



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0664

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations - POL-6 6. Employees Will Report Alleged Violations	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:

While investigating another incident, OPA identified Body-Worn Video (BWV) showing comments made by a Named Employee during an arrest. OPA investigated whether the comments violated SPD’s bias and professionalism policies, as well as whether another employee failed to follow policy by not reporting the interaction.

SUMMARY OF INVESTIGATION:

On September 15, 2020, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were part of a bicycle squad assigned to a protest occurring near Denny Park. On that date, a group of protesters were observed marching north toward Broad Street. Based on reports, members of the group were seen harassing passing vehicles and one individual attempted to open a vehicle’s door. As the march continued, members of the group were seen committing acts of property destruction targeting buildings in the area. Probable cause was developed for the arrest of an individual, referred to hereafter as the Subject. The Subject’s arrest report described her as an Asian female.

NE#1 and NE#2, with the assistance of other officers, conducted the arrest. The officers entered the demonstration march and formed a perimeter around the Subject. NE#2 took the lead arresting the Subject with the assistance of NE#1. The Subject was wearing a large backpack which made it difficult for them to secure her hands behind her back for handcuffing. Ultimately, NE#2 handcuffed the Subject. Immediately after the handcuffing, a member of the demonstration group could be heard on Body Worn Video (BWV) challenging the officers’ probable cause. NE#1



responded “shut up” before beginning the process of searching the Subject incident to arrest. During the search, the Subject told the officers that she was not resisting. NE#2 said: “I appreciate that; do not.” NE#1 again said that he appreciated her cooperation while he secured her property. The officers requested a transport van and placed the Subject on her side in the recovery position.

The Subject asked if the individual she referred to as “E” was there. NE#1 stated: “there’s nobody around you.” Another officer, who OPA could not identify based on BWV, could be heard stating “nobody cares what you say.” The Subject responded that this was “a little rude.”

NE#1 knelt beside the Subject and stated: “Hey, you guys are committing property destruction in my city. I don’t care if it’s rude or not.” The Subject responded that it was “[her] city too, thank you.” NE#1 replied: “Are you? Were you born here?” The Subject stated that she was. NE#1 said: “me, north Seattle.” The Subject responded: “me too.” NE#1 responded, “so stop destroying property.” The Subject said something inaudible, and NE#1 said “huh?” She responded that she did not say anything and was just making a “noise.” NE#1 told her: “you can stop talking because no one cares, no one is around you. We’re not being rude, it’s rude to destroy property that isn’t yours.”

A supervisor approached to tell NE#1 and NE#2 that they would be “handing off” the Subject shortly for processing. NE#2 began to get out his Miranda card. As he did so, NE#1 stated to the Subject “your friends are losing.” NE#2 read the Subject her Miranda warning, which she indicated she understood by nodding.

After identifying this incident during investigation of a different complaint, OPA attempted to contact the Subject, but was unsuccessful. Consequently, the Subject was not interviewed as part of this investigation.

OPA also interviewed the Named Employees. In his interview, NE#1 stated that on the date of the incident, his bicycle squad was ordered to conduct a targeted arrest of the Subject. He stated that based on the information he was given, the Subject was observed to be leading a group of demonstrators who had committed acts of malicious mischief including property destruction and that he was informed that there was probable cause to arrest her.

OPA asked NE#1 about his statements. He stated that he was frustrated by individuals committing acts of destruction in a city he had sworn to protect. When asked about his statement to the Subject that “no one cares” what she was saying, he stated that she was “trying to destroy property that she did not own, that other people had to clean up, other people had to repair and she showed zero regard for that.” He further stated that this conduct had been going on for months and that it was unacceptable.

OPA asked NE#1 specifically regarding his statements that Seattle was “his” city and asking if the Subject was “born here.” He stated that he was born and raised in Seattle and that it was unacceptable for people to destroy others’ property. He said that based on his own experience covering protests, most individuals who he had arrested for property destruction were not Seattle residents. He stated that the comment was not intended to be about the Complainant’s race or nationality, and that he did not have any basis to believe that she specifically was not a Seattle resident.

Finally, NE#1 was asked about his statement that the Subject’s “friends are losing.” He stated that he was trying to articulate that officers would not continue to tolerate acts of property destruction like those which were being committed by the demonstration group in the leadup to the incident.



OPA also interviewed NE#2. NE#2 stated that he did not recall the substance of the Subject's statements apart from her saying that she was trying to cooperate. He said that given all that was occurring at the time, he was not paying careful attention to the conversation between NE#1 and the Subject. He was tasked with monitoring the demonstration group and was attempting to do so.

When asked about NE#1's specific statements, NE#2 said that NE#1 was a Seattle native and was known to be proud of being so and serving in its police department. He stated that at the time of the Subject's arrest, there had been "four, almost five months of people destroying [the] city," and NE#2 believed this was upsetting to NE#1. He did not feel that the comments were inappropriate to the point NE#1 was trying to make and did not believe that they constituted a violation of Department policies.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140-POL.) This includes different treatment based on the race of the subject. (*See id.*)

OPA finds insufficient evidence to determine that NE#1's comments to the Subject were motivated by a belief about her race, national origin, or a belief that she individually was not a resident of Seattle. Rather, they appeared to be based on his experience and belief that individuals were coming to Seattle to commit property destruction as part of, or under the guise of, ongoing protest activity. Moreover, OPA did not find that any law enforcement action was taken on the basis of the Subject's race or other identifiable characteristics, as opposed to the probable cause information included in the CAD and arrest report.

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." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

OPA finds the question of whether NE#1's statements violated SPD's professionalism policy to be a close one. OPA found the majority of NE#1's interaction with the Complainant to have been unnecessary and unproductive.



Moreover, it did not appear to further any law enforcement interest and simply served as a mechanism for NE#1 to express his frustration concerning the ongoing property damage being caused by demonstrators within Seattle. This being said, OPA is cognizant of the fact that NE#1 takes pride in being from Seattle and feels strongly about his oath to protect the City and its residents from harm. OPA is also keenly aware of the toll to officer morale caused by months of protest activity that included widespread damage to people's property and livelihoods. This is particularly the case for NE#1, who worked repeated long shifts for more than a month.

On balance and given the above, OPA does not believe that NE#1's statements were so problematic and undermining of public trust and confidence to warrant a Sustained finding. Instead, OPA recommends that NE#1 receive the below Training Referral. In issuing this retraining and counseling, OPA wants to make clear to NE#1 that, regardless of frustration, future similar conduct will likely result in the imposition of discipline.

- **Training Referral:** NE#1's chain of command should discuss this incident with him and, in doing so, should review with him the BWV of his comments. His chain of command should discuss OPA's findings with him and, reiterate that, regardless of his frustration level, NE#1 needs to avoid these types of interactions. Lastly, NE#1 should be notified that future similar conduct will likely result in the imposition of discipline. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations - POL-6 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)

OPA finds that NE#2 did not violate this policy by failing to report the interaction between NE#1 and the Subject to a supervisor. It was not clear based on OPA's investigation that NE#2 heard the substance of the conversation. Moreover, the Subject did not herself complain of the incident or make any effort to report it. Given the ongoing protest activity and the need to screen the Subject's arrest, OPA finds it reasonable that NE#2 may not have been fully aware of what had transpired. Additionally, there was no evidence that NE#2 himself aggravated the incident or behaved unprofessionally.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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