



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 29, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN, ON BEHALF OF DIRECTOR GINO BETTS, JR.
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0175

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 – Using Force, 8.200-POL-1. Use of Force: When Authorized (Effective April 24, 2023)	Not Sustained - Lawful and Proper
# 2	5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings	Chief's Findings
# 1	6.150 – Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights	Sustained	Not Sustained - Training Referral
# 2	6.180 – Searches-General, 6.180-POL-6 Search Incident-to-Arrest/Custodial Search	Not Sustained - Lawful and Proper (Expedited)	Not Sustained - Lawful and Proper (Expedited)
# 3	6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained - Training Referral	Not Sustained - Training Referral
# 4	5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)	Not Sustained - Unfounded (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	8.300 – Use of Force Tools, 8.300-POL-14 Firearms, 6. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for Their Own Safety or for the Safety of Others (Effective December 1, 2023)	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:



Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) responded to a domestic violence (DV) call involving Community Member #1 (CM#1) reportedly assaulting Community Member #2 (CM#2) and threatening CM#2 with a firearm. After refusing to speak with the named employees, CM#1 fled on foot but stopped and turned towards them. The Complainant—a lieutenant—alleged that NE#1 may have used unauthorized force by deploying his Taser at CM#1. CM#1’s attorney alleged that NE#2 interrogated CM#1 without Mirandizing him; that NE#2 unlawfully searched CM#1’s backpack and bedroom; that NE#3 unnecessarily pointed his firearm at CM#1; and that the named employees engaged in bias-based policing.

ADMINISTRATIVE NOTE:

Two allegations against NE#2 (6.180-POL-6 and 5.140-POL-2) and all allegations against NE#3 (5.140-POL-2 and 8.300-POL-14(6)) were approved for expedited investigation. That means OPA, with the Office of Inspector General’s (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees on those allegations. As such, OPA did not interview NE#2 on those allegations, and OPA did not interview NE#3. On May 21, 2024, OIG certified OPA’s expedited investigation as thorough, timely, and objective.

The remaining allegations underwent a full investigation. On July 9, 2024, OIG certified OPA’s full investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On April 11, 2024, the Complainant submitted an OPA complaint via Blue Team, writing that NE#1 “may have used out of policy force when deploying his taser while taking a suspect into custody after a foot pursuit.”

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, 911 audio recordings, body-worn video (BWV), police reports, photographs, Seattle Fire Department (SFD) patient care record, Taser report, use of force reports, and training records. OPA also interviewed CM#1’s attorney, Witness Officer #1 (WO#1), NE#1, and NE#2.

B. Computer-Aided Dispatch (CAD) Call Report

On January 11, 2024, at 11:49 AM, CAD call remarks noted, “2ND HAND INFO[RMATION], FEMAL[E] TEXTED [REPORTING PARTY] TO CALL [POLICE DEPARTMENT] FOR HER SAYING SHE WAS HIDING IN THE BATHROOM AND THAT WHEN [POLICE DEPARTMENT] ARRIVED SHE MIGHT SAY SHE[’]S OK BUT SHE[’]S NOT, HISTORY OF [DOMESTIC VIOLENCE] INCLUDING MALE HITTING HER AND HOLDING A GUN TO HER HEAD, UNK[NOWN] WEAPONS TODAY.”

C. Body-Worn Video (BWV)

BWV captured the following:



The named employees responded to the incident location. NE#2 and WO#1 interviewed CM#2 outside a house. CM#2 said she and CM#1 argued the day before, and CM#1 beat her, struck her head, and slapped her.¹ CM#2 said that, a month ago, CM#1 pointed a gun at her and threatened her with it. CM#2 said the firearm could be inside her house. CM#1 and CM#1's friend were walking towards the house when CM#2 identified CM#1 for the officers.² NE#2 stated that CM#1 would be an "Adam."³ While wearing a backpack, CM#1 approached, and NE#1 told CM#1 that officers needed to talk to him. NE#1 stepped towards CM#1 and attempted to grab him. CM#1 fled, and the officers ran after him. While running, NE#1 took out his Taser and shouted, "Stop, or you're gonna get Tased!" While holding the backpack, CM#1 ran past WO#1:



WO#1 tripped and fell but got back up and resumed chasing CM#1. CM#1 stopped running and turned around, facing the officers:

¹ NE#2's police report documented, "At the time of speaking with [CM#2], I did not see any bruising or see any swelling."

² NE#2's police report documented that officers intended to detain CM#1 for fourth-degree DV assault but were unsure whether he was armed, given CM#2 saying she did not know where his firearm was located.

³ SPD officers use the word "Adam" to indicate an individual will be placed under arrest.



NE#3 extended his left hand, holding a radio, at CM#1; NE#3's right hand held a firearm in a modified "sul"/low ready position:



NE#1, NE#2, and WO#1 approached CM#1. NE#1 aimed his Taser at CM#1 and shouted, "Get on the ground now! You are going to get Tased!" CM#1 did not get on the ground. CM#1 slowly walked towards NE#1. NE#1 deployed his Taser at CM#1⁴ before CM#1 dropped the backpack and WO#1 grabbed CM#1's arm:

⁴ Photographs depicted one Taser probe in CM#1's left leg and one Taser probe in CM#1's right leg. A third Taser probe connected to a tree branch.



The red arrows in the two images above indicate Taser conductive probe lines

With his arms raised, CM#1 said, "Sir." NE#1's Taser beeped. CM#1 screamed, struck his head against an electrical box, and fell on his back:



CM#1 shouted, “Fuck! I’m down!” NE#1 shouted, “Get on the ground!” NE#1’s Taser beeped again. NE#1, NE#2, and WO#1 rolled CM#1 to his side against the electrical box and handcuffed him. During CM#1’s arrest, CM#1’s friend repeatedly asked NE#3, “Why you pulling a gun out?”

WO#1 and NE#2 stood CM#1, and NE#2 questioned CM#1 without Mirandizing him. CM#1 denied having weapons on him. CM#1 admitted pushing CM#2 during an argument but said CM#2 pushed him as well. Overhearing his friend talk to NE#3, CM#1 said to his friend, “Wait, yeah, somebody had their gun on me.” NE#2 resumed interviewing CM#1 about his relationship with CM#2. NE#2 told CM#1 he was arrested for assaulting CM#2. CM#1 asked, “Can, can y’all take, um, my homeboy’s backpack to his school?” NE#2 said officers would handle his property as he requested. CM#1 replied, “You can give my backpack to him, and my phone, too.”⁵ CM#1 questioned why one officer pulled a gun out and another Tased him, though acknowledging that they did not know whether he was armed. NE#2 said officers had reason to believe CM#1 had a firearm and did not know whether he had it with him. CM#1 said he sold his firearm, which he claimed to have found, to a friend a week or two ago. NE#1 approached and asked CM#1 whether he would like to report anything other than the Taser deployment. CM#1 said an officer chased him with a gun. CM#1 also said he saw officers surrounding him when he approached the house. NE#1 replied, “So, I’m gonna – I’m gonna be straight up with you. You were going to be taken into custody for sure. You were going to be detained just like this, and we were gonna have a conversation, right?”⁶ But the second you flee, that completely changes things for us, right, especially when I’m getting information saying that hey, this individual potentially had a firearm previously. That makes it to be a point where I need to apply force to be able to get you safely into custody.” SFD evaluated CM#1.⁷

Witness Supervisor #1 (WS#1)—a sergeant—arrived and screened the incident with NE#1, NE#3, and CM#1’s friend. NE#1 told WS#1 that a Taser deployment was the safer approach to arrest CM#1 because CM#1 reportedly had a

⁵ CM#1 later spoke to a friend on the phone, saying he had “Steve’s backpack.”

⁶ CM#1 repeatedly replied, “I know” while NE#1 spoke.

⁷ CM#1’s SFD patient care record documented that SFD removed the Taser probes without incident, and CM#1 did not need treatment because he had no injuries.



firearm, CM#1 potentially used a firearm during the commission of an assault, CM#2 recently saw a firearm in the house, the team was down one officer when WO#1 tripped and fell during the chase, CM#1 fled from officers before, and CM#1 did not comply with orders to get on the ground. NE#1 said he thought he deployed his Taser three times, though one may have missed. NE#3 told WS#1 that he drew his firearm but did not point it at CM#1. CM#1's friend corroborated NE#3's account.

WS#1 approached CM#1 and Mirandized him.⁸ CM#1 said he understood why NE#1 Tased him. CM#1 said he stopped running because he did not want to get shot by NE#3, who pointed a gun at him during the chase. CM#1 said he started running because he was scared when the officers continually went closer to him.

CM#1 said he wanted the backpack returned to his friend who owned it. NE#2 said he would search the backpack based on a search incident to arrest since CM#1 had the backpack on him, and NE#2 wanted to ensure there was no firearm in it. CM#1 denied knowing what was inside the backpack. NE#2 searched the backpack and found a firearm in it.⁹ CM#1 was searched and placed in a patrol vehicle. WS#1 told NE#2 that officers should seize the firearm in the house and suggested either obtaining a search warrant or obtaining consent from all residents. NE#2 reapproached CM#1 and told him that officers needed to seize the firearm in the house for their DV assault investigation. NE#2 said CM#1 could consent to a search, limit its scope, and revoke consent at any time, or officers could obtain a search warrant and search any spot in the house where a firearm could be located. CM#1 replied, "I don't care about y'all searching." Witness Officer #2 (WO#2) said CM#1 would observe while officers searched the house.

WO#2 and NE#2 escorted CM#1 to the front of the house. WO#2 advised CM#1 that officers would search his room for a firearm that may have been used during the commission of a crime, and that CM#1 could limit the search's scope and revoke consent at any time. CM#1 acknowledged and consented to officers searching his room. WO#2, NE#2, and CM#1 entered CM#1's room. NE#2 found two bullets under a mattress. NE#2 completed his search without finding a firearm. WO#2 and NE#2 escorted CM#1 back inside the patrol vehicle. WO#2 transported CM#1 to the North Precinct.

D. Police Reports, Taser Report, and Use of Force Reports

Police Reports

The named employees' police reports were consistent with BWV observations.

Taser Report

NE#1's Taser report noted that the Taser attempted to cause neuromuscular incapacitation (NMI) for 5.765 seconds. It also noted three cartridges were deployed. A pulse charge graph showed the electrical pulse had a positive connection for about three seconds.

Use of Force: Named Employee #1's Statement

NE#1's Type II¹⁰ use of force statement was consistent with the abovementioned evidence. NE#1 wrote that he received training for using a Taser on January 10, 2023. NE#1 wrote that he was concerned about officer safety when he read reports documenting CM#1's multiple alleged assaults and when NE#3 told him about CM#1's brother

⁸ WS#1's *Miranda* advisement was the first time it was provided to CM#1.

⁹ NE#2's police report documented that after NE#2 ran the firearm's serial number at the North Precinct, it returned as stolen.

¹⁰ Type II is force that causes, or is reasonably expected to cause, physical injury greater than transitory pain but less than great or substantial bodily harm. SPD Interim Policy 8.050 (effective May 19, 2023). Type II force includes a Taser deployment. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023).



allegedly involved in a drive-by shooting and CM#1's family being confrontational with the police. NE#1 wrote that when CM#1 approached the officers, CM#1's clenched hand was next to his waistline, which NE#1 perceived as a pre-flight or pre-assault indicator and an area that could conceal a firearm. NE#1 wrote that de-escalation was infeasible based on CM#1's fleeing, probable cause for DV assault, CM#1's history of assaultive behavior, and an unaccounted firearm that was reportedly used during the commission of a crime. NE#1 justified his Taser deployment as follows:

Once [CM#1] stopped running, he would not comply with my verbal commands. I made the decision to deploy my Taser 10 in an attempt to gain neuromuscular incapacitation, to [e]ffect an arrest. Prior to that I made a clear verbal warning that he needed to get on the ground, or he would be Tased. I did not think it was safe or feasible to prolong an attempt to take him into custody based upon the aforementioned facts.

NE#1 also wrote:

I gave [CM#1] multiple commands to stop and get on the ground or he would be tased[,] as I believed that [CM#1] was likely to cause injuries to Officers and that hand's on control tactics would likely cause injury to [CM#1] as he had already attempted to flee so greater force would have to be used to restrain him. [CM#1] had decided to turn around and face Officers at the corner ... of the intersection. I approached [CM#1] with my Taser pointing at him and gave him a verbal warning to get on the ground or he would be Tased. [CM#1] did not comply, and I made the decision to discharge my Taser.

NE#1 wrote that he intentionally targeted CM#1's thighs, which was a trained target area to cause NMI.

Use of Force: Chain of Command's Reports

The watch lieutenant concluded NE#1's Taser deployment was objectively reasonable, necessary, and proportional to arrest the fleeing CM#1, prevent CM#1 from running and formulating a plan to fight the officers, and de-escalate. The watch lieutenant wrote that the use of force was minimal given the circumstances of the arrest, and officers modulated their force once CM#1 was under control. The watch lieutenant wrote that the use of force was consistent with SPD training and policy.

The captain concluded NE#1's Taser deployment was objectively reasonable, necessary, and proportional because the fleeing CM#1, who was possibly armed with a firearm, posed a threat to the officers and was noncompliant when ordered to get on the ground. The captain noted that although CM#1 "appeared to not be resistive" before NE#1 deployed his Taser, NE#1 articulated that a Taser deployment was the safer alternative under the circumstances.

Ultimately, the Complainant—the Force Review Board (FRB)—filed a complaint writing FRB reviewed the incident and "found that [NE#1] may have used out of policy force when deploying his taser while taking a suspect into custody after a foot pursuit."



E. OPA Interviews

Community Member #1's Attorney

On May 2, 2024, OPA interviewed CM#1's attorney. The attorney said NE#1's Taser deployment was unauthorized use of force, given CM#1 stopped running and raised his hands as WO#1 grabbed CM#1's arm. The attorney said there was no reason for NE#3 to point his firearm at CM#1 since officers knew where CM#1 lived. The attorney said officers coerced CM#1 into consenting to officers searching the house by threatening to obtain a search warrant and search the entire house. The attorney questioned whether CM#1 had the authority to consent since officers did not seek consent from CM#2, also a resident, and CM#1's mother, the owner of the house. The attorney said officers failed to Mirandize CM#1 and interrogated him. The attorney said NE#2's search of the backpack was unlawful because CM#1 denied owning it, and officers permitted CM#1's friend to retrieve it. The attorney said the backpack should not have been searched since it could have been handed to someone else. The attorney said there were no safety concerns after CM#1 was arrested, and NE#2 searched the backpack without articulating a search incident to arrest. The attorney said the named employees engaged in biased policing, though she could not identify a specific incident demonstrating bias. The attorney said bias was a structural and cultural issue at SPD. The attorney believed CM#1 would not have been Tased or treated differently if he were white.

Witness Officer #1

On June 18, 2024, OPA interviewed WO#1, whose statements were consistent with the abovementioned evidence. WO#1 believed NE#1's Taser deployment was necessary because CM#1 previously fled, was noncompliant, and could have fled again. WO#1 said CM#1 was not treated differently based on his race and denied hearing any biased statement from any officer.

Named Employee #1

On June 18, 2024, OPA interviewed NE#1, whose statements were consistent with the abovementioned evidence. NE#1's explanation for his Taser deployment was consistent with his use of force statement. NE#1 said CM#1 refused to get on the ground, posing a threat to the officers. NE#1 concluded that physically contacting CM#1, who was potentially armed, was an unsafe option and would have required greater force than deploying his Taser. NE#1 believed a Taser deployment was the safest option to arrest CM#1. NE#1 denied seeing WO#1 grab CM#1's arm because he said he was focused on causing NMI. NE#1 said race did not impact his decisions.

Named Employee #2

On June 27, 2024, OPA interviewed NE#2, whose statements were consistent with the abovementioned evidence. NE#2 said he perceived CM#1 as an unknown threat when CM#1 stopped running and faced the officers. NE#2 said officers lacked scene control due to CM#1's noncompliance. NE#2 acknowledged questioning CM#1 without Mirandizing him. NE#2 denied interrogating CM#1, instead describing it as a conversation and trying to get CM#1's account. NE#2 said his chain of command counseled him to Mirandize as soon as possible as a best practice. NE#2 said CM#1 was an adult, so he could consent to a search of his room, even if he lived with his mother. NE#2 believed CM#1's room was not CM#2's primary residence. NE#2 said CM#2 lived at multiple locations and claimed that CM#1's mother insisted that CM#2 did not live at her house. NE#2 acknowledged finding CM#2's items in CM#1's room but said these items did not suggest she lived there. NE#2 denied coercing CM#1 into consenting to a search. NE#2 said a search warrant would have granted officers unfettered access to the house, while consenting permitted CM#1 to monitor and limit the search. NE#2 said his chain of command counseled him to obtain consent from all parties living in a shared space.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

8.200 – Using Force, 8.200-POL-1. Use of Force: When Authorized (Effective April 24, 2023)

The Complainant alleged that NE#1 may have used unauthorized force by Tasing CM#1.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The question is whether the officers' actions were objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* Several factors should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances when there is no reasonably effective alternative to using physical or deadly force, and the type and amount of physical or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective May 19, 2023). A proportional use of force must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. *Id.* Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force. *Id.*

OPA finds that NE#1's use of force was objectively reasonable, necessary, and proportional. First, NE#1's Taser deployment was objectively reasonable. Before NE#1 contacted CM#1, NE#1 became aware of CM#1's past assaultive behavior. After officers interviewed CM#2, NE#1 then became aware of an alleged DV assault and an unaccounted firearm that may have been used during the commission of a crime. NE#1 said he saw CM#1's clenched fist near CM#1's waistline, which NE#1 perceived as a pre-flight or pre-assault indicator. CM#1 also approached the officers wearing a jacket and backpack—both of which could have concealed a weapon. Refusing to engage further with NE#1, CM#1 elected to flee. NE#1 believed he was one officer down when WO#1 tripped and fell during the short chase. CM#1 stopped, turned around to face the officers, and slightly raised his arms. Even though CM#1 appeared to surrender, CM#1 still posed a threat to the officers, given the uncertainty of CM#1's next actions. CM#1's refusal to comply with NE#1's order to get on the ground heightened concerns that CM#1 could flee again or draw a weapon. Notably, CM#1 had a firearm in the backpack. Also notable was that NE#1 reacted with his Taser deployment in a matter of seconds. Because CM#1 presented such a serious threat to officer safety, NE#1's Taser deployment was objectively reasonable to swiftly apprehend CM#1. Second, NE#1's Taser deployment was necessary. NE#1 articulated that prolonging the attempt to arrest CM#1 would be unsafe based on the information known to the officers and CM#1's noncompliance. NE#1 also articulated that a hands-on approach would not have been a reasonably effective alternative because it would have required greater force than a Taser deployment and likely cause injuries to the officers since CM#1 already demonstrated his willingness to flee from them. Third, NE#1's Taser deployment was proportional. NE#1 relied on his training by targeting CM#1's legs to achieve NMI, which was effective. After CM#1 was under control, NE#1 modulated his use of force and SFD was sought.

OPA recognizes that after NE#1 deployed his Taser, but before the Taser achieved a positive connection, CM#1 appeared to surrender. Under the totality of the circumstances confronting NE#1, he did not appear to have the time or ability to prevent the Taser from activating. Overall, a preponderance of the evidence indicates that NE#1's Taser deployment was objectively reasonable, necessary, and proportional under the circumstances.



Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 – Allegation #2

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

CM#1’s attorney alleged that the named employees engaged in bias-based policing.

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatment based on race. *See id.* Employees are forbidden from making decisions or taking actions influenced by bias, prejudice, or discriminatory intent. *See* SPD Policy 5.140-POL-2.

CM#2’s attorney was unable to identify specific statements or actions suggesting bias. Instead, the attorney cited structural and cultural bias within SPD. The named employees denied treating CM#1 differently based on his race. Additionally, NE#1 articulated that his Taser deployment was based on the threat CM#1 posed to officers, not CM#1’s race. Overall, OPA found no evidence supporting the attorney’s interpretation of race-based mistreatment in this case.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 – Allegation #1

6.150 – Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights

CM#1’s attorney alleged that NE#2 failed to Mirandize CM#1.

Sworn employees will advise all arrestees of their full *Miranda* rights. SPD Policy 6.150-POL-1(1). Sworn employees will give this advisement to all persons taken into custody, regardless of interview, as soon as practical. *Id.*

NE#2 questioned CM#1 without Mirandizing him. NE#2 characterized his questioning as a conversation intended to get CM#1’s story, not an interrogation. However, at the time CM#1 was handcuffed, he was under arrest and in custody and, therefore, should have been Mirandized before questioning, regardless of how NE#2 characterized his questioning. SPD policy requires the *Miranda* advisement be given “as soon as practical” after a person is in custody. NE#2 failed to Mirandize CM#1 at all. In fact, CM#1’s first *Miranda* advisement was provided by WS#1 over 23 minutes after CM#1 was handcuffed.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #2 – Allegation #2

6.180 – Searches-General, 6.180-POL-6 Search Incident-to-Arrest/Custodial Search

CM#1’s attorney alleged that NE#2 unlawfully searched the backpack.

Officers may, incident to a lawful arrest, search an arrestee’s person and the area within the arrestee’s immediate control. SPD Policy 6.180-POL-6. Officers may only search personal items, such as wallets, backpacks, or other bags, if the subject had them in his or her actual and exclusive possession at or immediately preceding the time of his or her arrest. *Id.*

BWV captured CM#1 carrying the backpack on his back as he approached the officers. BWV also captured CM#1 holding the backpack as he fled from the officers. Because CM#1 had the backpack in his “actual and exclusive possession at or immediately preceding the time of his” arrest, NE#2 was permitted under SPD policy to search the backpack incident to arrest.

CM#1’s attorney claimed that the search of the backpack was unlawful, citing two cases: *State v. Alexander*, 10 Wn. App. 2d 682, 685 (2019), and *State v. Burdick*, 14 Wn. App. 2d 1011 (2020). The attorney said in both cases, the defendants had backpacks that did not need to go with them to jail because their nondangerous companions were willing to take them. Therefore, the attorney claimed, the backpacks were not in the defendants’ actual and exclusive possession and should not have been searched. However, OPA finds that *Alexander* and *Burdick* are distinguishable. In *Alexander*, officers had probable cause for trespass and an outstanding warrant, but there were no reports about an unaccounted firearm. Moreover, the arrestee was not in possession of the bag at the time of arrest since she was not wearing it but, instead, sitting next to a friend while the bag was touching the arrestee’s back. The friend was willing to take the bag. In *Burdick*, before officers developed probable cause, the arrestee—for whom there was no safety concern—asked to hand his backpack to his nearby mother, but the officers refused. The court held that the backpack was in the arrestee’s possession only because the officers refused, without reason, to allow him to hand the backpack to his mother. In this OPA case, CM#1 was holding the backpack immediately before he was taken into custody, and officers had safety concerns that an unaccounted firearm could be in that backpack. NE#2’s search of that backpack was consistent with SPD policy and case law.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #2 – Allegation #3

6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

CM#1’s attorney alleged that NE#2 unlawfully searched CM#1’s bedroom.

Officers may only make searches pursuant to a search warrant unless a specific exception applies. SPD Policy 6.180-POL-1.

Although CM#1’s attorney alleged that NE#2 obtained CM#1’s consent through coercion, OPA disagrees. NE#2 informed CM#1 that he could refuse to consent, limit the scope of the search, and revoke consent at any time—



elements necessary for a *Ferrier* warning. NE#2 also properly advised CM#1 that if he did not consent to a search, officers would obtain a search warrant to search for the unaccounted firearm inside the house. CM#1 understood these rights and consented to a search. There was nothing to suggest that NE#2 was disingenuous about his planned course of action or exerted unlawful pressure to obtain consent. CM#1 validly consented to a search.

Additionally, CM#1's attorney claimed that NE#2 should have obtained CM#1's mother's consent. OPA disagrees. NE#2 did not need her consent because she was absent. However, NE#2 failed to obtain CM#2's consent. Although NE#2 believed CM#1's room was not CM#2's primary residence, CM#2's items were in that room, suggesting she may have lived there. Officers also interviewed CM#2 right outside CM#1's house. NE#2 should have obtained CM#2's consent before searching CM#1's room. See SPD Policy 6.180-POL-2(3) (requiring officers to obtain the consent of all present cohabitants or roommates). Ultimately, due to the ambiguity of CM#2's residency, which officers failed to establish, OPA believes a training referral is warranted under the circumstances.

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

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 6.180-POL-2(3) with NE#2, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

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

Named Employee #2 – Allegation #4

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

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #3 – Allegation #1

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

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #3 – Allegation #2

8.300 – Use of Force Tools, 8.300-POL-14 Firearms, 6. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for Their Own Safety or for the Safety of Others (Effective December 1, 2023)

CM#1's attorney alleged that NE#3 pointed his firearm at CM#1.



Officers may draw their firearm in the line of duty when they reasonably believe it may be necessary for their own safety or for the safety of others. SPD Interim Policy 8.300-POL-14(6) (effective December 1, 2023). Unnecessarily or prematurely drawing their firearm may limit officers' alternatives in controlling a situation, create unnecessary anxiety for the public, and result in an unwarranted or unintentional discharge of the firearm. *Id.* When officers determine that the threat is over, they will holster their firearm when feasible. *Id.*

While NE#3 unholstered his firearm, he kept it at a sul or low-ready position. Based on OPA's review of BWV, NE#3 never aimed his firearm at CM#1. Instead, NE#3 aimed his radio at CM#1. NE#3's use of force statement indicated that he maintained his firearm in the low-ready position. Additionally, CM#1's friend demonstrated to WS#1 how NE#3 held his firearm. That demonstration portrayed a sul or low-ready position, corroborating NE#3's account.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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