



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 27, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0217

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

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

Named Employee #4

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

Named Employee #5

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

Named Employee #6

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



# 3	6.010 – Arrests 1. Officers Must Have Probable Cause that a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 4	8.100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities,	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:

It was alleged that the Named Employees engaged in biased policing and used excessive force on the Subject. It was further alleged that Named Employee #6 may have arrested the Subject without probable cause and may have failed to de-escalate prior to making entry into the Subject's apartment.

SUMMARY OF INVESTIGATION:

Multiple officers assigned to the Southwest Precinct were dispatched to an ongoing domestic violence (DV) incident. When they arrived, the officers heard a disturbance coming from an apartment. The officers knocked and identified themselves. The occupants did not immediately open the door. Around that same time, additional officers knocked on the door of another unit. A woman answered and relayed to the officers that a DV assault occurred between the residents of the initial apartment. She said that the male occupant – who is referred to here as the Subject – struck the female occupant – who is referred to here as the victim.

The Subject ultimately opened the door to his apartment. The victim was inside. He was uncooperative and placed himself between the officers and the victim. Body Worn Video (BWV) captured him raising his voice and using profanity, including at the victim and officers. Officers, led by Named Employee #6 (NE#6), tried to reason with the Subject; however, he continued to be uncooperative. After approximately seven minutes of negotiations and due to increasing concern for the safety of the victim, the officers decided to make entry into the apartment. They did so and took physical control of the Subject, grabbing hold of his arms. He struggled against the officers, complaining that they were hurting him and that he could not breathe.

The Subject was ultimately seated on a gurney, again against his physical resistance. Officers documented that, during this time, the Subject spit in the face of Named Employee #5 (NE#5). A spit sock was placed on the Subject's head to prevent him from further spitting. At one point, Named Employee #3 (NE#3) used his hand to hold the Subject's head against the gurney. The Subject complained that the officers' actions were based on his race.

A Sergeant responded to the scene to screen the arrest and the use of force. The Subject told the Sergeant that the officers subjected him to excessive force and falsely arrested him. He further claimed that the officers' actions were based on bias. The Sergeant documented his investigation, which included taking photographs of the Subject. Those photographs showed no indication of any physical injuries to the Subject. The Sergeant ultimately referred the Subject's allegations to OPA, and this investigation ensued.



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-POL.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainant asserted that he was subjected to biased policing by all of the Named Employees. However, this claim is disproved by the evidence.

As a starting point, the BWV showed that there was abundant probable cause to arrest the Subject for DV assault. This was based on an account provided by a witness, as well as on the investigation conducted at the scene by the officers and their contemporaneous observations. Given this, the Subject’s actions, not his race, were the basis for his arrest.

In addition, once the officers established probable cause to arrest the Subject, they were required to make the arrest under Washington State law and had no discretion. Accordingly, this also undercuts the allegation of bias.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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.) The policy lists a number of 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.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The BWV showed all of the force used by the Named Employees. This included taking hold of the Subject by grabbing his arms and then using control holds and body weight to prevent the Subject from physically resisting and to handcuff him. Officers used force again when they placed the Subject onto the gurney and held him there so that he could be secured. This included NE#3 holding the Subject’s head to the gurney at one point.

From OPA’s review of the BWV, the totality of this force appears to have been appropriate under the circumstances. Notably, the officers had probable cause to arrest the Subject for a crime of violence and were permitted to use reasonable, necessary, and proportional force to do so. The force he used here met and did not exceed those



standards. Moreover, this was the case even though the Subject was uncooperative and physically resisted during much of the incident. None of the officers ever struck the Subject or used any force other than that required to effectuate their lawful purpose.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #2 - Allegation #1

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 #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

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

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

Named Employee #3 - Allegation #1

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 #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

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

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

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



Named Employee #4 - Allegation #1

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 #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #2

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

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

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

Named Employee #5 - Allegation #1

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 #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #5 - Allegation #2

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

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

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

Named Employee #6 - Allegation #1

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 #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #6 - Allegation #2

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

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



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

Named Employee #6 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

The BWV showed that a witness identified the Subject as engaging in DV assault when he struck the victim. This statement established probable cause to arrest the Subject. As discussed in the context of the biased policing allegation, under Washington State law, the Subject's arrest was mandatory, and the officers had no discretion as to whether or not to take him into custody.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #6 - Allegation #4

8.100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities,

SPD Policy 8.100-POL-1 governs the requirement that officers de-escalate prior to using force. As a general matter, de-escalation is required when safe and feasible and when it will not undermine legitimate law enforcement interests.

The BWV indicated that NE#6 tried to gain the Subject's compliance via verbal communication for nearly seven minutes. During this time, the officers learned that the Subject had engaged in a DV assault. They also observed his aggressive and uncooperative demeanor towards both them and the victim. Given this, NE#6 made the decision to enter the apartment to take the Subject into custody.

Based on what NE#6 and the other officers observed and were aware of, the decision to enter the apartment and to go hands-on with the Subject at that time was reasonable. They had a legitimate concern for the safety of the victim and were permitted to act. Moreover, prior to doing so, they attempted to gain the compliance of the Subject but were unsuccessful.

Accordingly, OPA finds that they acted consistent with the requirements of SPD's de-escalation policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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