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**Issued Date:** JUNE 2, 2024

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

**Case Number:** 2023OPA-0487



## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

- 1. Allegation #1:** 15.180 - Primary Investigations, 15.180-POL 1. Officers Shall Conduct a Thorough and Complete Search for Evidence  
**Finding:** Not Sustained - Training Referral
- 2. 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  
**Finding:** Not Sustained - Unfounded

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### **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 force to arrest him. 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.* 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,” but that the bigger issue was resolving the NCO. “450” is SPD’s numerical code for DUI. 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.” “Adam” is code for an arrest. WO#2 then verified the NCO.

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. 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). NE#1 said that CM#1 did not answer him when he asked whether she had been drinking and driving. BWV showed NE#1 asked CM#1 if she had been driving, and CM#1 responded affirmatively. 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. NE#1 explained he recognized CM#1 from the neighborhood and knew she lived nearby. 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:**

#### **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**