



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 28, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0369

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

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

**Imposed Discipline**

Suspension Without Pay
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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:

It was alleged that the Named Employee made a statement to another officer that was unprofessional and biased.

### SUMMARY OF INVESTIGATION:

#### **A. Incident, Chain of Command Investigation, and OPA Referral**

A Sergeant submitted an OPA complaint on behalf of an officer – referred to here as the Complainant. The complaint stated that an officer – Named Employee #1 (NE#1) – used language towards the Complainant that was unprofessional and potentially biased. Specifically, it was alleged that NE#1 referred to the Complainant – who is African American – as a “thug.” The Sergeant documented the Complainant’s account of what occurred. He wrote that the Complainant walked into the North Precinct locker room wearing an “Under Armour shirt, sweatpants, crock shoes, headphones, and [a] department issued face mask.” The Complainant recounted that, at this point, NE#1 approached him and remarked: “You look like a fucking thug!” The Complainant said that he turned to another officer – Witness Officer #1 (WO#1) – who confirmed that NE#1 had called the Complainant a “thug.” The Complainant changed into his uniform and later confronted NE#1 in the write-up room. The Complainant said: “I feel disrespected, because you said I look like a thug, and I didn’t appreciate it!” The Complainant indicated that NE#1 responded: ““You did look like a fucking thug!” The Complainant said that this infuriated them and a verbal altercation with NE#1 ensued. The Sergeant and two other officers – Witness Officer #2 (WO#2) and Witness Officer #3 (WO#3) – stepped between them to prevent a physical confrontation.

The Complainant later told the Sergeant that calling an African American man a thug is offensive and constituted a racial slur. The Complainant felt that judging a person of color solely by what they were wearing was problematic and, if NE#1 did so with other officers, it was possible that he also did so with community members. The Complainant



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stated that he held this concern even though he had never witnessed NE#1 treat community members differently based on their race.

The Sergeant spoke with NE#1 about what occurred. He documented that NE#1 acknowledged making the statement and said that he was only joking. NE#1 told the Sergeant that the Complainant approached him and told him that the statement insulted him, and, in response, NE#1 said: “well you did look like a thug.” NE#1 told the Sergeant that an argument ensued and that the Complainant said: “do something about it!” NE#1 perceived this as a threat to become physical from the Complainant.

The Sergeant, who is also African American, informed NE#1 that referring to someone – particularly a person of color – as a “thug” was offensive and could be construed as racist. He directed him not to do so again, whether or not in jest. NE#1 said that he understood. NE#1 tried to apologize to the Complainant, but the Complainant was not initially receptive.

The Sergeant informed the Watch Lieutenant of what occurred and of the steps he took to handle the matter. The Watch Lieutenant determined that, given the allegations of bias against NE#1, an OPA referral would need to be made. The Sergeant subsequently make an OPA complaint and this investigation ensued.

## **B. OPA Investigation**

As part of its investigation, OPA examined recent police action taken by NE#1 to determine whether any evidence of bias could be uncovered. To do so, OPA looked at Terry stops conducted by NE#1 over a six-month period. OPA did so because Terry stops, unlike dispatched calls, rely on observations made by officers and the personal identification of suspicious behaviors. Given this, OPA posited that – while still an imperfect analytical tool – Terry stops would be the best indicator of the potential bias of an officer. OPA was only able to locate documentation of two Terry stops. In one, NE#1 stopped a car that he believed had earlier fled from officers. In the second, NE#1 responded to a Target and detained an individual who was identified as shoplifted. OPA found no apparent bias in either case.

OPA also reviewed NE#1’s performance history, including PAS entries. His history was largely positive and there was no indication of bias.

OPA further conducted interviews of NE#1, the Complainant, the Sergeant, and five witness officers.

### **1. Complainant’s OPA Interviews**

OPA interviewed the Complainant twice. During his first interview, the Complainant said that he came into work wearing a hooded sweatshirt, sweatpants, crocs, and headphones. He had his hood over his head at the time and a facemask on. When he walked into the locker room, NE#1 said to him: “You’re coming in here looking like a thug.” The Complainant acknowledged what was said and got changed into his uniform. When he left the locker room, he sought out NE#1 to allow him to “clean up” and explain the statement. The Complainant did so because, for him, the use of the word “thug” towards an African American male is synonymous with the N-Word. Now in his uniform, he asked NE#1, “do I still look like a thug?” In response, NE#1 repeated that the Complainant: “Did come in looking like a thug.” They then got into an argument, which nearly turned physical. However, prior to that occurring, it was broken up by other officers.

The Complainant told OPA that he pursued this complaint because of his concern that, if NE#1 was saying this to him, it reflected NE#1’s potential bias. The Complainant noted that he was not aware of other racially motivated statements



made by NE#1 or whether NE#1 had a history of making such statements. The Complainant said that NE#1 subsequently apologized to him.

The Complainant expressed an overall frustration with racism towards African American people within society and within SPD. He also stated that he had raised internal concerns previously about racially motivated incidents but had not received any response from his chain of command. He stated that other officers of color had also experienced this, but he declined to identify them. He told OPA that he was worried with coming forward in some scenarios, and opined that other officers were as well, due to the risk of potential retaliation.

During his second interview, the Complainant provided more context surrounding his concerns with racism within society and SPD. The Complainant told OPA that he did not know what steps could be taken to remedy this or that additional training could eliminate ongoing racism.

## **2. NE#1's OPA Interview**

NE#1 admitted that he called the Complainant a "thug" when the Complainant walked into the locker room. He said that this was a joke. He indicated that he defined the term as meaning "ruffian" and he did not believe, at the time, that it constituted a racial slur. He said that the Complainant turned around and confronted him. He initially thought that the Complainant might also be joking with him but he quickly realized that the Complainant was serious. He described that their argument almost turned into a physical altercation but was broken up by other officers.

NE#1 spoke with the Sergeant who informed him of the significance of the term "thug" when used towards African American men. NE#1 said that he did not know that. He indicated that he realized that his statement was "stupid." He apologized to the Complainant and said that the Complainant accepted his apology. He told OPA that he would not use that term again in the future.

He acknowledged that his statement to the Complainant was unprofessional but denied that it was biased because he did not understand the racial connotations behind the term. He said that he could not recall ever previously using that term to refer to an officer. NE#1 was not aware of ongoing racism experienced by officers of color in the North Precinct.

After his OPA interview concluded, NE#1 went back on the record to clarify that he was not White as was indicated in OPA's documentation. He stated that he identified as Hispanic and Native American.

## **3. Sergeant's OPA Interview**

The Sergeant told OPA that he had worked with both NE#1 and the Complainant and that he currently supervised the Complainant. He became aware of the incident when he heard NE#1 and the Complainant arguing. He saw two officers physically separating them. He took the Complainant outside to speak with him. The Complainant told the Sergeant that he came into work wearing a sweatshirt with the hood up and NE#1 called him a "thug." The Complainant indicated that he initially thought that NE#1 did not understand that the comment was disrespectful, so he went to ask NE#1 for an apology. NE#1 repeated the comment and they got into the argument.

The Sergeant did some research on the internet and found an NPR article that discussed the offensive connotations of the term "thug." He then went to speak with NE#1 and provided NE#1 with the article. He discussed the article with NE#1 and told NE#1 that, as an African American, he also would have been insulted by what NE#1 said. NE#1 told the Sergeant that he did not understand the derogatory nature of the term and he said that he was sorry. He further



stated that he would apologize to the Complainant and NE#1 ultimately did so. The Sergeant believed that this had resolved the matter.

The Sergeant opined that NE#1 did not intend to make a racist statement and that, instead, NE#1 did not understand the implications of what he said. The Sergeant had never heard NE#1 make racially pejorative statements before or ever learned from any other officers that NE#1 did so.

#### **4. WO#1's OPA Interview**

WO#1 was present in the locker room when the comment was made. He recalled that the Complainant walked into the locker room and that NE#1 was already there. WO#1 said that the Complainant was dressed in all red with a hood over his head and a facemask on. He stated that NE#1 then made a comment to the Complainant that the Complainant became upset about. WO#1 could not remember the exact verbiage that NE#1 used. WO#1 stated that it was characteristic of NE#1 to say things "that he thinks are funny that's probably sometimes not totally funny to certain people." WO#1 was not aware of other examples of such statements made by NE#1 in the past.

#### **5. WO#2's OPA Interview**

WO#2 was in the write-up room when he witnessed an argument occurring between NE#1 and the Complainant. He was worried that it could become physical, so he and WO#3 stood between them and separated them. He and WO#2 walked with the Complainant into the holding cell area where they spoke with him. Primarily, the Complainant talked to WO#3. He told her that the Complainant called him a thug in the locker room and that he was insulted by this and embarrassed. The Complainant explained that he confronted NE#1 about the statement and demanded an apology, which NE#1 refused to provide. At that point, the argument ensued. After he and WO#3 spoke with the Complainant, the Complainant went outside to talk with the Sergeant.

When asked about the use of the term "thug" by NE#1, WO#2 responded: "I don't think he meant anything malicious by it. Um, he often talks without thinking first and I think he was, he probably made the comment and was very surprised by the reaction that he got..." WO#2 had no knowledge of NE#1 making other similar statements in the past. WO#2 characterized NE#1's and the Complainant's current relationship as "amicable" and was aware of no other problems between them.

#### **6. WO#3's OPA Interview**

WO#3 was also in the write-up room when the argument started between NE#1 and the Complainant. She stepped in between them with WO#2 and prevented the altercation. She and WO#2 took the Complainant to the holding cell area and spoke with him. She described the Complainant as very upset and emotional. He talked about how NE#1 called him a "thug" and how he found this disrespectful and offensive given his background. WO#3 said that she also grew emotional listening to the Complainant.

When asked whether she felt that NE#1 intentionally used a derogatory term, she stated that she did not believe that NE#1 meant to offend the Complainant. She described NE#1 as not "sophisticated" and former military. She said that, while "thug" could refer to someone who engages in criminal behavior, it had recently taken on "racial" connotations. She further said that she did not know NE#1 to ever be mean, but she did know him to be an "idiot" at times. She was not aware of NE#1 ever making racist comments aside from the allegation here.

#### **7. WO#4's OPA Interview**



Witness Officer #4 (WO#4) was interviewed given her direct working relationship with NE#1 and the Complainant, as well as the fact that she is an officer of color on Third Watch at the North Precinct. WO#4 said that she worked for a period of time with NE#1 and that the Complainant was, at one point, her Field Training Officer.

WO#4 said that she heard of the incident after it occurred, and she was aware that NE#1 referred to the Complainant as a “thug.” She believed that the Complainant was insulted by the comment. She did not know whether NE#1 meant the comment to be derogatory and she had no recollection of him making similar comments in the past. She indicated that, had the statement been made towards her, she would have felt that it was based on her race. But she recognized that she could not say for sure what the Complainant felt when he heard the statement and what NE#1 meant when he said it. She said that she had heard officers make similar comments about community members in the past but that they used different terminology.

WO#4 was asked to opine on the Complainant’s assertions that officers of color were subjected to racial prejudice within the Department. WO#4 said that she understood the Complainant’s feelings but that she had not “directly felt something” that she felt was based on her race. However, she noted that passing comments made by both officers and community members towards officers “may be interpreted that way.” She did not believe that this was prevalent throughout SPD.

#### **8. WO#5’s OPA Interview**

Witness Officer #5 (WO#5), like WO#4, was interviewed because he worked with both NE#1 and the Complainant, as well as because he is an officer of color on the watch. WO#5 said that he has known NE#1 for around five years. He has known the Complainant for around the same time, and they were partners for a period of time. He said that he and the Complainant are like “brothers” and take trips together to visit family in Georgia.

He said that, after the incident occurred, the Complainant called him and told him what happened. The Complainant said that he walked into the locker room wearing athletic wear and NE#1 called him a “fucking thug.” The Complainant further stated that, when he confronted NE#1 about the statement and asked for an apology, NE#1 repeated it. WO#5 stated that, when the Complainant told him what occurred, his “heart dropped” because, for an African American man, “thug” is synonymous with the N-word. WO#5 felt that NE#1 understood the significance of what he was saying because he repeated it. WO#5 further opined that it was irrelevant whether NE#1 knew that the term was offensive. He said he had never heard NE#1 make racist comments towards African Americans previously. He indicated that he heard rumblings about other potential comments, but WO#5 characterized them as rumors and declined to elaborate.

WO#5 stated that it was problematic that only the Sergeant, who is African American, understood the issue with what NE#1 said. The others had to educate themselves to see that it was offensive. When asked whether he felt racism towards African American people was a problem within SPD, WO#5 said that it was not really a Department problem but was an issue with the whole of the City and society. However, WO#5 noted, without going into specificity, that there had been numerous occasions of racial issues that had been elevated by both him and the Complainant through their chain of command. No action had been taken and, in some cases, no one ever followed up with them about their concerns. WO#5 expressed deep frustration with the Department and, specifically, with the North Precinct. He told OPA that he believed that nothing would be done about it as nothing had been done previously and opined that he could think of no training that would be a panacea for this.

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



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

**5.140 - 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.) This includes different treatment based on the race of the subject. (*See id.*)

As discussed more fully below, NE#1’s statement was clearly unprofessional. The issue here is whether it constituted biased policing in violation of SPD policy.

Of the individuals interviewed by OPA, the Complainant and WO#5 believed it clear that the comment was biased and that, when NE#1 doubled down on it, it showed his intent to be derogatory towards the Complainant. The Sergeant and WO#4, who are both African American, concurred that it the statement was offensive but felt that NE#1 was not aware that this was the case. WO#2 and WO#3, who are both White, recognized that “thug” could be perceived as offensive but did not think that NE#1 knew this and felt that he did not intend to be derogatory towards the Complainant. NE#1, who identifies as Hispanic and Native American, denied awareness that “thug” was a racially pejorative term when applied to African American males. He said that he did not intend to use biased terminology and was regretful when he learned of the significance of the term.

Based on OPA’s own awareness, it agrees that “thug,” when applied to African American males, is an offensive and racially charged term. This should be widely known amongst officers and OPA shares the Complainant’s and WO#5’s frustration that this is not the case. In attempting to determine whether NE#1’s use of this term constituted bias policing, there are two pieces of evidence that plausibly support the finding that it was. First, NE#1 repeated the statement when confronted by the Complainant. Second, OPA’s believes that it is inordinately unlikely that NE#1 would have called a similarly dressed White officer a “thug” and, even though NE#1 said it was common for people to come into work dressed as the Complainant, there was no evidence suggesting that NE#1 had ever previously used this term to describe any other officer. However, neither of these facts are conclusive. With regard to the first fact, NE#1’s response to the Complainant could have been a defensive reaction rather than a doubling down on a racial term. Moreover, he asserted that he responded in that matter because he felt the Complainant could be joking with him at that time. Second, while OPA believes that NE#1 would not have called a similarly situated White officer a “thug,” this is admittedly a subjective determination for which OPA has no hard evidence in support.

Ultimately, it is difficult if not impossible for OPA to establish that NE#1 knew that “thug” could be construed as a racial slur at the time he said it. Moreover, OPA has insufficient evidence to establish that NE#1 used the term in a derogatory fashion rather than meant it to refer to the Complainant appearing to look like a “ruffian,” as NE#1 claimed. In any event, the statement was extremely unprofessional and had a significant negative impact on the Complainant. However, establishing intent is necessary to prove bias. Given the high standard of proof required, the disputes of fact and differences of opinion within the witnesses statements, and OPA’s inability to conclusively determine what NE#1 was thinking and intending at the time he made the statement, OPA deems the allegation of bias against NE#1 to be inconclusive.

It is important to note that this finding does not constitute an exoneration of NE#1 or a minimization of what the Complainant, WO#5, and other officers of color have experienced and continue to experience. OPA apologizes to these officers for what they have gone through, solely because of the color of their skin, and agrees that, fundamentally, something has to change. As both officers indicated, this change is needed not just within SPD and the North Precinct, but within the profession of policing, the City of Seattle, and our collective community. OPA does





not have the answers for to how to fix this and move forward. However, at a minimum, OPA believes that a Management Action Recommendation is warranted. This includes: (1) all SPD employees being put on notice that the use of the term “thug” to refer to an individual of color constitutes an impermissible racial slur for which there will be zero tolerance moving forward; (2) all North Precinct employees receiving racial equity training that specifically touches on the use of comments such as “thug” and the impact this can have on people of color; (3) SPD revising and expanding its biased policing training to amplify the experiences of BIPOC communities, including officers of color, in order to build increased understanding and racial awareness among officers; and (4) SPD EEO should open an investigation to evaluate specific concerns on the part of the Complainant and WO#5 regarding racial discrimination, to determine what information was relayed to their chain of command, and to identify what actions, if any, the chain of command took in response. If it is determined that no action was taken, EEO should determine why, as well as whether or not the lack of follow-up constitutes a policy violation. Lastly, at the conclusion of its investigation, EEO should consult with SPD Human Resources, OPA, and the Office of Inspector General for Public Safety to determine next steps and whether an expansion of the investigation is warranted.

- **Management Action Recommendation:** While not a clear remedy to this case, OPA requests that the SPD inform all officers that the use of the term “thug” to refer to a person of color is impermissible and unacceptable. OPA also requests that the North Precinct conduct racial equity trainings for all supervisors and officers. This training should address scenarios like what occurred here and educate employees on the negative impact this can have on officers of color, particularly African American officers. While SPD has made significant strides with prior bias training, it should consider changing the focus of its program to explain the specific lived experiences of BIPOC communities, including those of officers of color, to build increased understanding and racial awareness among officers. It is OPA’s understanding that the Department is already beginning to work on this. As discussed above, OPA also requests that an EEO investigation be opened. OPA may make additional Management Action Recommendations depending on the results of that investigation.

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

#### **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.)

It is abundantly clear to OPA that NE#1’s statement was inappropriate and violated the Department’s professionalism policy. Indeed, OPA would have reached this conclusion regardless of whether the comment had been made to a person of color. NE#1 should not and cannot speak to other officers this way, regardless of his intent. Moreover, he exacerbated his unprofessionalism when he refused to acknowledge that the Complainant was offended by his statement and, instead, repeated it, almost causing a physical altercation. This behavior is simply unacceptable.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**