




CLOSED CASE SUMMARY

ISSUED DATE: MAY 11, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0375

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Allegation Removed
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained - Inconclusive

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 Named Employee #1 (NE#1) confronted her in an escalated and unprofessional manner.

ADMINISTRATIVE NOTE:

The Office of Inspector General (OIG) certified this investigation as thorough, timely, and objective. However, OIG noted that OPA is reassessing its threshold for a bias review. Previously, OPA did not require bias reviews for generic racism allegations: “Simply calling an officer racist, without more, is insufficient to meet [the bias-based policing] standard.” [See OPA Case & Policy Update, Volume 06 \(February 1, 2019\)](#). Specifically, OPA instructed employees, “for a statement to be considered an allegation of bias, a subject must claim a nexus between the subject’s race or membership in a protected class and the officer’s actions or lack of actions.” *Id.* As that position is under review and additional guidance has yet to be issued, OPA did not classify an onlooker’s generic insinuation that NE#1 was racist.

SUMMARY OF INVESTIGATION:

An SPD supervisor filed an OPA complaint on the Complainant’s behalf. It described the supervisor’s conversation with the Complainant. The Complainant told the supervisor she smoked marijuana at WAMU Theater during the Boo! Halloween EDM event. The Complainant said an unknown SPD officer—later identified as NE#1¹—told her it was a civil infraction to smoke marijuana in public. The Complainant disagreed with the officer and did not appreciate the officer’s disposition. OPA opened an investigation.

¹ OPA also interviewed the Complainant and NE#1. OPA identified NE#1 by reviewing BWV for the officers assigned to work the Boo! Halloween EDM event.



a. SPD Records

OPA reviewed the computer-aided dispatch (CAD) data, NE#1's training records, and BWV. CAD data showed NE#1 was the primary officer. NE#1 did not detain or arrest the Complainant and was not required to write a report for the incident. The incident was classified as "mischief or nuisance" and closed as an "oral warning given" without a report.

NE#1's training records indicated he completed Listen and Explain with Equity and Dignity (LEED) training in 2013 and a Washington State Criminal Justice Training Commission (WSCJTC) Crisis Intervention training in 2022. The Crisis Intervention training involved interacting with military veterans.

BWV captured NE#1's interactions with the Complainant and Community Member #1 (CM#1). The encounter lasted about two minutes. In summary, BWV showed:

NE#1 exited his vehicle and approached the Complainant in a parking lot near WAMU Theater. The Complainant appeared to hold a cigarette; smoke emanated from it. The Complainant told NE#1, "I am a veteran, and I served this country, and this is the medicine I use because nothing at the VA works." NE#1 interjected, "I don't care. You can't do it in public." The Complainant continued, "I use this because it was prescribed by a doctor." NE#1 asked the Complainant when she served. The Complainant questioned why that was relevant. NE#1 told the Complainant that he served in the military too. The Complainant told NE#1 her years of military service. NE#1 replied, "[Okay], put the weed out, or I'll do it for you."

NE#1 and the Complainant briefly argued whether the Complainant had to put out the marijuana cigarette. CM#1 approached and told the Complainant, "Let me hit that shit. You smoking week. Let me hit it." The Complainant handed CM#1 the marijuana cigarette. The Complainant asked NE#1, "Really, dude? Come on man. We ain't putting it out." CM#1 appeared to inhale the marijuana cigarette while walking away.

NE#1 followed and ordered CM#1 to "Put the weed out now." CM#1 responded, "No, and don't fucking touch me. Don't fucking walk up on me, and don't fucking touch me." NE#1 repeated the order. CM#1 responded, "Fuck no. Find something else to do. I'm gonna light this up in front of your fucking face."

CM#1 walked under a festival tent, and NE#1 followed. The Complainant said, "He wants to arrest us for smoking weed!" NE#1 responded, "Yeah, I'll arrest you for obstruction. How about that?" NE#1 repeated the order for CM#1 to put the marijuana out. CM#1 and onlookers yelled that the marijuana was out. NE#1 and onlookers argued about whether the marijuana was extinguished. CM#1 yelled at NE#1, "Don't talk to me like that!" NE#1 responded, "I will talk to you that way." CM#1 approached NE#1, yelling, "Who the fuck do you think you are?" NE#1 told CM#1 to walk away as onlookers pulled CM#1 away.

Other officers arrived, and NE#1 walked away. NE#1 told other officers, "I told him to put the weed out, and he wanted to buck up." NE#1 told them, "No, it's over now. He put the weed out."



b. OPA Interview – Complainant

OPA interviewed the Complainant. The Complainant said she was “smoking a blunt” when NE#1 told her to put it out. The Complainant said she was “taken aback” by NE#1’s order. The Complainant said NE#1 got in her face “in a really negative form and fashion” and told her it was illegal to smoke weed. The Complainant was upset when NE#1 said he was also a veteran. The Complainant believed NE#1 tried to arrest CM#1 but said her recollection was poor because her “anger level got elevated to where [her] disabilities kicked in.”

c. OPA Interview – Named Employee #1

OPA interviewed NE#1. NE#1 said he worked at SPD for about twelve years and previously served in the United States Army.

NE#1 recalled working at the WAMU EDM event. NE#1 noted that drugs were a “huge problem at the Boo EDM.” NE#1 said he worked at that event for several years, and “Every single time, there are multiple overdoses.” NE#1 said the Complainant smoked marijuana publicly, where he stood in full uniform.

NE#1 said he smelled marijuana when the Complainant lit the cigarette. NE#1 said, “My intention was to exit my vehicle, walk up to the Complainant and tell her just put the cigarette out.” NE#1 said he did not plan further law enforcement action. NE#1 said he identified himself as a fellow veteran to de-escalate her, noting he was “trying to use some sort of relation to her. Basically, saying, hey, I’m a veteran too.”

NE#1 said his attention turned towards CM#1 when CM#1 took the cigarette. NE#1 said CM#1 interfered with his investigation, citing SMC 12A.20.100 (Opening or Consuming Marijuana Products in Public). However, NE#1 noted the marijuana was eventually put out, so he disengaged. NE#1 said he walked away because “even though I did have probable cause for obstructing a public officer.... My main mission that night was public safety for the event.” NE#1 believed that if he continued contact with CM#1, “there’s a large possibility of using force just from his demeanor.” NE#1 said, “The marijuana cigarette was out. That was my main intent, so it was out at that point, and I went back to my patrol vehicle and ended contact.”

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

The Complainant alleged NE#1 escalated tensions during his interaction with her and CM#1.

“When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force.” SPD Policy 8.100-POL-1. Officers are encouraged to use team approaches and consider whether any officer successfully established a rapport with the subject. *Id.* The totality of the circumstances guides de-escalation options, including communication, time, distance, and shielding to minimize the need for force. *Id.*



Here, NE#1 did not apply force. Moreover, SPD's professionalism policy best addresses the allegation that NE#1 initiated and escalated a tense exchange. See SPD Policy 5.001-POL-10. That policy requires employees to "avoid unnecessary escalation of events even if those events do not end in reportable force." *Id.*

Accordingly, OPA removed this allegation as duplicative.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

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

The Complainant alleged NE#1 was unprofessional by escalating a minor concern into a confrontation.

The Department directs employees to treat all people with dignity; remember that community caretaking is at times the focus, not always command and control; and that the guiding principle is to treat everyone with respect and courtesy, guarding against employing an officious or overbearing attitude and refraining from language, demeanor, and actions that may cause the individual feeling belittled, ridiculed, or intimidated. SPD Policy 5.001-POL. 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.* Additionally, employees must "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* Last, "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 derogatory, contemptuous, or disrespectful toward any person." *Id.*

Here, NE#1's behavior fell short of exemplifying SPD's professionalism standards. NE#1's tone with the Complainant was needlessly officious and commanding. NE#1's words were also curt ("I don't care" and "[Okay], put the weed out, or I'll do it for you."). Mainly where NE#1 had minimal law enforcement interest in enforcing a civil infraction.

Similarly, NE#1's words, behavior, and intensity toward CM#1 were less than stellar. OPA acknowledges officers' difficulty when confronted by rude and defiant community members. Still, NE#1 allowed himself to get pulled into a needless power struggle with CM#1 over a minor civil infraction. Threatening to arrest CM#1 for obstructing his public consumption of marijuana investigation and getting into a shouting match with CM#1 (who was held back by other community members) was not a great look for the Department or NE#1. It also risked escalating the situation where reportable force seemed imminent.

Further, NE#1 was admonished, retrained, and disciplined for unprofessional behavior five times over the last five years.² Four circumstances involved inappropriate comments or interactions with community members on-and off-duty. Nevertheless, OPA recognizes that NE#1 ultimately elected to disengage with the Complainant and CM#1 and found insufficient evidence that NE#1 more likely than not violated the Department's professionalism policy.

² (1) 2021OPA-0187, Supervisor Action (face mask); (2) 2021OPA-0174, Training Referral (profanity during intense situation); (3) 2020OPA-0664, Training Referral (unprofessional comments to community member); (4) 2020OPA-0385, Sustained (unprofessional behavior during off-duty incident); and (5) 2018OPA-0569, Supervisor Action (inappropriate comments in public setting).



Accordingly, OPA recommends this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**