



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 2, 2019

CASE NUMBER: 2018OPA-0757

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Lawful and Proper)

***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:**

On June 29, 2018, officers arrested a male subject for violating a Domestic Violence No-Contact Order and for having an open Department of Corrections’ felony warrant. During this arrest, the Complainant, who identified herself as the male subject’s wife, alleged that the Named Employee provided false information in an earlier report about the male subject assaulting the Complainant on March 5, 2018, which led to the No-Contact Order. It was further alleged that the Named Employee failed to activate his Body Worn Video device during his subsequent March 6, 2018 interaction with the Complainant as required by SPD policy. It was lastly alleged that the Named Employee failed to properly document the primary investigation that he conducted in the General Offense Report that he submitted on March 7, 2018.

### **SUMMARY OF INVESTIGATION:**

#### **March 5, 2018 Incident**

Named Employee #1 (NE#1) and other officers were dispatched to an assault call on March 5, 2018. Prior to their arrival, the information provided to the officers included that witnesses reported seeing a male suspect punch a female victim in the face. It also included physical descriptions of the involved parties. After officers located the Complainant in a nearby park, NE#1 responded to that location and engaged in a conversation with her about the incident because he was familiar with the Complainant and her boyfriend, who was believed to be the male suspect. The Complainant ultimately declined to confirm that she was assaulted by her boyfriend. On March 6, 2018, NE#1 took over as the primary investigating officer and he had further interactions with the Complainant.

#### **June 29, 2018 Arrest**



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Officers arrested the Complainant's boyfriend on an outstanding felony warrant. The Complainant's boyfriend was also charged for violating a Domestic Violence No-Contact Order (NCO). During the arrest, the Complainant told officers that the State of Washington never informed her about the NCO. She further alleged that, to the extent the NCO was based on an allegation that her boyfriend had previously assaulted her, the officer who submitted that report had been untruthful.

OPA's Investigation

OPA made repeated attempts to obtain additional and clarifying information from the Complainant regarding her allegation, but OPA's attempts went unanswered.

OPA obtained and reviewed the two 911 calls that were made by witnesses to the March 5, 2018 incident. Both callers reported seeing a male punch a woman in the face. One of the descriptions provided of the male suspect included that he was wearing a backpack with a hockey stick protruding from it. Both callers stated at the end of their call that the involved parties had just hugged and were seen walking away from the area together.

OPA obtained and reviewed the General Offense (GO) reports associated with the March 5, 2018 incident and June 29, 2018 arrest. The June 29 report contained confirming information that the male was contacted and detained for an open felony warrant and for violating a NCO. It also documented efforts on the part of the male suspect and the Complainant to continue to communicate with each other during the male suspect's arrest. NE#1 also authored a report that was submitted on March 7, 2018. This report included information about the March 5 incident and recounted a follow-up conversation NE#1 had with the Complainant on March 6. NE#1 reported that, during the March 6 conversation, the Complainant told him that her boyfriend punched her in the jaw on March 5 incident, and not in the eye as NE#1 assumed. NE#1 included in his report the fact that he did not record that conversation on his BWV because he believed doing so would have caused the Complainant to be less forthcoming. NE#1 also noted in his report that he referred this matter to SPD's Domestic Violence unit for follow up. OPA determined that the information submitted by NE#1 resulted in the issuance of the NCO against the Complainant's boyfriend.

OPA reviewed the available BWV recordings associated with the March 5 incident and June 29 arrest. The BWV from the June 29 arrest shows the Complainant making her allegation of misconduct against NE#1, though she does not specifically identify him by name. The BWV from March 5 shows NE#1 talking to the Complainant about the redness on her face, and that witnesses reported that the male suspect, who NE#1 stated that he knew to be the Complainant's boyfriend, punched her in the face. The Complainant is seen listening to what NE#1 is telling her, but never says, one way or the other, that her boyfriend was responsible for her injuries. NE#1 is heard telling her that he has enough information to arrest her boyfriend and will do so once they locate him. NE#1 also advises her not to go near her boyfriend for her own safety.

OPA discovered that the boyfriend pleaded guilty to assaulting the Complainant during the March 5 incident. In his plea, the boyfriend admitted assaulting the Complainant when he touched her arm without consent.

OPA interviewed NE#1. NE#1 stated that he is familiar with the Complainant and her boyfriend from previous contacts. NE#1 confirmed that the information he provided in his GO report was accurate and truthful. NE#1 told OPA that he believed that the boyfriend was the person who witnesses reported had punched the Complainant in the face on March 5. NE#1 stated that the Complainant's eye was red, which was consistent with the reported



assault. NE#1 also stated that the description of the male matched that of the boyfriend, including the fact that he had a hockey stick protruding from his backpack, which NE#1 knows is an item the male subject regularly carries around. NE#1 confirmed that the Complainant declined to cooperate on March 5, but NE#1 noted that she never denied that it was her boyfriend who hit her. NE#1 stated that when he met with the Complainant on March 6, she told NE#1 that her boyfriend punched her in the jaw during the March 5 incident. NE#1 explained to OPA that he decided against recording his March 6 meeting with the Complainant on BWV because NE#1 believed she would be more forthcoming about what happened if he did not do so. NE#1 stated that he included that information in his General Offense Report.

OPA interviewed the officer who was NE#1's partner on March 6. NE#1's partner stated that he was not directly involved in the conversation that took place between NE#1 and the Complainant, and therefore, never heard what they talked about. Even though NE#1's partner was not present for their conversation, he has no reason to believe NE#1 was anything but truthful.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

##### ***16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity***

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; arrests and seizures; and questioning victims, suspects, or witnesses. Officers are entitled to use their discretion as to whether to record in certain situations. (SPD Policy 16.090-POL-1(5)(c).) One such situation is "when the use of BWV would impede or limit the cooperation of a victim or witness." (SPD Policy 16.090-POL-1(5)(f).) The policy last states that: "Employees reasonably exercising discretion under [SPD Policy 16.090-POL-1(5)(f)] will not be subject to discipline for the decision to record or not record those portions of an event."

As identified in OPA's investigation, NE#1 stated that he chose not to activate his BWV on March 6 during his conversation with the Complainant because he believed it would impede his ability to gain her trust and cooperation. As indicated above, this was within the exception set forth in SPD Policy 16.090-POL-1(5)(f). Moreover, even if OPA deemed this decision to be unreasonable under the circumstances, SPD policy prohibits the imposition of discipline.

Given the above, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

##### **Named Employee #1 - Allegation #2**

##### ***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-10 requires that SPD employees be truthful and complete in all communications.



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In this case, the Complainant alleged that she never told NE#1 that her boyfriend assaulted her during the March 5 incident. She further contended that, if NE#1 said that she did say so one of his reports, NE#1 was being dishonest. Though there was no BWV recording of what the Complainant told NE#1 when he followed up with her on March 6, the facts of this case support that NE#1 was truthful in what he reported. OPA reaches this conclusion when evaluating the totality of the evidence, including what was reported by the 911 callers, the Complainant's March 5 appearance and actions, and the boyfriend's guilty plea for assaulting the Complainant on that date.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #3**

***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report***

SPD Policy 15.180-POL-5 requires that officers document all primary investigation on a General Offense Report. If, as alleged, NE#1 failed to document his involvement in this incident in a General Offense Report, he would have violated this policy.

NE#1 was not originally assigned to the March 5 incident as the primary investigator, but he assumed that duty after the initial primary officer was involved in a collision. During its investigation, OPA determined that NE#1 did write a report concerning the law enforcement action that he took. Based on OPA's review of that report, NE#1 appears to have complied with this policy.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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