



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 4, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN ON BEHALF OF DIRECTOR GINO BETTS JR.,
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0531

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 - Lawful and Proper (Expedited)
# 2	5.001 – Standards and Duties, 5.001-POL-11. Employees Will Be Truthful and Complete in All Communication	Not Sustained - Unfounded (Expedited)

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 a disturbance at a store. The Complainant alleged NE#1 lied by saying recording people in a private business without their consent was unlawful. The Complainant also alleged NE#1 failed to thoroughly investigate an alleged assault committed against him.

ADMINISTRATIVE NOTE:

This case was approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee involved in this case.

On January 10, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

On December 8, 2023, the Complainant left a voicemail for OPA. The Complainant alleged NE#1 lied by telling him he could not record a private conversation. The Complainant said he was grabbed and shoved out the door of a store because he had epilepsy. The Complainant said he recorded the store owner physically grabbing and pulling him. The Complainant said NE#1 told him to delete the recording.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report and body-worn video (BWV). OPA also interviewed the Complainant.

On December 8, 2023, at 8:28 AM, CAD call remarks noted, "5 MIN[UTE]S AGO, [REPORTING PARTY] SAYS EMPLOYEE GRABBED HIM AND SHOVED HIM OUT THE DOOR OF THE BUS[INESS]. [REPORTING PARTY] SEATED IN HIS VEH[ICLE] OUTSIDE NOW, NO WEAPONS SEEN. MEDICS DECLINED."



NE#1 responded to the incident location and activated his BWV, capturing the following:

NE#1 spoke with the Complainant in a parking lot. The Complainant said Community Member #1 (CM#1)—the store's general manager—refused to accept an item he tried returning, and then started yelling. The Complainant showed NE#1 a video he recorded capturing the Complainant telling CM#1, "I have epilepsy. You are attacking me," and CM#1 replying, "Bye." The Complainant said he recorded CM#1 as CM#1 grabbed and shoved him.

NE#1 told the Complainant that Washington law required two parties to consent to being recorded on private property. The Complainant replied that a business open to the public needed to provide reasonable accommodations under the Americans with Disabilities Act (ADA). NE#1 repeated his prior statement. NE#1 provided the Complainant with contact information for the Seattle Office of Civil Rights for his discrimination claims. NE#1 recommended that the Complainant delete the video, but the Complainant refused, saying it was evidence.

NE#1 spoke with CM#1. CM#1 said he denied the Complainant's request to return an item because he had no receipt. CM#1 said the Complainant became aggressive and started yelling, so he asked the Complainant to leave. CM#1 said he used his hands to guide the Complainant out of the store. NE#1 said CM#1 was permitted to use reasonable force to remove a patron from his business. CM#1 denied consenting to being recorded. CM#1 also denied refusing service based on the Complainant's disability, citing instead that the Complainant had no receipt.

NE#1 reapproached the Complainant, who denied CM#1's version of events. The Complainant also disputed NE#1's understanding of Washington's two-party consent law. NE#1 said he would not provide legal advice. The Complainant suggested NE#1 was unfamiliar with the ADA since NE#1 was unfamiliar with epilepsy. NE#1 said he was familiar with the ADA, then terminated contact with the Complainant.

On December 21, 2023, OPA interviewed the Complainant. The Complainant's statements were consistent with his statements to NE#1. The Complainant denied raising his voice, saying instead that CM#1 raised his voice. The Complainant said CM#1 told him to leave, did not like his attitude, and shoved him, which the Complainant described as fourth-degree assault. The Complainant alleged CM#1 discriminated against him because he had epilepsy. The Complainant acknowledged that CM#1 did not mention anything about his epilepsy but alleged discrimination based on CM#1 disliking his attitude. The Complainant said his attitude originated from his epilepsy. The Complainant disagreed with NE#1's understanding of Washington's two-party consent law, saying he did not need to comply with that law due to his epilepsy. The Complainant alleged NE#1 failed to thoroughly investigate the fourth-degree assault committed against him.

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 NE#1 failed to thoroughly investigate an alleged assault committed against him.

In primary investigations, officers must conduct a thorough and complete search for evidence. SPD Policy 15.180-POL-1. Sworn personnel must know how to collect the most common physical evidence that might be encountered in a primary investigation. *Id.* Only evidence that is impractical to collect or submit to the Evidence Unit shall be retained by the owner. *Id.* Officers shall photograph all evidence retained by the owner. *Id.*



Here, NE#1 questioned the Complainant and CM#1 about the incident. NE#1 also watched the Complainant's recording. The Complainant had no visible injuries and declined a medical evaluation. Under these circumstances, NE#1 conducted a thorough investigation, concluding there were insufficient facts supporting an assault charge.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #1 – Allegation #2

5.001 – Standards and Duties, 5.001-POL-11. Employees Will Be Truthful and Complete in All Communication

The Complainant alleged NE#1 lied by saying recording people in a private business without their consent was unlawful.

Department employees must be truthful and complete in all communications. SPD Policy 5.001-POL-11.

RCW 9.73.030 prohibits recording any private conversation without first obtaining the consent of all parties engaged in the communication. NE#1 told the Complainant that Washington law required two parties to consent to being recorded on private property. NE#1's statement was consistent with RCW 9.73.030. Therefore, NE#1 did not misstate the law or lie about it.

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**