



CLOSED CASE SUMMARY

ISSUED DATE: JULY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0040

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.400-POL-1 Use of Force Reporting and Investigation	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

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 may have engaged in biased policing, improperly pointed his firearm, and did not report a Type I use of force to his supervisor.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified that Named Employee #1 did not notify his supervisor of a potential claim of biased policing. Given that Named Employee #1 had not previously failed to comply with this policy, OPA recommended that this allegation be handled by the chain of command as a Supervisor Action.

The Complainant alleged that Named Employee #1 was unprofessional during this incident. The Complainant specifically cited to Named Employee #1 "laughing" at the arrested male. However, OPA determined that another officer, not Named Employee #1, was the individual who may have engaged in unprofessionalism. Given that the identified unprofessionalism was minor in nature, this allegation was also returned to the chain of command to be handled as a Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant filed a complaint with OPA in which she alleged that an officer – later identified as Named Employee #1 (NE#1) – improperly pointed his firearm at a Black male's head. The Complainant asserted that the male was not acting aggressively and did not appear to pose a physical threat to the officers or anyone else. The Complainant stated that the male did not have a weapon and had not committed a crime. The Complainant said that an officer grabbed the male from behind and handcuffed him. Five officers then forced the male onto the hood of a patrol vehicle. The male accused the officers of engaging in biased policing. OPA subsequently commenced this investigation.



As part of its investigation, OPA reviewed the Body Worn Video (BWV) recorded by the responding officers and read the reports that they generated. OPA determined that officers were dispatched to a call of a male who had pulled a knife on a Safeway employee and threatened to stab the employee. The call was updated with information concerning the male's description, as well as to advise officers that the male had possibly placed the knife in a pant pocket. The officers were also informed of the male's direction of travel and that he may have boarded a Metro bus.

The BWV showed NE#1 make contact with the male, who matched the suspect description. At the time, the male had just exited the Metro bus. NE#1 had his firearm drawn and had it at the low ready (pointing downwards). There was no indication from the BWV that the firearm was ever pointed at the male, including at the male's head. NE#1 told the male: "Hey, get on the ground now!" The male asked: "For what?" The male did not get on the ground and began throwing items down. None of these appeared to be the knife. NE#1 went over the radio and advised that the male had been located and was uncooperative. NE#1 again told him to get on the ground, but the male walked away while yelling. NE#1 followed the male and continued to give orders to him and updates over radio. Ultimately, they walked into the Safeway parking lot and other officers responded. Officers drew Tasers and one officer performed an arc test (demonstrating the functionality of the Taser as a form of deterrence).

The male continued to be non-compliant and to not get on the ground. The male stopped yelling, however, and NE#1, in turn, modulated his tone of voice and tried to reason with the male. NE#1 went over the radio and said that he believed that the male may have dropped the knife and that the male may no longer be armed; however, NE#1 noted that the male had a heavy jacket on. The officers continued to engage with the male, with NE#1 taking the lead. At that time, another officer moved behind the male and, after coordinating with the other officers, stepped up to the male's back and grabbed and held his arms. The other officers converged and placed the male into handcuffs. The officers walked the male to the front of a patrol vehicle where he was searched. At one point, he said to the officers: "Thank you man. I'll lay on the hood." He then placed his own head on the hood of the patrol vehicle. NE#1 made the decision to transport the male from the location. The male sat on the gurney and then placed his legs onto it. He was then transported from the scene in an ambulance. Towards the end of NE#1's time on scene, an individual said to him something along the lines of: "I'm glad you didn't kill that man, but you probably made his mental illness worse." NE#1 responded: "Have a good night." He then walked away and, soon thereafter, left the vicinity.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.400-POL-1 Use of Force Reporting and Investigation

SPD Policy 8.400-POL-1 governs force reporting and documentation by officers. NE#1 did not complete a report for the pointing of a firearm, which under SPD policy is reportable Type I force. OPA classified this allegation to assess whether he, in fact, pointed his firearm at the male and, if so, whether he failed to document that force.

From OPA's review of the BWV, NE#1 did not ever point his firearm directly at the male. Specifically, he never pointed his firearm at the male's head as asserted by the Complainant. Instead, the BWV showed that he kept his firearm at the low ready, pointed down towards the ground. As he did not point his firearm at the male, he was not required to complete a Type I report. Given these findings, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 engaged in biased policing. The male made similar allegations both before and after his arrest.

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.)

From a review of the BWV, there is no support for the allegation that NE#1’s actions were based on bias. First, this was not an on-viewed call where NE#1 made the decision as to whether or not to engage with the male. Instead, NE#1 was dispatched to the call and was required to respond. Second, the male was identified as the suspect in serious crimes, which included violent activity, and he matched the description provided. Third, NE#1’s approach to the call, including drawing his firearm and arresting the male, was warranted based on the male threatening a store employee with a knife and likely still possessing the knife at the time of the police response. This had nothing to do with the male’s race and everything to do with the male’s conduct.

As OPA’s finds no evidence of bias on the part of NE#1 or, for that matter, any other officer, OPA recommends that this allegation be Not Sustained – Unfounded.

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