



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 21, 2019

CASE NUMBER: 2019OPA-0168

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties - 6. Employees May Use Discretion	Sustained
# 2	5.001 - Standards and Duties - 10. Employees Shall Strive to be Professional	Sustained
# 3	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication (Ruses, when appropriate)	Not Sustained (Management Action)

**Imposed Discipline**

6-Day Suspension
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication (Ruses, when appropriate)	Allegation Removed

***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:

It was alleged that the Named Employee used a ruse that was inconsistent with Department policy. It was further alleged that the use of the ruse constituted an abuse of the Named Employee’s discretion and unprofessional behavior on the Named Employee’s part.

### SUMMARY OF INVESTIGATION:

On May 28, 2018, East Precinct officers investigated a hit and run collision. The hit and run involved damage to several vehicles; however, those vehicles were still drivable. No injuries were suffered by any of the occupants of the vehicles that were struck. The officers determined that the vehicle belonging to the driver who fled the scene was associated with a residence in West Seattle. The officers requested that Southwest Precinct units go to that residence and attempt to locate and take a statement from the suspect. Named Employee #1 (NE#1) and his partner – referred to here as Witness Officer #1 (WO#1) – were dispatched. At this time, NE#1 and WO#1 were aware that they were investigating a hit and run collision with no injuries. Under SMC 11.56.420, this was a misdemeanor crime.

NE#1 and WO#1 responded to the residence and contacted a woman who lived there. Prior to doing so, the officers discussed using a ruse if the Subject was inside of the residence. NE#1 stated that he would use the ruse and told WO#1: “it’s a lie, but it’s fun.” The woman, who is the Complainant in this case, stated that she knew the driver – referred to here as the Subject – and that he was an old friend. The Complainant reported that the Subject did not live



at her home but that she allowed him to register his vehicle using her address because he did not have a fixed place of habitation. The officers asked the Complainant whether she knew where the Subject was at that time. The Complainant replied that she did not and that she had not seen the Subject for several days. The officers asked the Complainant whether she had a phone number for the Subject. The Complainant said that she would look for his number but that she did not know whether it would be any good. She told the officers to “wait for one minute” and she would “grab it.” Approximately 50 seconds later, she returned with her cell phone and sat down on the stoop. She told the officers that she would see what she had and that she thought that she had the Subject’s number in her phone. She told the officers that she usually spoke with the Subject over Facebook messenger. The Complainant then started to look through her phone.

Around 15 seconds after the Complainant started doing so, NE#1 used a ruse and told her that the reason that they were looking for the Subject was because: “he was involved in a hit and run earlier that left a woman in critical condition and he left her.” The Complainant responded: “God dammit. When did that happen?” NE#1 said that the hit and run occurred earlier that day and that the woman “might not survive.” The Complainant stated: “Jesus Christ. Downtown? I haven’t talked to him in a couple of days.” The Complainant told the officers that she was shaken, that the information provided to her by the officers was hard for her to hear, and that she was scared. From a review of the Body Worn Video (BWV), which captured the officers’ interaction with the Complainant, she was clearly emotionally affected by the information provided to her. She provided the officers with a phone number for the Subject and they walked away.

After the officers left, the Complainant called the Subject and left him a voicemail. She was later able to speak with the Subject and she told him that the police had been at her home and had informed her that the Subject was in a hit and run that resulted in an injury. She told the Subject that he should get an attorney and contact his mother. The Complainant recounted that the Subject did not appear concerned at that time and he told her that he did not think that he had been in a collision that caused an injury. The Complainant spoke to the Subject again the next day. He discussed help getting a referral to an attorney. He again stated that he did not recall being in a collision and was not concerned. They further spoke after she located an attorney. At that time, the Complainant believed that the Subject was growing more concerned. He told her that he did have a minor fender-bender with another vehicle, but he did not believe that anyone had been injured. He was concerned, however, that he might have hit a pedestrian but did not realize it. He grew more and more worried. He had been a heroin addict for nearly 20 years and had prior legal troubles. The Complainant searched for information regarding a hit and run that resulted in a fatality and found nothing. The absence of information concerned them because they believed that this suggested that it was being withheld because a criminal investigation was ongoing. The Complainant spoke to the Subject one last time and he seemed increasingly despondent regarding the collision and the possibility that he had killed someone.

The Complainant told one of the Subject’s friends about the hit and run and the officers’ assertion that the Subject had critically injured a woman. The friend recounted that, while the Subject had suffered from drug addiction, he had gotten a new job and was saving money. The friend spoke to the Subject about the hit and run. The Subject denied being high at the time and stated that his car rolled backwards striking the motorist behind him. The Subject remembered that the other driver got out of his vehicle but the Subject drove away. The Subject told the friend that he believed the other driver called in the hit and run. The friend stated that he read the Subject the riot act and that he told the Subject that he could go to jail for a long time if he killed someone, even if he was not high at the time of the collision. The friend recalled that, on the last occasion that he saw the Subject, the Subject was crying. The friend stated that everyone believed that the Subject had hit and killed someone but that he did not remember it. The friend stated that the Subject left a bag on a shelf in his garage that contained some of the Subject’s personal effects and money. A note with the bag told the friend: “If you don’t see me, keep this stuff.”



Like the Complainant and the friend, the Subject's roommate reported that the Complainant became increasingly worried about the hit and run and that he believed that he might have killed someone. The Subject relayed to the roommate that the police indicated that he killed someone during the hit and run. He did not remember the incident and, according to the roommate, was freaking out. Several days after the incident, the Subject asked the roommate if it was normal to think about suicide. The roommate said that it was. She confirmed that his statement of feeling suicidal was related to his concern regarding the hit and run and the potential legal and criminal implications.

On the morning of June 3, 2018, which was the day after this conversation and less than one week after the hit and run, the roommate went into the Subject's room and found him deceased. He had committed suicide and left a note for the roommate next to some money that said: "you keep this." Officers responded to the scene and investigated the death. The officers documented the following in their report concerning the account provided by the roommate: "She and [the Subject] were talking yesterday afternoon, and he seemed sad. He said he was in trouble with police, and needed to get a lawyer. He also made the statement, 'Is it normal to feel suicidal?'"

At this point, the Subject's mother was notified. The Complainant, the friend, the roommate, and the mother all still believed that the Subject had killed someone. They conducted further investigation into this incident, including requesting BWV. They ultimately determined that the Subject did not kill anyone and that the hit and run was a minor fender-bender. The Complainant realized that the statement made to her by NE#1 was knowingly inaccurate. The friend, roommate, and mother learned this information as well. The Complainant, friend, and roommate all asserted that NE#1's use of the ruse was wholly inappropriate and that it directly contributed to the Subject's suicide.

On March 12, 2019, the Complainant reported this matter to OPA. OPA subsequently initiated this investigation. As part of its investigation, OPA interviewed the Complainant, the friend, the roommate, the officer who investigated the hit and run, and the officer and sergeant who responded to the roommate's home to investigate the Subject's suicide. OPA also interviewed NE#1 and WO#1.

The officer who investigated the hit and run told OPA that the crime at issue was a misdemeanor. He did not recall telling NE#1 and WO#1 that it was important to locate the driver or that he instructed them to make an arrest. He expected that NE#1 and WO#1 would locate the Subject and obtain his insurance information.

WO#1 stated that she and NE#1 were looking for the Subject but that they had not been asked to arrest him. She was not aware of any injuries that were suffered by anyone involved in the hit and run. She recalled that it was a misdemeanor crime. WO#1 stated that the Complainant was cooperative and "seemed fine." WO#1 recounted that, at the time NE#1 told the Complainant that there was a critically injured victim, she momentarily thought that she had misread the call notes. When they walked away, she asked NE#1 if she misread the call and he told her that he had used a ruse. WO#1 stated that the Complainant was "shaken" by the ruse. In response to a question posed by OPA, WO#1 opined that there was no need to use the ruse to get the desired information from the Complainant. WO#1 did not complete a supplemental report concerning this incident or pass the phone number off to another officer. She stated that this was NE#1's responsibility as the primary officer on that call.

NE#1 told OPA that he received training on ruses at the police academy. He confirmed that he was aware that, while the use of ruses was generally permissible, they could not "shock fundamental fairness." NE#1 said that he was unaware as to whether there were any injuries that resulted from the hit and run. He stated that he was sure that he read the call notes, but he could not remember what they said. NE#1 told OPA that the Complainant was evasive when asked about the Subject and that she was "kind of impeding the investigation." NE#1 characterized her as uncooperative. At his interview, NE#1 recalled the Complainant's response to their request for information concerning



the Subject as: “Nothing, other than yeah, that’s my friend, and yeah that’s his car, but I’m not going to tell you anything else—from what I can remember.” NE#1 did not recall the Complainant getting her phone and looking up the Subject’s phone number. When asked why he used the ruse when the Complainant was actively going through her phone, NE#1 said that he did not have time to stand around and wait for the information. NE#1 stated that, after he used the ruse, the Complainant was surprised and had an emotional reaction. NE#1 did not write a supplemental report concerning this incident. He believed that he would have forwarded the Subject’s phone number to the officer investigating the hit and run. NE#1 believed that the ruse he used was reasonable and appropriate and, as such, was consistent with policy. Specifically, he asserted that the ruse was needed to get information relevant to a criminal investigation and, while there was no exigency, there was an ongoing threat to public safety. NE#1 denied that the ruse shocked fundamental fairness. He stated that the statements he made concerning the victim in critical condition were plausible and did not reference an unrelated “heinous” crime. NE#1 contended that, while it was regrettable that the Subject committed suicide, he was not ultimately responsible for the Subject’s actions. NE#1 lastly asserted that he did not abuse his discretion or act unprofessionally.

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

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

##### ***5.001 - Standards and Duties - 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

Based on a review of the totality of the evidence, OPA concludes that NE#1’s use of the ruse in this case constituted an abuse of his discretion.

First, I find that there was an insufficient need to use a ruse here. While NE#1 claimed that the Complainant was uncooperative, this is contradicted both by WO#1’s account and the BWV. The BWV shows that the Complainant volunteered to get her phone, returned to the officers less than a minute later, and was flipping through her phone for 15 seconds prior to the ruse being used. NE#1 claimed that he did not have time to wait around for her to locate the number; however, it is unclear why that was the case. The Subject was being sought for a misdemeanor hit and run. There were no exigent circumstances or injuries, and there was no information suggesting that the Subject was an active threat to harm anyone or that he was armed. Moreover, NE#1 was not asked to immediately apprehend the Subject but only to try to locate him. While NE#1 stated that he did not have all day to stand around and wait for the Complainant to provide the number, he was at her residence for only five minutes. Certainly, he could have waited for several minutes longer prior to believing that a ruse was necessary. Further, it appeared that NE#1 had already made up his mind to use a ruse regardless of the circumstances. This provides further evidence contradicting NE#1’s assertion that the use of the ruse was based on the uncooperative nature of the Complainant. Lastly, had there been an overwhelming need to use the ruse, as NE#1 asserted, it follows that he would have written a supplemental report concerning his obtaining the Subject’s number and that he would have quickly provided that information to the officer investigating the hit and run. However, he did not write a supplemental report and there is no indication from either the CAD or NE#1’s MDT messages that he ever conveyed the phone number to anyone.



Second, even if a ruse was permissible under the circumstances of this case, the specific ruse used here shocked fundamental fairness. The crime at issue was a misdemeanor with no injuries. The Subject was not believed to be armed, was not being sought as an imminent threat to safety, and was not a fleeing felon. As such, falsely stating that the Subject had likely killed someone shocked the conscience and, in OPA's opinion, was inconsistent with the community's expectations of NE#1's conduct.

Third, NE#1 acted without any apparent consideration of the possible consequences that could flow from his use of the ruse. NE#1 asserted that he was not responsible for the Subject's decision to commit suicide and that this was an unforeseeable result. However, even if OPA agreed with this, it was not unforeseeable that the Complainant would notify the Subject of the officers' assertion that he critically injured the woman and that the woman was likely to die. It was also not unforeseeable that this would cause the Subject and others significant distress. Indeed, we know from witness accounts that it did exactly that. Moreover, based on the evidence adduced during this investigation, it is clear that the ruse was, at least in part, a cause of the Subject's suicide. Indeed, multiple witnesses established that he was despondent about the fact that he may have killed someone. Notably, the night before he took his own life, he directly told his roommate that the incident was causing him to feel suicidal feelings.

For the above reasons, OPA finds that NE#1 abused his discretion when he used the ruse in this case. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

##### ***5.001 - Standards and Duties - 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.)

When NE#1 used a ruse and told the Complainant that the Subject had likely killed someone, he engaged in unprofessional behavior. Even had the Subject not committed suicide, I would have found this to be the case as the ruse was well outside of what was permissible. As discussed above, there was simply no need to use a ruse under the circumstances and, even if there was, the specific ruse utilized was inappropriate.

Further, this incident clearly undermined public trust in the Department and in NE#1 by multiple individuals, including the Complainant, the roommate, and the friend. They were shocked and upset that SPD officers could engage in such actions. NE#1 is correct that the Subject, himself, ultimately made the decision to take his own life. However, the witnesses to this case all establish that this decision was based, potentially solely, on the Subject's belief that he had killed someone. While NE#1's ruse was perhaps not the legal cause of the suicide, a preponderance of the evidence supports a finding that, had the ruse not been used, it is likely that the suicide would not have occurred. This provides additional support for the finding that NE#1's behavior substantially undermined public trust and confidence and was, thus, unprofessional.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



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

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication (Ruses, when appropriate)***

SPD Policy 5.001-POL-11 governs when ruses are permissible.

Based on its investigation, OPA determined that there is no ongoing training on ruses, including when they are appropriate and when they shock fundamental fairness. OPA believes that this case demonstrates that such training is sorely needed. As such, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** SPD should provide training on ruses, including when they are appropriate and when they shock fundamental fairness. This training should provide examples of ruses that the Department believes are appropriate and discuss situations when ruses should be used. The Department should consider using this case as an example of the consequences of using an inappropriate ruse. This training could be conducted as part of an already ongoing module.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #2 - Allegations #1**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication (Ruses, when appropriate)***

Given the potential that OPA could issue a policy recommendation concerning the use of ruses and training on ruses, SPD was initially added as a Named Employee. However, OPA no longer believes that it is necessary to include SPD in this case and, as such, this allegation is removed.

Recommended Finding: **Allegation Removed**