



## ***CLOSED CASE SUMMARY***

ISSUED DATE: AUGUST 3, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0310

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to Be Professional	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 her fiancé, the Named Employee, engaged in a domestic violence assault towards her.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

Officers from the Port Orchard Police Department were dispatched to a domestic violence (DV) call. When they arrived, they contacted a woman – who was later identified as the Subject.

She reported that her fiancé – Named Employee #1 (NE#1) – pushed her head into a wall, grabbed the back of her neck, and threatened to shoot her. She stated that the conflict started because she found that NE#1 had a dating profile and she accused him of cheating on her. She said that he grew upset and then physically harmed her. The officers documented that the Subject was crying and that she smelled strongly of alcohol. They noted that her account of the incident had a number of discrepancies and changed over time. The Subject told the officers that she suffered from mental illness and confirmed that she had consumed alcohol earlier that evening. The officers took pictures of the Subject; however, the officers did not observe evidence of any injuries and no visible injuries are reflected in the photographs.

NE#1 was also interviewed by officers. He said that he went to sleep earlier that evening, but that the Subject stayed up playing video games and drinking vodka. He stated that she woke him up and began accusing him of cheating. He said that the dating profile was fake, and that the Subject and her family knew this. He denied that he physically harmed the Subject. He told officers that the Subject suffered from anxiety and bi-polar disorder and had not taken medication. He said that he had a video of the incident, but he did not want to show it because the Subject was



partially unclothed. NE#1 agreed to allow officers into the home and conduct their investigation. The officers described NE#1 as sober, calm, and cooperative. They further found his account to be consistent.

While the officers were at the apartment, the Subject's sister arrived to pick up the Subject. The sister said that, when the Subject called her, she heard the Subject saying: "don't touch me, stop touching me" and "you already touched me." She also heard NE#1 say: "go ahead and call, they are not allowed in my fucking house." The sister believed that NE#1 was referring to her, not the police. The sister said that she had come to the house to get the Subject four times in the last year. The sister confirmed that the Subject suffered from anxiety and bi-polar disorder.

The officers concluded their investigation. They did not believe that there was sufficient probable cause to place NE#1 under arrest. They documented their investigation in reports and submitted those reports to a prosecuting attorney. After reviewing the incident, the prosecuting attorney declined to file charges.

Once the criminal case was disposed of, OPA commenced its administrative investigation into this incident. As part of that investigation, OPA reviewed the reports and the declination of charges. OPA further interviewed NE#1 and the Subject and tried to interview the sister without success.

NE#1 again denied physically assaulting the Subject. He confirmed that he videotaped part of the incident and that it showed the Subject yelling and cursing at him. He stated that the Subject deleted the video off of his phone because it showed her partially nude and was embarrassing for her.

During her OPA interview, the Subject recanted her previous allegations against NE#1. She denied that he assaulted her, and she said that she tripped over shoes in the hallway and hit her own head on the wall. She explained that she was very intoxicated at the time and suffers from mental health issues.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If NE#1 physically assaulted the Subject, he would have violated this policy.

Ultimately, the totality of the evidence indicates that NE#1 did not assault the Subject. OPA notes that, as documented by the Port Orchard officers, the Subject's account was inconsistent, and she did not have any visible injuries. She was further intoxicated at the time. NE#1, in comparison, was sober and provided a calm and complete accounting of the incident. Moreover, as discussed above, the Subject later recanted her allegations.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

#### **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.)



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Had NE#1 engaged in the acts initially alleged by the Subject, he would have violated the Department's professionalism policy. However, for the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA finds that he did not do so.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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