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From: Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0135

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation:** 5.100 - Operations Bureau Individual Responsibilities I. Patrol Officers A. Responsibilities 2. Monitor and take appropriate action regarding criminal activity in the assigned area
 - a. **Finding:** Sustained
2. **Allegation:** 5.001 - Standards and Duties. 10. Employees Will Strive to be Professional
 - a. **Finding:** Sustained
 - **Proposed Discipline:** 9-Hours Suspension (1-day) to 27-Hours Suspension (3-days)
 - **Imposed Discipline:** 9-Hours Suspension (1-day)

Named Employee #2

1. **Allegation:** 5.100 - Operations Bureau Individual Responsibilities I. Patrol Officers A. Responsibilities 2. Monitor and take appropriate action regarding criminal activity in the assigned area
 - a. **Finding:** Sustained
2. **Allegation:** 5.001 - Standards and Duties. 10. Employees Will Strive to be Professional
 - a. **Finding:** Sustained
 - **Proposed Discipline:** 9-Hours Suspension (1-day) to 27-Hours Suspension (3-days)
 - **Imposed Discipline:** 9-Hours Suspension (1-day)

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.

Administrative Note on Proposed Findings:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

Executive Summary:

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) failed to take appropriate action for a high-priority call. The Complainant alleged that the named employees "sounded annoyed" when radioing updates. The Complainant alleged that the misconduct occurred in the presence of a student officer.

Summary of Investigation:

An anonymous complainant filed an OPA complaint. It alleged that the named employees were dispatched to a priority-one gunshot call at a SODO nightclub (Nightclub). The Complainant alleged that the named employees marked themselves "en route" but remained at the Seattle Police Officers' Guild (SPOG) building. The Complainant alleged that the named employees took twenty-three minutes to arrive at the incident location despite being "down the street," particularly when updates noted a gun flash and a bloody subject fleeing. The Complainant wrote that, after the named employees arrived at the scene, they advised "nothing was going on" and coded the incident as a disturbance without a report.

The Complainant wrote that Harborview Medical Center (HMC) reported admitting a gunshot victim later that evening. The Complainant alleged that the named employees went to HMC but initially indicated that the gunshot victim was unrelated to the Nightclub call. The Complainant said they later wrote an incident report for the gunshot victim under the Nightclub call's incident number to "cover up" their initial lack of diligence. The Complainant was particularly alarmed that the named employees' behavior occurred with a student officer present.

OPA opened an investigation, reviewing the complaint, computer-aided dispatch (CAD) call reports, incident report, GPS data, Google Maps images, and in-car video (ICV). OPA also interviewed WO#1, NE#1, and NE#2.

a. CAD Call Reports

OPA reviewed two CAD call reports: the Nightclub call and HMC's call.

At 1:26 a.m., a 9-1-1 caller reported seeing an armed suspect at the Nightclub. The caller reportedly heard a gunshot but did not see the shooting. At 1:27 a.m., NE#1, NE#2, and WO#1 were marked as "en route." An update noted that the caller reportedly saw the suspect flee southbound. The caller provided the suspect's race, gender, height, build, and clothing. A minute later, Nightclub security called 9-1-1, reporting that no one was injured, but there was an altercation involving three subjects, a gun was discharged, and a bloodied subject fled. Security also reported seeing a muzzle flash but not the gun. Security reported that the involved subjects fled on foot. The CAD call remarks noted that "caller contact" was "optional."

At 1:47 a.m., South Dispatch marked a South Precinct sergeant as "copied" to the call. NE#2 and WO#1 reported arriving at the scene at 1:50 a.m. NE#1 reported arriving at the scene at 1:51 a.m. At 1:54 a.m., NE#2 and WO#1 went back into service, marked the call as a disturbance, and coded the call as assistance rendered without a report. NE#2 and WO#1 provided a CAD remark, "Everything looked fine. No one flagged us down."

At 2:11 a.m., HMC called 9-1-1 to report a "person just came in with a [gunshot wound]." At 2:13 a.m., South Dispatch noted that it was unknown whether HMC's patient was related to the Nightclub call. At 2:23 a.m., South Dispatch marked NE#2 and WO#1 as "en route." At 2:24 a.m., East Dispatch updated that "this shooting happened at [the Nightclub.]" At 2:30 a.m., South Dispatch added the HMC call to the Nightclub call. NE#1 and WO#1 marked themselves as "arrived" at 2:34 a.m. At 2:48 a.m., South Dispatch noted the Nightclub and HMC calls were "related." At 4:09 a.m., NE#1 and WO#1 went back into service, updating the call to a firearm-involved assault call, and noted a report was written.

b. Incident Report

WO#1 wrote an incident report.

WO#1 wrote that he responded to HMC at 2:50 a.m. WO#1 documented meeting with the victim and observing a gunshot wound on his arm. The victim reported being at the Nightclub and seeing two people fighting outside the Nightclub. The victim said he attempted to break up the fight but was shot "out of nowhere" by an "unknown individual." WO#1 documented photographing the victim's injury, screening the incident with a sergeant, and advising relevant follow-up units. WO#1 also documented that the officers responded to the Nightclub call for a "possible shooting but located no crime scene or victims." WO#1 documented that no ICV or BWV existed for the HMC call due to "hospital regulations." See SPD Policy 16.090-POL-2(3) (Recording in Sensitive Areas). The incident report was labeled for the Homicide/Assault and Gang Units to follow up.

c. CAD GPS Information

OPA reviewed the CAD GPS information, tracking GPS locators for marked SPD vehicles. The GPS does not display a continuously updated location of SPD vehicles. Instead, it shows snapshots at sequential points, like a timelapse video.

At 1:27 a.m., the named employees' vehicles were at the SPOG building. At 1:49 a.m., NE#2's and WO#1's vehicle started driving and arrived at the incident location at 1:50 a.m. NE#1 arrived at 1:51 a.m.

The named employees drove past the incident location and around the area before clearing the call around 1:54 a.m.

d. Google Maps Information

OPA used Google Maps as a reference for response times from the SPOG Building to the Nightclub. Google Maps showed the SPOG Building was about a mile from the Nightclub, about a four-minute drive.

e. ICV

Neither named employees nor WO#1 activated their BWV. NE#2, who rode with WO#1, activated ICV while responding to the Nightclub. NE#1 did not activate ICV.

NE#2's ICV depicted NE#2 and WO#1 driving to the incident. NE#2 said, "It says 'optional' for contact. So...we're just looking for anybody that's injured or anything like that." About 34 seconds later, NE#2 said, "Security guards got it on lockdown there. Everything looks fine so far."

An aspect of the Complainant's allegations concerned the named employees' tone when communicating with dispatch and whether they originally stated the Nightclub and HMC calls were unrelated. The incident occurred on December 18, 2022, but the Complainant did not submit their complaint until March 28, 2023. SPD dispatch audio is only retained for ninety days unless specifically preserved. See Law Enforcement Records Retention Schedule, Version 8.0, [Washington Secretary of State, Washington State Archives, February 2022\), Section 3 "Communication" provides that "All Radio Transmissions"](#) are retained for 90 days, then destroyed. *Id.*

To retrieve the dispatched audio, OPA identified ICV from an unrelated incident where South Dispatch transmissions were recorded. OPA reviewed the times relevant to this complaint. Times are approximated as they were determined by comparing time stamps across multiple recording systems, which may not have been perfectly synchronized.

Around 1:27 a.m., South Dispatch transmitted, "[Named Employees]' sector. We're getting a report of a shots call at 1 Avenue South and South Massachusetts Street outside of the [Nightclub]. [Indecipherable] heard one shot. But they did see somebody with a gun but did not see him shoot it. They only heard the shot. 1 Avenue South and South Massachusetts.

[Nightclub].” About twenty-four seconds later, NE#1 and WO#1’s unit copied and said, “en route.” Five seconds later, South Dispatch transmitted, “Looks like security is gonna [indecipherable]. [The Nightclub’s] back door is secure. Working on a description [indecipherable].”

An unidentified unit responded, “They didn’t see a shooter by [indecipherable] get a description.” At about 1:28 a.m., South Dispatch transmitted, “They’re saying they saw somebody with a weapon but did not see him shoot it. [indecipherable] heard the shot [indecipherable]. But they last saw that person running towards a vehicle at Massachusetts and Occidental.”

Around 1:28 a.m., NE#1 copied the transmission and stated, “Me and [NE#2 and WO#1] will take care of it. No other units.” Around 1:29 a.m., South Dispatch transmitted, “And for that call at [the Nightclub], they described a Black male, six-foot, thin build, wearing a black sports jersey, a white hoodie, and dark jeans.” About eleven seconds later, an unknown unit transmitted, “[Sector] 1 and 2 copy.”

At about 1:31 a.m., South Dispatch transmitted, “We have another security guard on the line. Says there’s no injuries. They saw three subjects involved. One shot was fired. He says they saw blood on one male that took off running southbound on 1st Avenue. Security says they saw the flash but did not see the actual gun.” An unknown unit responded about twenty seconds later, “Okay.” About thirty seconds later, South Dispatch stated, “And per that second security guard, they said there was no vehicle involved. All subjects left eastbound on [indecipherable] foot.” About eleven seconds later, an unknown unit responded, “Copy.”

At about 1:48 a.m., South Dispatch transmitted, “And for the shots call at [the Nightclub]. So, the security guards called back. Says there’s 1,100 plus people that are about to be released from the show. That same security guard also heard the shot. No known injuries [indecipherable]. Is there a supervisor that copies the shot call?” About twenty-two seconds later, a South Precinct sergeant copied the call.

Around 2:48 a.m., WO#1 hailed South Dispatch. South Dispatch acknowledged. WO#1 stated, “You can duplicate this call with the shooting call earlier from [the Nightclub].” WO#1 ended the transmission by saying, “They’re one in the same,” or “It wasn’t the same.”

OPA ultimately finds that WO#1 more likely than not stated, “they’re one in the same.” This is consistent with WO#1’s request to duplicate the call—that is, WO#1 requested that the two calls were, in fact, the same. The request to duplicate, which was heard clearly over radio, would be entirely inconsistent with a statement that the two incidents were unrelated. This is further corroborated by the fact WO#1 wrote an Incident Report for both the Nightclub and HMC calls under the same incident number. OPA concluded that the evidence clearly showed the Complainant misunderstood WO#1’s transmissions and did not warrant classifying the portion of the Complainant’s allegation that the named employees attempted a “cover up.”

f. OPA Interview – WO#1

WO#1 was a student officer at the time of this incident. WO#1 stated his field training officer was NE#2. WO#1 said the field training officer, like a supervisor, makes final decisions.

WO#1 stressed that his May 8, 2023, OPA interview was months after the December 18, 2022, incident. However, WO#1 remembered that, after receiving the call, he and NE#2 "...didn't move hastily." WO#1 explained that, as a student officer, he wanted "to prove that, hey, you can do it," so he was "always being ready to go, ready to go." WO#1 stated, "I remember the call coming out being sort of a hot call and kind of, you know, wanting to go to it."

When asked about their twenty-two-minute response time, WO#1 said, "Makes me feel like we dropped the ball. We should have done more. Doesn't make me feel good. Feel like definitely should have been some exigency behind that. Because lives could have been more in danger than they were."

WO#1 did not recall what transpired at the SPOG building but was confident he and the named employees were eating dinner: "Whenever we went to Guild, we ate dinner . . . we didn't just go there and just sit around."

WO#1 was asked about the officers' demeanor during radio communications. Specifically, OPA asked whether he would have responded that way. WO#1 said, "Absolutely not. Absolutely not." WO#1 said he would not communicate "to come off as if it's nothing." WO#1 initially characterized the officers' radio transmissions as "unprofessional" but later said the better characterization was probably "annoyed."

g. OPA Interview – NE#1

OPA interviewed NE#1 on May 24, 2023. NE#1 also had difficulty recalling specifics. However, NE#1 said he was at SPOG when the call came in and did not respond immediately.

NE#1 did not recall what transpired at SPOG but noted he typically took breaks there since it is centrally located in his sector. NE#1 said he often went there for restroom breaks, to refill refreshments, get water and snacks, or microwave meals.

When asked why it took so long to respond to the call, NE#1 said, "There's level of priority. And in seventeen years, I have learned . . . how exigent a call is." NE#1 elaborated:

So, in this call, I received information that it was shots fired, yes. I also received updates of the -- the involved parties were leaving the scene. And then I also saw an update, something about the complainant -- if I recall right, the complainant just saw a flash of a gun, and then he saw something that looked like blood.

And in my seventeen years of patrol work, generally, when I get that information, for me, the exigency of responding kind of declines, even though it is categorized as like a priority one, and in my experience, most of the time, when I've shown up, there's been no victim. And that's exactly what happened that night. We showed up. We didn't find a scene. We didn't find any shell

casings. We didn't find any -- I don't -- I don't recall finding any witnesses telling us about, you know, what happened. I did -- I definitely didn't find a victim, and so me, personally, this is how I respond. And you know, the reason I respond like that is because I have an understanding that, you know, like when I do respond exigently to calls, like, I run lights and sirens, right, and from my experience, that usually is a public safety issue in regards to like, you know, when I'm driving code, right, that kind of heightens my stress level. That heightens the stress level of other people on the roadway.

When OPA mentioned that evidence might disappear with a twenty-three-minute response time or an involved person might leave, NE#1 responded, "Yeah, that's a possibility." However, NE#1 insisted that the most common evidence for a call like this would be shell casings or property damage, which "would still be there, present, whether I took twenty minutes, five minutes, or an hour."

OPA asked NE#1 how a student officer would perceive their choices. NE#1 said that, as an experienced officer, he uses these situations to teach student officers to "pay attention to the details when you listen to your calls." NE#1 said he teaches student officers to weigh the need to respond quickly against the risk of emergency driving.

NE#1 characterized the officers' communications with South Dispatch as "Normal, standard radio responses." NE#1 said whether the officers sounded "annoyed" was subjective and "If I was annoyed, then I think I'm entitled to be annoyed for one, but then two, it was like annoyed to who? You know? Like, I feel like that's such a subjective definition. But if I was annoyed, I mean, you know, that wasn't the intent."

h. OPA Interview – NE#2

OPA interviewed NE#2 on June 13, 2023.

NE#2 said he was at SPOG when the call came through. NE#2 indicated that the call stated, "Everybody had left," which was what they found when they responded to the call: There was "nothing there." NE#2 said he assumed they would later get a call for a gunshot victim at the hospital, which did happen.

NE#2 did not remember what transpired at SPOG but said he was likely using the restroom, eating a meal, or "[sitting] there in the car and [writing] reports." When asked about the twenty-three-minute response time, NE#1 said:

Like I said, I don't know if somebody was in the restroom. I don't know if somebody was in the middle of a report. It's a two-officer response. I don't remember what I was doing. I don't remember what [NE#1] was doing. I don't remember what my student was doing. They did state that everybody had left the scene, so, you know, there was no victim there that we knew of. I don't know. I can't give you a straight answer on that. I don't recall those details.

When asked what his typical response would be to a call like this, NE#2 responded, "Drop the meal, drop the report, and go." NE#2 did not recall why he did not do that for this call.

When asked whether the officers' radio communications were unprofessional, NE#2 said, "It's a matter of perception." OPA played the radio traffic and asked NE#2 his perception. NE#2 characterized it as "Normal radio traffic."

Analysis and Conclusions:

Named Employee #1 - Allegation #1

5.100 – Operations Bureau Individual Responsibilities I. Patrol Officers A. Responsibilities 2. Monitor and take appropriate action regarding criminal activity in the assigned area

The Complainant alleged that the named employees failed to monitor and take appropriate action regarding criminal activity in their area.

SPD Policy 5.100(I)(A) outlines performance standards for patrol officers: "Monitor and take appropriate action regarding criminal activity in the assigned area;" "Maintain close contact with the community;" "Display...necessary interpersonal skills..." "Demonstrate consistent work habits which reflect a high standard of performance and initiative;" and "Remain professional at all times."

The Nightclub incident occurred within the named employees' sector. It was a "priority one" call, the highest priority call. Within the first four minutes, South Dispatch updated the named employees, among other things: (1) that multiple callers reported hearing a gunshot; (2) that a witness saw the man with the firearm running away; (3) with a location and direction of flight; (4) with a detailed description of the suspect and total number of subjects; and (5) that at least one person was seen with blood on them.

NE#1 suggested that those updates lessened the call's priority. However, OPA agrees with NE#2's description of the appropriate reaction for such a call: "Drop the meal, drop the report, and go." WO#1 said they did not respond hastily and felt "like we dropped the ball." OPA agrees.

OPA recognizes that officers must be afforded reasonable discretion to prioritize calls. Moreover, officers are human beings and must be afforded reasonable breaks to take meals and use the restroom. Even when responding to an emergency call, some time will be required to transition from one task to another. However, taking twenty-two minutes (NE#2) and twenty-three minutes (NE#1) to transition from a non-emergency activity—like eating a meal, writing a report, or using the restroom—to respond to a priority one gunshot call is unacceptable.

Similarly, NE#1's suggestion that his response time did not impact the available evidence is unacceptable. As OPA pointed out in his interview, witnesses and suspects could have left, and physical evidence, like shell casings, could have been lost. Further, it was particularly troubling since NE#1 advised South Dispatch not to send other units, ensuring that the fastest response would be himself, NE#2, and WO#1 about twenty minutes later. Finally, NE#1's concern that responding in emergency response would have created additional danger misplaces the issue. Once NE#1, NE#2, and WO#1 drove to the Nightclub, arriving only took them one or two minutes. The issue was the excessive time it took the named employees to leave the SPOG building.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties. 10. Employees Will Strive to be Professional

The Complainant alleged that the named employees were unprofessional. SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. *Id.*

Overall, the named employees' excessive response time was unprofessional for the reasons at Named Employee #1 - Allegation #1. Moreover, their response also set a poor example for WO#1, a student officer. For these reasons, OPA recommends this allegation be sustained.

However, OPA reviewed the radio transmissions between the officers and South Dispatch. While responses such as "okay" and "copy" may be short, they are common radio communications. Moreover, OPA did not find that the named employees sounded "annoyed" or "unprofessional." Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.100 - Operations Bureau Individual Responsibilities I. Patrol Officers A. Responsibilities 2. Monitor and take appropriate action regarding criminal activity in the assigned area

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

5.001 - Standards and Duties. 10. Employees Will Strive to be Professional

For the reasons at Named Employee #1 - Allegation #2, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**