video

NE#1's BWV recorded the following:

NE#1 shone a flashlight on three people walking towards him from across the street—CM#1, CM#2, and Community Member #3 (CM#3). CM#1 said, "Officer, I need your help." NE#1 requested backup. CM#1 said she wanted her phone. CM#3 crossed the street and spoke to NE#1, explaining that CM#1 was trying to get her cell phone from CM#2, who may have mental health issues.

A second police officer, Witness Officer #2 (WO#2), arrived. NE#1 spoke with the three community members. NE#1 asked CM#2 to give CM#1 her phone. CM#2 said CM#1 told him he could have it. NE#1 asked CM#1 and CM#3 to speak with WO#1. NE#1 asked to talk to CM#2 separately. During their conversation, CM#2 referenced NE#1 shooting him multiple times. When NE#1 asked why CM#2 kept talking about NE#1 shooting him, CM#2 said SPD was notorious for shooting young Black men and putting "chips" in them. CM#2 said he was arguing with CM#1 because she had been drinking and driving "today." CM#2 said NE#1 should give CM#1 a breathalyzer.

CM#2 approached CM#1 and began arguing with her. NE#1 asked whose car was in the parking lot, and CM#1 responded, "My car. I can't drive." CM#1 said CM#2 would not let her drive but admitted she had the car keys. CM#1 admitted she was driving. CM#2 continued insisting CM#1 had been drinking, which CM#1 denied. NE#1 told CM#1 to give him her car keys, and CM#1 complied. NE#1 told CM#1 he smelled alcohol on her breath.

NE#1 asked CM#3—who appeared to be CM#1's friend or significant other—why he was letting CM#1 drive. NE#1 explained, "I didn't see this, right? But she admitted it. I had every legal right to take her to jail right now for DUI...I'm letting her go." CM#2 asked NE#1 where CM#1 went. NE#1 responded he was letting her go. BWV showed CM#1 walking away from the scene.

As NE#1 continued with CM#2, WO#2 told NE#1 that there was an NCO between CM#1 and CM#2. About nine minutes later, NE#1 told CM#3 that he could not arrest CM#2 for violating the NCO because CM#1 picked CM#2 up in the car, causing CM#2 to violate the NCO. NE#1 then called his supervisor. While speaking with his supervisor, NE#1 checked and confirmed that CM#1 was the subject of an NCO. NE#1 told his supervisor that CM#1 admitted she was "450,"² but that the bigger issue was resolving the NCO. NE#1 said he did not think he could arrest CM#2 for violating the NCO since CM#1 picked CM#2 up in her car. BWV did not capture the supervisor's comments. Immediately after ending his call with the supervisor, NE#1 radioed for backup as there would be an arrest. NE#1 approached WO#2 and said, "I got another arrestable offense for the mom, so if she shows up, it'll be an Adam as well."³ WO#2 then verified the NCO.

¹ "Reportable force" refers to any level of force greater than *de minimis*. See SPD Interim Policy 8.400-POL-1. "*De minimis*" force refers to a "physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." *Id.*

² "450" is SPD's numerical code for DUI.

³ "Adam" is code for an arrest.



NE#1, WO#2, and other officers attempted to take CM#2 into custody. BWV depicted a struggle, during which NE#1's BWV was knocked off. After CM#2 was placed in custody, NE#1 appeared to inspect his hand and spoke with responding Seattle Fire Department (SFD) personnel about injuries to his hands and face. CM#2 could be heard in the background saying he was not issued *Miranda* warnings. At that time, other SPD officers attempted to control CM#2 on the ground.

NE#1 was placed in the back of an ambulance to be transported to a hospital.

OPA Interviews – Named Employee #1

OPA interviewed NE#1 on March 29, 2024, and again on April 26, 2024.

NE#1 stated he heard an argument, drawing his attention to the community members. NE#1 said he saw a female reach for an object in a male's hand. NE#1 explained he kept his distance while awaiting backing units. NE#1 said there was a vehicle near the community members, but he did not know who owned it, and the community members were not in the car.

NE#1 described CM#2 as "very animated" and possibly having a mental illness. NE#1 learned CM#1 and CM#2 were arguing over a cell phone that CM#1 had given CM#2. NE#1 noted CM#2 was difficult to communicate with, interrupted his investigation, and was very distracting.

NE#1 said he shifted his investigation to DUI after CM#2 claimed CM#1 was drinking and driving. NE#1 described a faint odor of alcohol on CM#1's breath. NE#1 said he did not observe CM#1 driving but acknowledged that the "misdemeanor exception" allowed him to make an arrest.⁴ NE#1 said that CM#1 did not answer him when he asked whether she had been drinking and driving.⁵ NE#1 said after speaking with CM#1 for some time, he did not believe she was impaired. NE#1 explained he wanted to continue his investigation by identifying CM#2, so he took CM#1's keys so she could walk home.⁶ NE#1 concluded that CM#1 did not commit a crime, "She wasn't driving the car. She had no signs of impairment. . . [and] the field sobriety tests are not mandatory." When asked why he did not investigate the DUI further, NE#1 stated he did not believe CM#1 was impaired. OPA asked why he took CM#1's keys. NE#1 said he did not know but "figured that she may have had a drink beforehand."

NE#1 said CM#2 was identified after CM#1's name was run and the NCO between them was discovered.

In a follow-up interview, OPA questioned NE#1 about why he told CM#1 he could take her to jail. NE#1 stated he was trying to defuse the situation but could not recall why he made that statement. OPA also asked NE#1 about his statement to his supervisor, "She admits to me that she was 450 and driving, I didn't see her, and I was like, 'Do you realize what you just told me?'" NE#1 explained this as a poorly worded statement but that he meant someone had alleged CM#1 was driving under the influence. NE#1 said he should have told his supervisor that he already determined that he did not detect signs of impairment.

ANALYSIS AND CONCLUSIONS:

⁴ Washington law allows officers to make misdemeanor DUI arrests based on probable cause, regardless of whether they saw the offense or have a warrant. See RCW 10.31.100(3)(d).

⁵ BWV showed NE#1 asked CM#1 if she had been driving, and CM#1 responded affirmatively.

⁶ NE#1 explained he recognized CM#1 from the neighborhood and knew she lived nearby.



Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 failed to conduct a complete and thorough search for evidence concerning CM#1 allegedly driving under the influence.

During a primary investigation, officers must conduct a thorough and complete search for evidence. All evidence, except evidence that is impractical to collect, shall be collected. *See* SPD Policy 15.180-POL-1.

Here, NE#1 had at least reasonable suspicion that CM#1 drove under the influence. CM#2 accused CM#1 of drinking and driving, NE#1 smelled alcohol on CM#1's breath, and CM#1 admitted that she drove. NE#1 should have done more to confirm or refute whether there was probable cause to arrest CM#1. Although neither NE#1 nor WO#2 carried a portable breath test (PBT) on the night of the incident, NE#1 still could have requested a PBT or made CM#1 take Standard Field Sobriety Tests (SFSTs). NE#1 also could have asked further questions from CM#1, CM#2, or CM#3 to establish how recently CM#1 had driven and whether she was impaired. NE#1 did not attempt to gather this evidence. Instead, NE#1 permitted CM#1 to leave.

NE#1 explained in his OPA interview that he did not conduct any further investigation because he did not believe CM#1 was impaired. However, this explanation is undercut by NE#1's multiple statements on the night of the event, suggesting that he believed he had probable cause to arrest CM#1 for DUI. OPA also found the BWV inconclusive regarding whether CM#1 appeared impaired. NE#1 principally engaged with CM#2. CM#1 primarily stood silent. NE#1's only direct conversation with CM#1 lasted less than one minute, during which CM#1 visibly cried before abruptly walking away.

Ultimately, OPA finds NE#1 committed a potential, but not willful, violation of policy that did not amount to misconduct. First, CM#2 presented challenges for controlling the scene as he wandered, interrupted, repeatedly challenged the officers during their investigation, and behaved erratically. OPA is troubled by NE#1's inability to control his scene. However, OPA also recognizes that CM#1's suspicious behavior reasonably required some of NE#1's attention and likely disrupted his ability to sort through his investigation in a controlled manner. Second, OPA also recognizes that the SPD Manual section concerning DUI investigations recently changed, adding a new mandate that "Sworn employees will complete investigations for DUIs/PCs occurring within the City of Seattle." *See* SPD Policy 15.280-POL-1(1) (original effective date 09/01/2020; revised effective date 05/01/2024). While OPA believes NE#1 was still obligated to investigate the DUI under the previous policy, had the new version of the policy been in force on the date of this incident, NE#1 may have been more attuned to his obligations to investigate the incident here. Finally, OPA recognizes that NE#1 has no prior disciplinary history or supervisor actions for failure to investigate an incident thoroughly. Moreover, NE#1's chain of command appears to be actively working with him to address this issue. For these reasons, OPA finds a training referral is most appropriate in this instance.

OPA also notes one final concern. The BWV showed NE#1 mistakenly believed CM#2 could not be arrested for violating an NCO because CM#1 picked CM#2 up in her car. OPA recognizes that NE#1's supervisor corrected this mistaken belief, and NE#1 was able to effect this mandatory arrest. *See* SPD Policy 15.400-POL-3. However, OPA is concerned that an officer of NE#1's experience required supervisory input to resolve this commonplace issue. *See id.* ("If the order is violated with the permission or consent of the victim, the terms of the order are still valid.").

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



- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policies 15.180-POL-1, 15.280-POL-1, and 15.400-POL-3 with NE#1, and provide any retraining and counseling it deems appropriate. The retraining and counseling conducted should be documented and maintained in Blue Team.

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

Named Employee #1 - Allegation #2

6.150 Advising Persons of Miranda and the Right to Counsel 6.150-POL-1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights

It was alleged that NE#1 failed to provide CM#2 with his full *Miranda* rights as soon as practical.

Sworn employees must advise arrestees of their full *Miranda* rights, "regardless of interview, as soon as practical." SPD Policy 6.150-POL-1(1).

This allegation is unfounded. NE#1 was injured while attempting to take CM#2 into custody. Even as NE#1 was being treated for injuries, CM#2 was still uncontrolled. Under these circumstances, NE#1 had no practical opportunity to issue CM#2's *Miranda* rights.

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

Recommended Finding: **Not Sustained - Unfounded**