



## CLOSED CASE SUMMARY

ISSUED DATE:     APRIL 2, 2018

CASE NUMBER:    2016OPA-1199

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Sustained
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Sustained

**Imposed Discipline**

Termination
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***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 the Named Employee may have been dishonest and may have violated SPD policy when providing a statement regarding his involvement in an off-duty incident that appeared to have involved force.

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication***

On September 22, 2016, Named Employee #1 (NE#1), who was a Student Officer at that time, reported to two officers assigned to the Field Training Unit (FTU) that he was involved in an incident while off-duty in Puyallup. This incident, which took place on September 21, 2016, occurred when NE#1 was at a department store getting his eyebrows waxed. The first officer recounted that, during this conversation, NE#1 said that he was in the store when a felony level shoplifting offense occurred. He initially told this officer that he did not get involved in the incident and only acted as a “witness.” NE#1 was asked whether he identified himself as a police officer, and both officers recounted that NE#1 “hesitantly” responded that he yelled something to the effect of “hey, I’m a cop,” when the subject bumped into him. NE#1 stated that he took no further action and did not chase the subject. The first officer counseled NE#1 on the risks he exposed himself to in this situation.

The second officer, who was also present for this conversation, recalled that NE#1 described that the subject ran into him while exiting the store. NE#1 stated that, at that time, he pulled his arms up to his shoulders and took no police action. She recalled that NE#1 stated that he announced that he was a police officer when the subject ran into him. NE#1 told her that the subject kept running and NE#1 just watched him do so. She recounted that NE#1 reiterated that he took no police action and simply witnessed the incident. The second officer, like the first officer, counseled NE#1 “to think about not stating he is a Police Officer when off duty for safety reasons.”



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On September 28, 2016, NE#1 wrote an email to the FTU formally describing his role in the September 21 incident. NE#1 wrote that he had his eyes closed when heard the manager start yelling at someone who was stealing from the store. He opened his eyes and saw an Asian male running in his direction towards the exit. NE#1 explained that he was seated at that time near the exit. NE#1 stated that the male: "barreled down the aisle and pushed over the employee and myself." NE#1 further indicated the following:

I instinctively grabbed his backpack from the floor and then let it go when I realized I shouldn't jump into anything physical. The male pushed us away and I told him, "Hey man, quit it. I'm a cop" with the hopes he'd just give in but obviously that did not happen. The manager told me and the employee to not touch him cause she didn't want to risk getting sued and violating their policy. The employee and I both kept our hands off of him and the male then began sprinting out of the store.

After receiving this written disclosure from NE#1, the FTU conducted a follow-up inquiry into this matter. The FTU learned that there was no police report generated for this incident. The FTU spoke to the store's manager, who recalled the incident. She stated that when the shoplifter was attempting to leave the store, she saw NE#1 approach the subject. She recounted telling NE#1 to not touch the subject. She explained to the FTU that this subject had been violent in the past. She observed NE#1 grab the subject's backpack as the subject walked by, but NE#1 was unable to stop him. The subject then left the store.

The FTU also spoke with the store employee who was waxing NE#1's eyebrows at the time of the incident. She stated that she heard the manager tell the subject to stop and that she recognized the subject from a prior shoplifting incident. She recounted that NE#1 asked her what was going on and she told him that the subject was about to shoplift. She said that NE#1 asked her if she wanted him to stop the subject and she told him no because she did not want him to get hurt. He said that he was a police officer and that he could stop the subject, and she said "ok." NE#1 then walked over to the subject and tried to stop him by attempting to grab his backpack. She heard NE#1 identify himself as a police officer.

The FTU also spoke with the store employee who was waxing NE#1's eyebrows at the time of the incident. She stated that she heard the manager tell the subject to stop and that she recognized the subject from a prior shoplifting incident. She recounted that NE#1 asked her what was going on and she told him that the subject was about to shoplift. She said that NE#1 asked her if she wanted him to stop the subject and she told him no because she did not want him to get hurt. He said that he was a police officer and that he could stop the subject, and she said "ok." NE#1 then walked over to the subject and tried to stop him by attempting to grab his backpack. She heard NE#1 identify himself as a police officer.

The FTU obtained and reviewed third party video taken by security cameras in the store. The video showed NE#1 following the subject through the aisles of the store, while the subject put items into his backpack. At one point, the subject noticed that NE#1 was following him when he turned up an aisle and as they looked at each other. The subject then began to hastily make his way out of the store. The video then showed NE#1 waiting for the subject at the entrance of the store. The subject moved by NE#1 and NE#1 appeared to grab at his backpack. When the subject had gotten to the front right of NE#1, NE#1 appeared to push him with both hands. This caused the subject to fall sideways into a display, knocking it to the ground. The subject then ran out of the store. The conclusion of the video showed NE#1 picking up the display.



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This matter was referred to OPA by the FTU, given its concerns after reviewing the video and comparing that to NE#1's statements. OPA then initiated its investigation, which included reviewing documentary evidence, emails, and the third-party video, as well as interviewing NE#1. The Department terminated NE#1's employment during the pendency of OPA's investigation into this matter.

At his OPA interview, NE#1 again described what occurred on the date in question. He contended that his email was misconstrued to suggest that both he and a store employee were pushed on the date in question. Instead, NE#1 said that he meant to write that he was pushed during the incident, but that the store employee was pushed during a prior incident. NE#1 recounted that he was pushed into a banner or a shelf by the subject ("No, no, well, when I, when I got up and I said, hey, chill out, I'm a cop. When he was coming past me and I reached in the bag, he pushed, pushed me into the – there's, like, a banner or a shelf or something."). NE#1 further told OPA that he was "100% sure" that he did not physically touch the subject. NE#1 stated that, while he was involved in the incident, he did not believe that he used force that needed to be reported. NE#1 further told OPA that, after the subject left the store, NE#1 went to look for him at a Red Robin; however, the subject was already gone when he arrived there. This detail was not included in his prior written statement. NE#1 recounted that he then went back to the store and finished getting his eyebrows waxed.

OPA asked NE#1 what the policy was for student officers to engage in law enforcement activities while off-duty. NE#1 responded that he was told to "be a good witness." NE#1 recounted that he reported this incident to his chain of command the next day. He stated that they asked whether he was a victim or a witness and, because he was not a victim, he stated that he was a witness.

OPA then showed the video of the incident to NE#1. He stated that he did not remember following the subject through so many aisles. He also stated that, while he saw that the subject, not himself, was pushed into the display, he remembered this incident differently.

At his OPA interview, NE#1 further disclosed that this was not the first time he had been involved in an incident while off-duty. In the first, he was engaged in a dispute with another motorist, during which the other motorist learned that NE#1 had a firearm. Police arrived at the scene but no action was taken towards NE#1. That same day, his car was broken into and some of his equipment (but not his firearm) was stolen. In the second incident, a witness reported that NE#1 was armed in a casino. He was told by an officer that he could not carry in that casino and he apologized, but no further law enforcement action was taken towards him. After these incidents, which occurred prior to this case, NE#1 was warned to be more careful when off-duty.

SPD Policy 5.001-POL-10 requires that Department employees be truthful and complete in all communications. Here, it was alleged that NE#1's various statements concerning his involvement in this case were deliberately and materially false and misleading, and that this conduct constituted dishonesty in violation of Department policy. Based on my review of the evidence, and applying the higher burden of proof required for this allegation, I find that NE#1 was materially dishonest in his recounting of this incident.

First, NE#1's initial description of himself as a "witness" rather than an involved party was contrary to the video. In the video, NE#1 followed the subject around the store, actively pursued the subject when he attempted to leave the store, and used force on the subject to prevent him from shoplifting.



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Second, and similar to the above, NE#1's contention that he did not engage in law enforcement activity while off-duty was also false. This statement was disproven by both the video and by the discussion he had with the woman who was waxing his eyebrows at the time. Notably, he told her that he was a police officer and could stop the subject and she heard him then identify himself to the subject as a police officer. Moreover, even after the subject left the store, NE#1 went outside to look for him, even following him into a Red Robin. This information was not disclosed to his supervisors.

Third, NE#1's written statement that the subject "barreled down the aisle" and pushed NE#1 and a female employee over was also untrue. NE#1 told OPA that he meant that the subject pushed the female employee over on a previous occasion; however, this was simply contrary to the plain language of his email. Moreover, even if this is true, the video conclusively shows that NE#1, himself, was not knocked over. Further, later in his written statement, he stated that the subject "pushed us away." Again, the video conclusively proved that this did not occur.

Fourth, NE#1's statement to his supervisors that he pulled his arms up to his shoulder when the subject ran into him was also inconsistent with the objective evidence. Contrary to running into NE#1, the subject actively tried to avoid him. NE#1, not the subject, initiated the physical contact between them. Further, NE#1 clearly did not pull his arms up to his shoulders when the subject neared him. Instead, he grabbed the subject's backpack and then pushed the subject with both hands.

Fifth, NE#1's written statement that he did not put his hands on the subject was also untrue. As discussed more fully herein, NE#1 indisputably touched the subject.

Sixth and last, NE#1's written statement that he was sitting in a chair with his eyes closed when he heard the store manager state that someone was shoplifting and then looked up to see the subject running towards him was also false. Notably, NE#1 was following the subject around the store prior to physically confronting him.

While there are other inconsistencies between NE#1's account of the incident with the video and the store employees' descriptions, the above are the most significant. They collectively establish that NE#1 was deliberately and materially dishonest in this incident for the apparent purpose of covering up law enforcement activity that he engaged in off-duty as a student officer. Such dishonesty is unacceptable and constitutes a serious violation of policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

##### ***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. The question here is whether the force used by NE#1 in this instance, which was captured on video, rose to the level of needing to be reported. SPD policy defines de minimis force as: "Using hands or equipment to stop, push back, separate or escort, the use of compliance holds without the use of sufficient force to cause pain, and unresisted handcuffing." Among the definitions of Type I force includes: "Open hand technique with sufficient force to cause complaint or indication of pain."



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Based on my review of the video, NE#1 pushed the subject with both hands, which caused the subject to fall sideways into a display and knock it over. The subject did not fall to the ground, however, and continued to run away out of the store. I believe that, under the definition set forth above, this was Type I force that was required to be reported. Here, NE#1 was, contrary to his recounting of the incident, taking law enforcement action to prevent the subject from leaving the store and, while doing so, he pushed the subject. Moreover, even were the level of force arguable, given that it occurred while he was off-duty, NE#1 should have reported and documented the force out of an abundance of caution and due to the higher scrutiny of force used by a Student Officer while off-duty. His failure to report the force in this case was thus in violation of policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**