



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 6, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0698

### **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 (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All Reports Must be Complete, Thorough, and Accurate	Sustained
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

#### **Imposed Discipline**

Resigned Prior to Discipline

***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 Employee made statements and took actions that constituted unprofessionalism and biased policing.

### **ADMINISTRATIVE NOTE:**

The Office of Inspector General for Public Safety (OIG) was provided this case for review and certification on April 1, 2020. On April 15, 2020, which was less than 30 days prior to the expiration of the 180-day deadline (May 11, 2020), the OIG issued a directive to OPA to complete additional investigation and to take other steps to clarify the record and make corrections to the Case Summary. Included in this directive was the OIG's opinion that there were deficiencies with the interview of Named Employee #1. The OIG believed that: Named Employee #1 was asked narrow leading questions instead of probative open-ended queries; OPA did not ask follow up questions to resolve conflicting



evidence; and the interview did not address all allegations relevant to Named Employee #1. The OIG provided no specific information concerning which questions were leading or too narrow, what the conflicts of evidence were that were not resolved, and what allegations were not covered. Moreover, aside from flagging these purported issues, there was no clear instruction that a reinterview be conducted.

OPA addressed all of the issues identified by the OIG except for those surrounding the interview of Named Employee #1. OPA disagreed with the assertions that there were conflicts of evidence that were not addressed or that all of the allegations were not covered. While OPA acknowledges that the interview contained some leading questions, those queries fundamental to whether policies were violated were asked in a non-leading fashion. As such, in OPA's opinion, the interview was sufficient to issue findings. Moreover, there was a dearth of information within the directive to allow OPA to actually understand what the perceived deficiencies were and to enable OPA to address them.

Ultimately, given OPA's belief that the record was sufficiently developed to issue findings, due to heavy caseloads, and because changes in staffing necessitated this case being transferred to another investigator, OPA declined to reinterview Named Employee #1 and requested a partial certification. Had OPA not made this decision, it would not have been able to meet the 180-day deadline in this case.

OPA subsequently received a non-certification for thoroughness. The investigation was certified for timeliness and objectivity.

Lastly, Named Employee #2 is no longer employed by SPD and, given this, the 180-day timeline no longer governs the portion of the case pending against him. OPA attempted to interview him during the course of this investigation without success.

#### **SUMMARY OF INVESTIGATION:**

SPD received a number of complaints concerning officers' handling of a collision between a motorist and a Real Change vendor that occurred on March 29, 2019. Video of the incident circulated on Twitter in November 2020, resulting in the complaints being filed with OPA. All of the complaints contained virtually identical language, and none appeared to be from eyewitnesses to the incident.

The Complainants alleged that Named Employee #1 (NE#1) and another officer minimized and made light of the injuries suffered by the Real Change vendor (referred to here as the "Subject"). The Complainants alleged that Named Employee #2 (NE#2): did not investigate the collision but instead punished the Subject by issuing him a ticket and a citation; made accusations and assumptions about the Subject's involvement in the accident without ever speaking to him directly; questioned if the Subject's bicycle was stolen without any reason to believe this; filed a false report stating that driver was not at fault despite eyewitness testimony to the contrary; and that he requested to see privately obtained video footage of the accident not for investigative purposes but for personal enjoyment, because he said the collision was a "good hit." The Complainants also contended that the actions and demeanor of both of the Named Employees was due to their bias towards the Subject because of their perceptions of his housing status. This OPA investigation ensued.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) recorded by the involved and witness officers, reviewed the reporting completed, and interviewed NE#1. NE#2 had since resigned from SPD and did not respond to OPA's attempts to interview him. OPA attempted to locate and interview the Subject, but he did not respond to OPA.



The BWV indicated that, at the time the Named Employees responded to the scene, the Subject was being treated by Seattle Fire Department (SFD) personnel. The Subject could be overheard saying to SFD: "I didn't do this man, that guy ran right into me man." NE#2 walked over to where the driver was. The driver, who was talking to Witness Officer #1 (WO#1) and a King County Sheriff's Office (KCSO) deputy, was still seated in his vehicle. NE#2 first spoke with WO#1 and the KCSO deputy and verified that the driver was the other involved party. WO#1 stated that the driver exited a store parking lot and turned southbound when the collision occurred. NE#2 asked whether the Subject rode out in front of the driver and WO#1 stated that the driver did not know what had happened. WO#1 went to go speak with Department of Corrections (DOC) employees who had witnessed the incident, while NE#2 remained with the driver.

NE#2 spoke to the driver who appeared to have difficulty hearing him. NE#2 asked the driver what happened, and the driver said that he was not sure. The driver said that he was leaving the parking lot, turned left, saw the bicycle, and the collision occurred. The driver said that the impact occurred at the front left of his bumper; however, he said the damage to his vehicle was old.

NE#1 arrived after NE#2. WO#1 approached him and told him that "everybody" was at fault in the collision. WO#1 said that the Subject was coming from across the street and the driver was turning. As a result, they collided head on. WO#1 gave NE#1 a business card from the store and said that they recorded video of the collision. WO#1 told NE#1 that a store employee witnessed the collision and said that the Subject drove across the lanes of traffic and collided head on with the driver who was turning. NE#1 and WO#2 discussed the Subject's medical condition with SFD personnel. They were informed that the Subject was complaining of pain "everywhere." NE#1 stated aloud while making a motion with his pen as if he was noting it down on his pad: "everywhere."

NE#1 spoke with the DOC personnel to get their accounts of what occurred. They stated that the driver was turning at the same time that the Subject was crossing over Fourth Avenue. They then collided head on. The DOC personnel stated that the driver tried to leave the scene but was stopped from doing so by another vehicle. One DOC officer indicated the belief that the driver "mashed his accelerator" when he pulled out in an apparent attempt to get out in front of oncoming traffic. Multiple DOC officers stated that the driver would absolutely have known that he was involved in an accident but tried to leave despite that.

NE#2 spoke with SFD and confirmed the Subject's information. NE#2 asked one SFD employee whether the Subject was wearing a helmet at the time of the collision and the SFD employee responded that it did not look like it. NE#2 said that he would cite the Subject for this. NE#2 asked SFD about the medical condition of the Subject who was being treated on a backboard. SFD informed NE#2 that the Subject had pain to his left hip and legs, as well as general pain all over his body. NE#2 asked the KCSO deputy if the Subject's bicycle was stolen. The KCSO deputy responded: "Do you really want to know?" NE#2 stated that it was a potential felony as the bicycle was worth \$2,000 and people would, at times, cut the locks off. These statements were made while NE#2 was in the immediate vicinity of the Subject, who was being treated on the ground.

NE#2 spoke with several DOC officers to determine whether they were witnesses. They said that they were. NE#2 asked what the Subject was doing at the time of the collision. One DOC officer said that the Subject was riding across Fourth Avenue when he collided with the driver. NE#2 noted that the Subject was going to receive several citations. NE#2 also said: "I'm also wondering if the bike's stolen, they're \$2000 it's a felony, possession of stolen property." NE#1 noted that the bicycle's lights were on, indicating that it had been paid for. NE#2 stated, apparently joking, that they should review the Subject's phone to verify that he paid to use the bicycle. NE#2 asked if the Subject even had a cell phone, and a DOC officer said that he did. The DOC officers laughed at this.



NE#1 told NE#2 that he got the Subject information. NE#1 said to NE#2 that the Subject was complaining of pain “everywhere.” He then motioned with his hands up and down his body and repeated: “everywhere.”

NE#1 informed NE#2 that the store had video showing the collision. NE#1 characterized the video as showing a high-speed head on collision. NE#1 further stated that the video showed the driver trying to leave the scene after the collision. NE#2 said that the driver appeared to be confused and there was no indication that his leaving the scene was based on “malintent.” The DOC officers confirmed that the driver appeared confused, and NE#2 indicated that he would have a license re-evaluation.

NE#1 asked NE#2 whether he should get the video from the store. NE#2 laughed and said that he wanted to watch it. A DOC officer also laughed and said that it was a “good hit.” NE#1 went into the store to obtain the video. While inside, a customer noted that it was fortuitous that police officers were already in the area. NE#1 clarified that those were DOC employees and stated: “Yeah, we keep this area pretty thick with officers anyways because there’s a lot of crime that happens down here...” The customer interjected sarcastically: “uh-uh, in Seattle?” NE#1 continued: “...associated with people, we don’t like to draw correlations.” The store cashier told NE#1 that, as the end of the month neared: “We get ‘em all in here.” She continued that: “They need their little fix or whatever you call it.” NE#1 interjected: “Whatever it is they’re looking for money for...” The store cashier added: “Yeah, were pretty quick on ‘em though.” NE#1 said: “There’s also not a drug and housing status correlation either, apparently...as I’m told.”

While NE#1 was in the store, NE#2 provided a business card to the driver and to AMR staff to give to the Subject. NE#2 told the driver that he was not going to be cited. NE#2 then joined NE#1 in the store. At that time, NE#1 was providing his information to store employees. NE#1 said, concerning NE#2: “he sucks by the way.” NE#2 agreed with this statement. NE#1 provided information on how store employees could email him the video. NE#2 asked NE#1 if he watched the video and NE#1 said that he did not. NE#2 said that the Subject rode out across traffic and was hit. A store employee then volunteered that it looked like the Subject struck the driver’s vehicle as the driver was turning. NE#2 said that the driver would be cited and told the store employees that the Subject not wearing a helmet increased the resources needed to respond to the collision. NE#1 and NE#2 then left the store and the scene.

### **ANALYSIS AND CONCLUSIONS:**

#### **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.*)

The Complainants alleged that NE#1 engaged in biased policing in two main respects: first, when he contributed to an investigation that presumed the guilt of the Subject because of the Subject’s perceived housing and economic status; second, when he made comments surrounding the potential nexus between housing status, drug abuse, and crime while inside of the store.

With regard to the first allegation, OPA finds that this allegation lies against NE#2, who made the decisions during this incident as the primary officer and who chose to cite the Subject, not against NE#1.



With regard to the second allegation, the BWV established that NE#1 made the following comments in response to store employees' statements regarding thefts and crime committed in their store and the immediate area: "Yeah, we keep this area pretty thick with officers anyways because there's a lot of crime that happens down here...associated with people, we don't like to draw correlations" and "there's also not a drug and housing status correlation either, apparently...as I'm told."

At his OPA interview, NE#1 stated that there were high levels of crime in the SODO area that were committed by a variety of people. He noted that there had been a 31% increase of crime in that area, and, in the immediate vicinity, there was crime flowing from a methadone clinic, a DOC office, stores with high rates of shoplifting, other high traffic areas and stores, and homeless encampments. However, commonalities that he experienced were individuals with housing insecurity and/or drug abuse issues, particularly the latter. He said that he had read media reports that indicated that there was no correlation between housing status and drug use to crime. His statement was in disagreement with this and in agreement with the sentiments of the store staff, who had all experienced this firsthand. He noted that correlation and causation were two different concepts, and he was not saying that all people with housing insecurity or drug abuse issues committed crimes. NE#1 denied bias towards housing status and asserted that his words were taken out of context by the Complainants.

OPA ultimately agrees with NE#1. OPA does not believe that his statements represented bias but merely indicated his perspective about this issue. Moreover, it was based on his experience responding to repeated calls in SODO, many of which involved drug abuse and some that involved individuals with housing insecurity. As he explained at his OPA interview, NE#1 did not say that all homeless people or people abusing drugs committed crimes or suggest that he had any animus towards those individuals.

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

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

#### **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.) The policy further states the following: "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 that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

The Complainants alleged that NE#1's comments to the store employees and customers was unprofessional, as was his minimizing the injuries suffered by the Subject.

When assessing the first allegation, OPA does not believe that NE#1's discussion with the individuals in the store violated the Department's professionalism policy. As discussed above, NE#1 was discussing a matter of public concern – crime rates within the vicinity and the store itself, and the potential causes for it. He did not use any pejorative language or profanity.



OPA finds NE#1's statements surrounding the Subject's medical condition to be more problematic. When initially told by SFD that the Subject complained of pain "everywhere," NE#1 repeated "everywhere" while pretending to take notes with his pen. When he did so, others in the vicinity laughed. Notably, at the time, the Subject was making statements about being in pain and was sitting on the ground next to NE#1. On a subsequent occasion, NE#1 told NE#2 that the Subject was complaining of pain "everywhere." He said this in an exaggerated manner and while making exaggerated hand motions indicating his whole body.

NE#1, to the contrary, denied that he was making light of the Complainant's injuries and said that he was simply trying to relay information he learned.

OPA believes that the way NE#1 spoke about the Complainant's injuries was dismissive. OPA notes that he did so while in the immediate vicinity of the Subject and while the Subject was actively complaining of pain, was being treated by SFD, and was being placed onto a backboard. This being said, OPA recognizes that its findings are based on an interpretation of NE#1's conduct. NE#1 denied that he was trying to minimize the Complainant's injury or make light of them, and OPA cannot conclusively controvert this testimony. OPA notes, however, even if not NE#1's intent, his conduct made it appear that the officers did not have any concern for the welfare of a community member who had been in head on collision with a car while driving a bicycle.

OPA believes that the manner in which NE#1 made his comments were concerning; however, OPA believes that, given the other facts detailed above, it does not rise to the level of a violation of policy. In reaching this decision, OPA notes that NE#1 did not actually use any derogatory language towards the Complainant and that others who have evaluated this case – including NE#1's chain of command – interpreted NE#1's conduct and demeanor differently. OPA also notes that NE#1 has no prior discipline for unprofessionalism.

For these reasons, OPA now recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss this incident and OPA's findings with him. NE#1 should be instructed that, even if not his intent, his words and the ways he convey them can reflect negatively on both himself and the Department. He should be notified that any further similar situations will likely result in a Sustained finding and the imposition of discipline. This counseling and any retraining provided should be documented by the chain of command.

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

#### **Named Employee #2 - Allegation #1**

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

OPA struggles to understand some of NE#2's decision-making in this case; however, OPA sees insufficient evidence tying this to bias. Most notably, it appeared clear from the BWV that the decision to deem the Complainant the at fault party and to cite the Complainant was based on information provided to NE#1 from others, not because of the Complainant's status or membership in any protected class. Indeed, OPA found no evidence – video or otherwise – suggesting that NE#1 knew that the Complainant was affiliated with Real Change.





Moreover, while helmet citations have been criticized as being overly punitive for those who are most disenfranchised, it does not appear that the Complainant's racial or financial status was the motivating factor for the helmet citation here. This is the case even though OPA does not believe that the citation should have ultimately been issued.

Lastly, while OPA fails to understand the relevance of whether the bicycle was stolen to the investigation of the collision, NE#1 did not take law enforcement action concerning the bicycle and his comments did not rise to the level of biased policing.

While OPA certainly sees how some of NE#1's actions and comments raise the specter of biased policing, the evidence is insufficient in the record to prove this allegation. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[D]iscretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

OPA finds that this allegation is subsumed without Allegation #3, below. Accordingly, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #3**

***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All Reports Must be Complete, Thorough, and Accurate***

SPD Policy 15.180 generally governs primary investigations conducted by patrol officers. SPD Policy 15.180-POL-1 states that "[o]fficers shall conduct a thorough and complete search for evidence." SPD Policy 15.180-POL-5 further directs that "[o]fficers shall document all primary investigations on a report." The policy further directs that these reports must be complete, thorough, and accurate. As discussed below, OPA finds that NE#1's investigation was insufficient and that his reports concerning this incident were incomplete and inaccurate in several respects.

With regard to the lack of sufficiency of NE#2's investigation, OPA has two main concerns.

First, NE#2 made the decision to cite the Subject when he had not watched the video of the collision and without conducting an interview with the Subject. He seemed to rely heavily on a store employee's recitation of what the video showed; however, this easily could have been inaccurate. NE#2 should have watched the video and not just assumed its contents. This is particularly the case given that WO#1 contended that everyone involved in the collision was at fault and when one of the DOC employees who was an eyewitness described the driver as "mashing his accelerator" to get out in front of traffic, which could have provided a basis to cite both drivers. Moreover, OPA



believes that NE#2's decision to cite the Subject for a helmet violation was unnecessary under the circumstances. In OPA's perspective, it was overly punitive for someone who had just been struck by a vehicle and injured.

Second, NE#2 failed to conduct any investigation into the driver trying to leave the scene, even though multiple DOC employees stated that the driver would absolutely have known that he was involved in an accident but tried to leave despite that. Instead, NE#2 assumed that it was not "malintent." However, the evidence he relied upon to reach this conclusion was sparse.

OPA also believes that NE#2's report was insufficient in a number of respects.

First, NE#2 did not include any information concerning some of the relevant statements made by witnesses concerning the other driver's culpability, including that the driver was described as "mashing his accelerator" to try to pull in front of other traffic when the collision occurred.

Second, NE#2 did not describe the video (because he did not watch it) or indicate how it supported the conclusion that the Subject was at fault. He also did not include any description of the witness's account of what the video showed. He further did not collect the video or even document that it existed on the report.

Third, NE#2 did not conduct an interview of the Subject and did not provide any information in the report of the account provided by him.

Fourth, NE#2 conducted no substantive assessment of the allegations that the driver had tried to leave the scene. Instead, he merely noted that the driver seemed confused. However, this did not tell the entire story and was incomplete.

Fifth, NE#2 stated in the Driver Evaluation Request that a witness conveyed that the driver "attempted to drive away because he appeared to not know he was in a collision [with] a bicycle." However, this was exactly the opposite of what the witnesses said, as the DOC employees told NE#2 that the driver would absolutely have known that he was in a collision but that he tried to leave the scene regardless. This was inaccurate.

OPA finds that the failures in NE#2's investigation and the gaps his report rose to the level of a violation of policy. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #2 - Allegation #4**

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

The BWV showed that, when told that there was video of the collision, NE#2 laughed and said that he wanted to watch it. NE#2 laughed again in response to a DOC employee stating that it was a "good hit."

While NE#2 did not make the comment about the "good hit" as the Complainant contended, OPA still believes that his laughing statement that he wanted to watch the video was inappropriate. OPA believes that it suggested that NE#2 felt the video would be humorous and OPA struggles to see how this could possibly be the case.





---

Unlike with NE#1, NE#2 declined to sit for an interview as he was leaving SPD. Given this, OPA does not have his account of what he said and why he said it. As such, OPA must rely on the BWV and its interpretation of this evidence.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**