




CLOSED CASE SUMMARY

ISSUED DATE: JUNE 11, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0430

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Inconclusive
# 2	8.100 - (1) When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained - Training Referral
# 3	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

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 Named Employee #1 (NE#1) used unauthorized force, grabbing her hair, against Community Member #1 (CM#1). It was also alleged that NE#1 failed to use de-escalation tactics to reduce the need for force and that NE#1 used force based on CM#1’s race.

ADMINISTRATIVE NOTE:

The Office of Inspector General (OIG) certified OPA’s investigation as thorough, timely, and objective. OIG also agreed with designating the bias allegation (#3) against NE#1 for Expedited Investigation. That means OPA believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employee about that allegation. Under the related collective bargaining agreement, an Expedited Investigation may not result in a sustained finding. The other allegations (#1 and #2) against NE#1 underwent a full investigation. OPA left several voicemails, using her listed number, for CM#1 to arrange an interview but did not receive a callback.

SUMMARY OF INVESTIGATION:

On the evening of December 10, 2022, NE#1 responded to a vehicle that crashed off-road. NE#1 contacted CM#1. Body-worn video (BWV) captured their interactions. In summary, CM#1 said she drove the vehicle and crashed it while trying to navigate a curve.

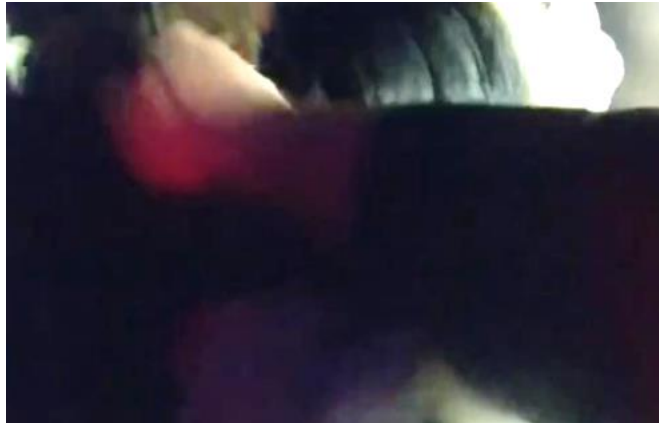


Community Member #2 (CM#2)—CM#1’s husband—and the Seattle Fire Department (SFD) were also on the scene. SFD evaluated CM#1, including examining her eyes. After that, NE#1 requested CM#1’s driver’s license and asked her investigative questions, like why she was in the area and where she worked. He also had CM#1 walk him through how the collision occurred. NE#1 told CM#1 he could tell she drank alcohol. CM#1 said she “drank one...That was a little bit of wine, but that’s it.” She said that drink was consumed about six hours prior. CM#1 agreed to do field sobriety tests. Before the tests, NE#1 asked preliminary questions like whether she took medication or wore glasses or contact lenses. CM#1 successfully recited the alphabet. NE#1 asked CM#1 to count backward from 53 to 36. CM#1 counted backward from 53 to 21. NE#1 asked her what number she was instructed to stop at. CM#1 replied, “21?” For the second test, NE#1 instructed CM#1 to stand with her feet together, close her eyes, and tilt her head back for 30 seconds. CM#1 tilted her head back with her eyes closed for about 18 seconds. CM#1 admitted to swaying during that test. The third test required CM#1 to put her right foot before the left heel-to-toe. She was instructed to take nine steps forward, counting each step aloud, then turn and walk back. NE#1 also offered to demonstrate. CM#1 noted they were on an inclined road, which NE#1 acknowledged. She then said, “Maybe we need a lawyer.” NE#1 explained that if CM#1 refused to participate, his DUI investigation would be based on available evidence. CM#1 said she understood but refused to “do something that would make [her] look like [she’s] not okay, when [she was] okay.” CM#1 also refused a breath test and again requested a lawyer. NE#1 told CM#1 she was under arrest, told her she would be taken in his police car, and offered to arrange a ride for CM#2 to get to the station “so you guys can leave together.”

NE#1 applied handcuffs. CM#1 appeared agitated and overtalked NE#1 as NE#1 tried telling CM#2 what was happening. CM#1 accused NE#1 of arresting her for requesting a lawyer. NE#1 replied, “We’ll call a lawyer for you at the police station.” NE#1 attempted to escort CM#1 to the police car, but she stood still and conversed with CM#2. CM#2 and NE#1 debated whether CM#2 could drive the crashed car, with NE#1 insisting it had to be towed since the airbags were deployed. NE#1 again tried escorting CM#1 to the police car, but she refused and said, “Get the lawyer, then I’ll go wherever you want.” NE#1 again explained that a lawyer would be contacted at the station, but CM#1 refused to move. NE#1 grabbed CM#1’s arms and directed her toward the police car. CM#1, slightly pulling away, said she would “have someone else take [her]. Any [officer] but [NE#1].” NE#1 said, “Let’s walk.” CM#1 replied, “I will walk if you let me go.” As NE#1 walked her toward the police car, she said, “Wow, really? Wow, why, though? Can you tell me why you’re pulling me so hard?” NE#1 replied, “Because you’re not walking. When I tell you to do something...” When they stood outside the police car’s backdoor, CM#1 told NE#1, “Stop pulling on me, you asshole.” She also asked another officer to tell NE#1 to let her go. That officer replied, “Just have a seat in the car, and he’ll let you go.” Still holding CM#1, NE#1 opened the backdoor and repeatedly asked CM#1 to “Have a seat, please,” and “Get in the police car.” CM#1 sat partially on the backseat and repeatedly ordered NE#1 to release her. She stood and twice called NE#1



a “racist piece of shit.” CM#1 continued to demand a lawyer. NE#1 grabbed the back of CM#1’s hair and guided her inside the police car. CM#1 yelled, “He’s pulling my hair. Are you kidding me?”



As NE#1 tried to fasten CM#1’s seatbelt, she again called him a “racist piece of shit.” CM#1 also kicked her right leg at him multiple times as NE#1 held it.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized.

The Complainant alleged that NE#1 used unauthorized force by grabbing her hair.

An officer’s force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a

¹ The red arrow points to NE#1 holding CM#1’s kicking right leg.



law-enforcement objective.” *Id.* Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

Here, after CM#1 was handcuffed, she grew resistant. She ignored several attempts to get her into NE#1’s police car. Instead of complying, she stopped for an extended conversation with CM#2, refused to move, and repeatedly demanded a lawyer after NE#1 told her a lawyer would be contacted at the police station. NE#1 worked at the Seattle Police Department (SPD) for 42 years and specialized in DUIs. The force he applied against CM#1, a hair hold technique, used to be trained by SPD. While SPD stopped training that tactic about 20 years ago², the policy does not prohibit it. NE#1 told OPA he learned it at the basic academy in 1984. NE#1’s lawful purpose was to get CM#1, an arrestee, into the police car for transporting. The relatively low level of force was objectively reasonable to accomplish that goal. However, whether it was necessary or proportional to the threat is questionable. CM#1 repeatedly said she would comply with any officer except NE#1, which presented a “reasonably effective alternative to using force....” NE#1 could have allowed another officer to escort her. Moreover, CM#1 posed no threat before NE#1 applied the hair control. Notably, after that, she did kick at him several times.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #2

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

NE#1 allegedly failed to use de-escalation tactics to reduce the need for force.

“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 also encouraged to use team approaches to consider whether any officer has successfully established rapport with the subject. *Id.* The selection of de-escalation options is to be guided by the “totality of the circumstances.” The policy gives several examples of de-escalation, emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, NE#1 showed great patience with CM#1 before her arrest. He maintained a calm and polite tone and repeated and offered to demonstrate field sobriety test instructions. However, rather than using a team approach and considering whether another officer established a rapport with CM#1, NE#1 apparently tired of her resisting, calling him racist, and decided to apply force. While NE#1’s force was not great, it was likely avoidable. It also could have escalated CM#2, who was present as a man grabbed his wife’s hair and pushed her into a police car.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

² That estimation came from an SPD training unit sergeant.



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- **Required Training:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 8.100-POL-1 with NE#1, and provide training and counseling deemed appropriate. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #3

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

CM#1 alleged that NE#1's behavior was based on her race.

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 treatments based on the race of the subject. *See id.*

Here, NE#1 is a white man, and CM#1 is a Hispanic³ woman. However, BWV did not capture evidence suggesting he was motivated by bias or that CM#1 was mistreated based on a discernable trait. Following NE#1's use of force, CM#1 repeatedly accused him of being racist and later told a screening sergeant, "I don't trust him. I feel like he's a racist." Further, she could not describe, other than a feeling, what racist behavior NE#1 exhibited.

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

³ The related incident report listed her as "Hispanic Or Latino."