



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 5, 2018

CASE NUMBER: 2017OPA-0824

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons	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:

The Complainant alleged that the Named Employees treated the subject disrespectfully, engaged in bias, failed to give medical aid, and escalated the situation with the subject.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.) The policy further states that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*) Lastly, the policy states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)



Based on my review of the Named Employees' Body Worn Video (BWV), I find that NE#1's actions and statements during this incident violated the Department's professionalism policy.

First, I find that NE#1's statements and demeanor towards the subject unnecessarily escalated this incident. His statements – which included: “don't touch me” when the subject appeared to make slight contact with him; and “You keep walking up on me, do you want me to push you? If you get close to me I'm going to push you. How's that sound? Is that what you want me to do? I don't want you to touch me” – were aggressive and served to escalate his interaction with the subject. Also escalating the situation was the fact that he did, in fact, appear to push the subject. It is unclear why such physical contact was necessary in this case. While the subject was clearly unwell (apparently intoxicated) and was also verbally aggressive, NE#1 could have handled this situation differently and more professionally.

Second, NE#1's later statement to the subject - “You need to drink about three more beers so that you'll pass out somewhere and not bother people. Then you won't be a nuisance Cool Aid” – was contemptuous and disrespectful of the subject. Whether or not the subject was herself insulting and difficult – which she appeared to have been from the ICV – this statement, which was made within range of other civilians who were observing NE#1's actions, was inappropriate and was contrary to the expectations of the community and the Department.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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.*) The policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic...” (*Id.*)

The Complainant alleged that the Named Employees' actions towards the subject were motivated by bias. In her complaint, the Complainant asserted that she was “troubled by how the police treated this Woman of Color who needed help...” She later indicated that she wanted the Named Employees to receive training in “no racial bias.”

While, as indicated more fully herein, I do not believe that the officers handled this incident entirely appropriately, I do not find that they engaged in biased policing. I base this conclusion on my review of the BWV and on the totality of the circumstances involved in this case. Notably, there is no evidence of any racial slurs or any other similar improper motivation behind the officers' acts. Their decision to treat the subject as they did appears to have more to do with her level of intoxication and the officers' prior interactions with her than her status as a Native American woman.



For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons

The Complainant recounted that the subject was unwell on the date in question and that, at one point, the subject fell onto the sidewalk. The Complainant stated that she observed the subject's fall and that she and her husband helped the subject off of the ground. The Complainant recalled telling the subject that it was ok and that help was coming. The Complainant stated, however, that when help arrived in the form of the Named Employees, they were unhelpful and taunted the Complainant, thereby improperly escalating the situation. The Complainant contended that she did not believe that the subject was intoxicated, given that she was in the subject's close proximity and did not smell alcohol.

The Complainant recalled that she told NE#1 that the subject needed help and, in response, NE#1 stated that the subject would not go to detox based on their past experiences with her and that she needed to go somewhere with benches. The Complainant reported that NE#1 again told her that there was nothing they could do. The Complainant asserted that NE#1 was wrong to not provide the subject with medical aid when she was not clearly medically well and given that it was a very hot day. I note that the Complainant did not state that NE#2 was complicit in the failure to provide medical aid.

As discussed above, the Named Employees' BWV captured their interaction with the subject and the Complainant. Shortly after they arrived at the scene, NE#1 asked the subject whether she was "alright" and whether she needed to go to detox. The subject responded no to both questions. After a further back and forth, which included the Complainant calling NE#1 an "asshole" and telling him to "get the fuck off my block," the Complainant asked NE#1 if they could get the subject an "aid car." NE#1 asked the subject if she wanted an aid car and the subject appeared to shake her head from side to side, indicating no. After additional largely unproductive conversation with the subject, NE#1 approached the Complainant to speak with her. NE#1 told the Complainant that the subject's name was "cool-aid," that she is someone they deal with on a regular basis and that she is normally intoxicated. The Complainant expressed her concern that the Complainant was "really unsafe," but NE#1 responded that she is always like that and it was nothing new to the officers. NE#1 then told the Complainant that they tried to offer her detox so she could "sleep off that drunkenness and she refuses to go."

NE#1 stated at his OPA interview that, while he was aware that the subject was reported as needing officers' assistance, he never heard or was told that the subject had fallen down. Based on my review of the BWV, it does not appear that NE#1 and NE#2 discussed this matter while at the scene.

SPD Policy 16.130-POL-1 concerns the obligation of Department employees to assist sick and injured persons. The policy requires that: "Employees assisting a sick and/or injured person will attempt to determine the nature and cause of the person's injury or illness, provide first aid, and initiate Emergency Medical Services (EMS) as needed."

Here, NE#1 apparently determined that the subject was intoxicated rather than sick or injured. While he did not ultimately call an ambulance, he offered to do so and further offered the subject detox services. The subject refused



both. Based on my review of the video, it does not appear that NE#1 was actually aware that the subject had fallen down. Moreover, there is no evidence in the record that the subject had any signs of injury that would have indicated that she had fallen or otherwise hurt herself. As such, based on the information known to NE#1 at the time, I do not find that his failure to provide first aid or initiate EMS was in violation of policy.

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

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

As with NE#1, I also had concerns about NE#2's statements during this incident. Specifically, I believe that NE#2's statement to the Complainant and her husband that they must not be from Seattle when they raised concerns about the subject's condition was problematic.

This statement – which exhibited a lack of empathy on NE#2's behalf – reflected negatively both on NE#2 and on the Department as a whole. Based on her complaint to OPA, the Complainant was clearly insulted, surprised and disappointed by this statement. This was particularly the case given that it came from an officer who has taken an oath to serve, protect and treat with respect all people – even those who are intoxicated or in crisis.

At his OPA interview, NE#2 stated that he realized that the Complainant and her husband found his statement to be rude. He made no additional efforts to explain his statement to them. Based on my review of the ICV, I do not think that NE#2 meant to be rude or insulting, but, in reality, his statement was exactly that.

I very much believe that NE#2's statement straddles the border of unprofessionalism. However, given my review of the video and given that NE#2's overall tone and demeanor towards the Complainant was polite, I believe that a training referral is the appropriate finding.

- **Training Referral:** NE#2 should be counseled by his chain of command concerning his statements in this case. He should be informed that, even though this finding was not sustained, his conduct fell below the Department's expectations. He should be told that such statements reflect negatively on the Department and decrease community trust and confidence in officers. This counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #3

16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons

While NE#1 was interacting with the Complainant and the subject, NE#2 spoke with other individuals who had been on the bus and a Metro Supervisor. These conversations were captured on ICV.

At his OPA interview, NE#2 stated that he was told by these other individuals that the subject was “drunk on a bus and that getting off the bus she had fallen down.” NE#2’s BWV captured that he was also told by the Metro Supervisor that the subject had fallen down when getting off the bus. In response, NE#2 stated: “she’s fine, she’s walking off, she’s just drunk.”

NE#2’s BWV also captured a conversation between him and a woman (possibly the Complainant) during which the female asked about calling an “aid car,” and NE#2 stated that they could call the aid car but if the subject did not want medical attention it was of no use.

SPD Policy 16.130-POL-1 concerns the obligation of Department employees to assist sick and injured persons. The policy requires that: “Employees assisting a sick and/or injured person will attempt to determine the nature and cause of the person’s injury or illness, provide first aid, and initiate Emergency Medical Services (EMS) as needed.”

During his OPA interview, NE#2 contended that based on his past experiences with the subject he believed her to be intoxicated and not in medical distress. He stated that he did not believe, based on his observations, that she had been knocked unconscious. He further stated that he did not observe her to be bleeding. Lastly, NE#2 cited to the fact that NE#1 had already offered an ambulance and detox services to the subject and she declined.

Based on my review of the evidence, it does not appear to me that NE#2 informed NE#1 that witnesses had stated that the subject fell while getting off the bus. While he was aware of this information, NE#2 did not ask the subject whether she had fallen and, if so, whether she was injured. NE#2 simply assumed that, based on his past history with the subject and her apparent lack of injuries, that she did not need medical attention. It is unclear, however, how NE#2 definitively knew that the subject had not suffered a head or other blunt force injury from falling.

It seems that the preferred course of action would have been to call an ambulance to provide the subject aid just to be safe, especially since this was what the civilians who witnessed the incident were suggesting. Moreover, NE#2 appeared to make no efforts to interact with or examine the subject for injuries, which also would have been optimal. That being said, in this specific case, I do not believe that it was a violation of policy to fail to do so. NE#2 made his decision to not provide first aid or call an ambulance based on his experience both with the subject and with intoxicated persons generally, as well as on his evaluation of the subject’s condition. Again, while seeking medical action for the subject may have been optimal, I do not believe that it was required.

For this reason, I recommend that this allegation be Not Sustained –Lawful and Proper.

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