



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 14, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0347

Allegations of Misconduct & Director's Findings

Named Employee #1

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 - Training Referral

Named Employee #2

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
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Training Referral
# 3	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation	Not Sustained - Lawful and Proper

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
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Training Referral
# 3	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation	Not Sustained - Lawful and Proper

Named Employee #4

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 - Training Referral
# 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 5.140-POL 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 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Training Referral
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 3	11.020 - Transportation of Detainees 11.020-POL 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody	Not Sustained - Lawful and Proper
# 4	11.020 - Transportation of Detainees 11.020-POL 4. Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees	Not Sustained - Training Referral

Named Employee #7

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 - Training Referral
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 3	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation	Not Sustained - Training Referral
# 4	11.020 - Transportation of Detainees 11.020-POL 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody.	Not Sustained - Training Referral

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 Named Employees engaged in excessive force when interacting with him at a bus stop. The Complainant also alleged that during this contact his tooth was broken, and his shoulder was injured. The Complainant further alleged that the Named Employees were racists and did not care about his medical disability.

ADMINISTRATIVE NOTES:

a. Supervisor Actions

During its intake investigation, OPA identified that Named Employee #4 (NE#4) stated to the Complainant, "knock it off...knock it off...You're being stupid right now man, knock it off." OPA found that this statement may have violated 5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional and determined that it would best be addressed by way of a Supervisor Action. This was returned to the chain of command to be handled via a Supervisor Action.

OPA also alleges that Named Employee #5 (NE#5) violated SPD policy when she failed to maintain the confidentiality of the OPA investigation into this Complaint by speaking with numerous colleagues about the incident details. NE #5's conduct was in direct disobedience of an order from Chief Diaz, which was noted in the written interview notification



received from OPA, which would violate 5.001 - Standards and Duties 5.001-POL 15. Employees Obey any Lawful Order Issued by a Superior Officer. OPA has determined that this matter is best handled as a Supervisor Action.

b. OIG Partial Certification

After OPA originally classified this case for full investigation, OPA requested that OIG review the force and bias-based policing allegations in this case for certification as an Expedited Investigation. However, OIG declined to certify these allegations for Expedited Investigation and, instead, requested OPA proceed with a full investigation.

On February 28, 2022, OPA submitted the full investigation to OIG to review for certification. On March 17, 2022, OIG returned a memorandum to OPA noting that OIG could certify the case as timely but declined to certify the case as thorough or objective. In order to certify the case as thorough, OIG requested that OPA conduct further investigation concerning whether there was an element of bias-based policing based on NE#2's conclusion that the Complainant was a "semi-transient person." OIG also requested that OPA use consistent language to refer to the cause of blood appearing near the Complainant's thumb. OIG also declined to certify the case as objective due to "closed-ended questions in Named Employee interviews, and a need for additional follow up questions and documentation."

OPA conducted additional investigation and sent an April 5, 2022 memorandum to OIG explaining its efforts to address the issues OIG raised. On April 8, 2022, OIG provided a memorandum certifying the investigation as thorough and timely but declining to certify the investigation as objective. The only reason OIG provided for not certifying this investigation as objective was a single line of questioning appearing on two pages of interview transcript at the conclusion of NE#4's interview. This line of questioning related to why NE#4 "may not have heard statements regarding [the Complainant's] injuries or treatment during the arrest." OIG stated:

it appears that OPA provides the Named Employee with possible reasons for not hearing the Complainant, rather than the Named Employee offering these reasons themselves. Through OPA stated the intent was to get additional information from a reluctant interviewee in follow up discussions, it is not consistent with OPA's policies on closed-ended questioning and creates concerns with the objectivity of the case.

As explained more fully in its April 5 memorandum, OPA acknowledged that the way this brief line of questioning was conducted may not have been the best practice when conducting an administrative interview. However, OPA disagrees with OIG that this single, brief line of questioning—which occurred at the end of a lengthy interview with a reluctant interviewee—was so problematic as to compromise the objectivity of this entire investigation.

While the statute requires OIG to consider "whether interviews were thorough and unbiased and conflicting testimony was sufficiently addressed," S.M.C. 3.29.260(F)(2)(b), OPA believes that the factors that "witnesses were contacted, interviewed, and all other material evidence was timely collected," S.M.C. 3.29.260(F)(2)(a), and "the written summary and analysis are objective and accurately reflect the evidence," S.M.C. 3.29.260(F)(2)(d), should outweigh the imperfections in a brief line of questioning at the conclusion of a single interview. Moreover, OPA believes that the objectivity of the investigation should be reviewed holistically, not through the lens of a single line of questioning.



SUMMARY OF INVESTIGATION:

The incident occurred at a bus stop at the corner of 2nd Avenue Extension South and South Jackson Street, near to where Named Employee #2 (NE#2) and Named Employee #3 (NE#3) were conducting stationary traffic posts. The incident was logged by dispatch as a “physical fight with no weapons seen.” NE#3 was notified of the call by concerned citizens and went to investigate. On hearing the commotion and seeing NE#3 move in that direction, NE#2 also responded to the call. NE#2 activated his BWV. NE#3 neglected to activate his BWV.¹ Independent witnesses at the scene explained that the Complainant had approached a female and attempted to engage her in conversation asking her “What are you doing later?” According to witnesses, the female declined the Complainant’s advances. On being ignored by the female, the Complainant then pushed the female. She responded to his push and pushed him back and a physical altercation ensued.

NE#2’s BWV showed that NE#3 had separated both parties on his arrival. A second male, Community Member #1 (CM#1) was also present. CM#1 claimed to be the brother of the Complainant. CM#1 had a slurred speech pattern, and his statements were not completely coherent. The Complainant was agitated, was shouting derogatory terms, and had a slurred speech pattern. The Complainant wanted to retrieve his hat which had been knocked off during the fight with the female. BWV shows that the Complainant walked up to NE#2 in an aggressive manner and was argumentative about what had occurred. NE#2 extended his arms in the direction of the Complainant and stated, “Get out of my face.” The Complainant then reached out and slapped at NE#2 with his right hand. The exact contact that was made was not completely covered by the BWV angle. Photographs that were taken shortly thereafter showed that NE#2 glasses were scraped and that he sustained a red mark to his face where alleged contact had been made. NE#2 then went hands on to place the Complainant under arrest. During the arrest the Complainant was heard saying, “I got seizures and all that.”

During the arrest, NE#2 and NE#3 struggled trying to restrain the Complainant and he was placed face down over a small concrete bollard, with the effect that he was kneeling face forward over it. The Named Employees were straddled either side of the Complainant and attempted to handcuff the Complainant who was refusing to cooperate. Both Named Employees attempted to take his arms out from underneath him to handcuff him. During this period, Named Employee #6 (NE#6) and Named Employee #7 (NE#7), who were in a two-person car, arrived to assist. NE#7 arrived at the scene and immediately moved CM#1 away from where the Named Employees were trying to arrest the Complainant. NE#7 then attempted to assist in restraining and handcuffing the Complainant. NE#6 spoke with witnesses who were at the scene. The Complainant was “turtling” and refusing to give his hands to be handcuffed. NE#7 stated, “Let’s get him on the ground” to NE#2 and NE#3. NE#3 stepped out from trying to restrain the Complainant and NE#7 took his position and attempted to handcuff the Complainant. NE#6 also then arrived and assisted at this juncture in bringing the Complainant to the ground.

The Complainant was placed on the ground by the Named Employees and continually resisted being handcuffed. The Named Employees struggled to pull his arms out from underneath the Complainant. NE#7 placed his knee on the Complainant’s shoulder/upper-back. NE#7 successfully pulled the complainant’s left arm out from underneath him and he was handcuffed. Named Employee #4 (NE#4) arrived at the scene. Throughout this handcuffing, the Complainant repeatedly stated that he had seizures and twice referenced his medical bracelet to the Named Employees who were present, namely, NE#2, NE#3, NE#4 and NE#7. While on the ground, the Complainant was heard making a derogatory racial statement, “N*****, You said N*****, I heard that” to officers present. The statements did not appear to be

¹ As required by policy, the failure to activate BWV was subsequently documented by the Named Employee.



directed at any Named Employee. OPA conducted an extensive review of all BWV of attending officers and did not identify any use of the n-word or any type of derogatory language during this incident.

Once handcuffed, NE#4 and NE#7 lifted the Complainant from the ground and walked him to the front of a patrol car where he was searched. The Complainant resisted and pulled away from the two Named Employees as he was walked to the car. At this juncture, Named Employee #1 (NE#1), the Supervisory Sergeant attended the scene. Throughout his detention the Complainant continually made statements about seizures. Named Employee #5 (NE#5), the primary officer on the call, arrived when the Complainant was being searched and asked if a spit sock was required. NE#7 said, "No, he's fine." When being searched at the vehicle, the Complainant continued to state that he had seizures to which NE#4 asked, "Is punching people part of your seizure?" The Complainant continually stated to both NE#4 and NE#7 "Read my bracelet," which neither did. The brother of the Complainant then interjected stating "He got a seizure, numerous times" to NE#4. The Complainant continued to say he had seizures and that his shoulder was out of place. During the search of the Complainant NE#4 called for a spit sock alleging that the Complainant "spit twice." A spit sock was never applied to the Complainant.

While the Complainant was being searched at the front of the vehicle, NE#5 obtained a property bag to retrieve the Complainant's property after he was searched. CM#1 approached NE#5 and NE#2 and stated that the Complainant had seizures and stated that an ambulance needed to be called. NE#5 responded to him and told him that medics would be called and then directly asked the Complainant if he suffered from seizures. The Complainant did not reply directly to NE#5. Independent witnesses at the scene who observed the arrest, asked NE#2 to ensure that medics were called. NE#2 called for medics on air. The Complainant was searched at the vehicle and then placed in the back of the vehicle. The Complainant resisted being placed in the vehicle using his foot to push back against the car. The Complainant was pulled into the vehicle by NE#5, NE#7, and NE#4. The Complainant was seat belted into the vehicle by NE#7. NE#5 explained the circumstances of the arrest to the supervisory screening Sergeant, NE#1, and informed him that the Complainant started saying that he had pain, and that SFD were called. NE#5 stated to NE#1 that the Complainant's brother "started saying that the Complainants had seizures, so he, the Complainant started saying that he had seizures."

In-Car Video (ICV) depicted the Complainant removing his seatbelt while handcuffed and kicking the back of the vehicle. The Complainant was then observed banging his head in a forward motion, approximately 80 times, on the Perspex divider in the vehicle. When the Complainant was handcuffed in the back of the vehicle, NE#1 asked the Complainant if he had any injuries to which he replied that it didn't matter because he was in handcuffs. NE#1 asked, "So handcuffs are your injury?" The Complainant responded, "Yeah." Seattle Fire Department attended the scene and examined NE#2 who had sustained some cuts to his hands which were bleeding. SFD were informed by NE#2 and NE#6 that the Complainant was suffering from seizures and shoulder pain. NE#1 attempted to have the Complainant examined by SFD but the Complainant became agitated and non-compliant and stated "I'm on social security disability and all that s***." The Complainant was not examined by SFD.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 engaged 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 or disability status of the subject. (See id.)

Throughout the detention and the arrest of the Complainant, he made several statements that he suffered seizures and that he was on disability social security allowance. The Complainant also made a statement that one of the Named employees had referred to him by the “N” word and that the Named Employees were racists.

NE#1 was the supervisor and screening Sergeant of this incident. He was, self-admittedly, not well rehearsed with the necessary policies associated with this type of call and noted that, “he was a little out of practice” as he had been in the traffic unit for the last three years. While NE#1 completed the appropriate paperwork with respect to the bias allegations made, NE#1 admitted, however, that he should have included all officers in the paperwork relating to allegations of bias, as opposed to just NE#2. Policy states that Supervisors and commanders who fail to respond to, document, and review allegations of bias-based policing will be subject to discipline. OPA believes that this was an erroneous omission by NE#1 owing to lack of practice in dealing with such incidents. OPA notes that, after recognizing his deficiencies in this area, NE#1 sought advice from another supervisor in trying to address this knowledge gap.

NE#1 stated that he heard the Complainant say that someone used the “N” word at the scene and that the Complainant alleged that every officer at the scene was racist. NE#1 stated that he screened the arrest with the primary officer, NE#5, and was satisfied with the explanation given for the arrest. NE#1 stated that he believed the Complainant’s statements about race were more of a commentary that “we didn’t seem to care about him.”

In addition to the primary officer telling him, NE#1 also stated that he heard the Complainant report that he had seizures. NE #1 stated that they had SFD “check him out” and that he tried to keep a close eye on him. NE#1 noted that the Complainant was agitated and uncooperative. BWV shows NE#1 attempting to communicate with the Complainant while he was handcuffed in the back of the patrol car. NE#1 was unaware that the Complainant had a medical bracelet indicating his disability, even though the Complainant made several officers aware of this at scene. NE#1 was not made aware about the bracelet by any officer.

This scene was attended by several officers, none who regularly worked together. As such, the normal routines and practices associated with such a call appeared to have been unintentionally interrupted. As a result, the necessary consideration which would normally have been given to the allegations of race and disability were notably absent. OPA does not say this to excuse the absence but to explain it after unpacking the events and NE#1’s mismanagement at scene. On review of the BWV and associated statements, OPA does not believe that NE#1 treated the Complainant any different based on his race or on his disability. However, OPA believes that NE#1 would benefit from a refresher training on the required documentation when such statements are made by Complainants and as such recommends a Not Sustained – Training Referral.

- Training Referral: NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policies 5.140-POL-4 and 5.140-POL-5 with NE#1 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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



Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2 engaged in bias-based policing.

NE#2 was on a traffic post when he heard the commotion of fighting between the Complainant and a female. Assisted by NE#3, he separated the two fighting parties, and his initial and continued engagement was based on the incident itself. NE#2 subsequently arrested the Complainant for assault on an officer.

NE#2 was asked about the statements made by the Complainant during his detention. The Complainant made several statements that he suffered seizures and was on disability social security allowance. The Complainant also urged the Named Employees to look at his medical bracelet to confirm his disability. However, the initial way in which the Complainant brought this to the Named Employees attention, however, was not as apparent as is perhaps depicted in this memo. When the Complainant was initially detained, his statements were to the effect of, "I'm having seizures...You see my bracelet right you see my bracelet." From BWV it did not appear that the Complainant was having seizures, and as a result, the two statements did not necessarily directly associate with each other for those present.

BWV also showed a concerned community member asking NE#2 to call Medics for the Complainant. NE#2 called medics and stated on BWV that it was for a "CYA." NE#2 explained to OPA that he heard sirens in the vicinity and wanted to make sure that they were aware that they had been requested for the Complainant. OPA questioned why the Medics were not called sooner, before the public requested him to, and he stated that "I thought they had, with all the sirens coming our way then I realized they hadn't." BWV captured NE#2 telling attending medics that "And then the guy (Complainant) in there (patrol vehicle)...who allegedly has seizures." NE#2 stated that he did not witness the Complainant have any seizures.

The Complainant also alleged that one of the Named employees had referred to him by the "N" word and that the Named Employees were racists. BWV showed that NE#2 reported the use of the "N" word to NE#1, the supervising Sergeant. As noted above, OPA conducted an extensive review of all BWV of attending officers and did not identify any use the "N" word or any type of derogatory language during this incident.

The Complainant was captured on footage saying, "I have seizures and shit. You don't care? Because I'm Black." In Interview with OPA, NE#2 stated he never heard the Complainant say racist comments. However, NE#2 appeared to have forgotten that he had a conversation with NE#1 and the attending Lieutenant where he notified them of the comments made by the Complainant. This conversation was captured on BWV. NE#2 also reported to SFD that the Complainant had seizures for him to be examined.

On review of the footage, OPA does not find it unreasonable to believe that NE#2 did not recall hearing the comments about racism being uttered. NE#2's routine duties as a traffic officer did not normally include these types of arrests. As such this could have been a perceptual blind spot for the Named Employee. In addition to this, NE#2 suffered abrasions to his hand which were bleeding and required attention after the initial arrest of the Complainant. As in the analysis of NE#1 above, this is not a means to excuse any deficiencies on the part of NE#'s actions, but merely to understand why he may not have recollected this information during interview when it was captured on BWV.



OPA found that NE#1 reported the racist comment to a supervisor as required to by policy. NE#2 also called SFD to examine the allegations of seizures. NE#2 was also present when NE#6 reported the Complainant's shoulder injury to SFD. OPA finds that NE#2's initial and continued interaction with the Complainant was as a direct result of an altercation between two fighting parties and was not because of race or disability. NE#2's arrest of the Complainant was as a result of an assault by Complainant.

Accordingly, 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

The Complainant alleged that NE#2 used excessive force.

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 Complainant alleged that his tooth was broken and that his shoulder was "out of place" after his arrest by the Named Employees.

In interview, NE #2 stated that once they, he and NE #3 had separated the individuals, the Complainant "kept coming at us to get to the individual behind us who he had been fighting with." NE#2 stated that he told the Complainant "to get out of my face and went to push him" when the Complainant "swung at him and connected with his left temple and knocked of his hat and glasses." NE #2 then went to arrest the Complainant for assault on an officer. After being struck by the Complainant and during the ensuing struggle, NE#2's BWV was knocked off and landed on the ground, the interaction and force was not captured. A portion of the force however was captured on NE#6's BWV.

During the attempt to arrest the Complainant he ended up being placed into a kneeling position, face forward over a cement bollard. NE#2 and NE#3 straddled either side of the Complainant and attempted to handcuff him. The Complainant refused to comply and pulled his hands underneath his body.

NE#2 stated that he reached out and grabbed the Complainant, by the right coat sleeve with his left arm as he was pulling away. NE#2 stated that he was pulling the Complainant towards himself, and the tension hit. NE#2 stated that he felt pain in his own body because of the tension. NE#2 stated that he tried to get the Complainant's right arm behind his back by grabbing the wrist, the elbow area, twisting it bringing it back towards the back. NE#2 described the Complainant as "a little spry guy, drunk and high or could have been drunk and high" and that his smaller stature made it difficult to restrain him as he was "wiry." NE #2 stated that he used the "straight arm bar control" technique, a trained technique he learned in the academy and street skills, to restrain the Complainant.



NE#2 then described how NE#3 grabbed the Complainant's left side. NE#2 believed that NE#3 made the decision to place the Complainant over the cement bollard. NE#2 believed that he made the decision to place the Complainant on the block and stated that while this was not a trained tactic it was just a "solid surface" to use at that time. NE#2 believed that he then instructed NE#3 to move the Complainant to the ground. However, BWV depicted NE#7 instructing attending officers to move the Complainant to the ground. NE#2 stated that the Complainant was continually resisting throughout the arrest process. BWV depicted the handcuffing of the Complainant by NE#2, NE#3, and NE#7.

NE#2 had probable cause to arrest the Complainant. OPA finds that—although the techniques used by NE#2 and NE#3 were not tactically sound—the force used was reasonable, necessary, and proportional. OPA does not find that the tactical deficiencies were such which made the use of force unreasonable or disproportional to the totality of the circumstances. The officers had no control over the location of the cement bollards, which were in the immediate area of the arrest and not easily navigated. After NE#7—an officer more familiar with current arrest tactics—arrived and provided instruction, the Complainant was immediately brought to the ground to facilitate the handcuffing in an easier manner.

BWV depicted that the Complainant's tooth was intact throughout his entire detention by SPD. BWV captured two possible injuries sustained by the Complainant during his arrest. One appears to be an abrasion on the top of his right hand, near his little finger. The second one appears to be an abrasion on the inside of his left hand, nearest his thumb. OPA finds that these minor injuries are consistent with the way he failed to cooperate and resisted being handcuffed during his arrest.

OPA appreciates that NE#2 is assigned to the traffic section and, as such, does not normally participate in arrests of such a physical nature. Regardless, officers often must intervene in situations outside of their routine duties. As such, they need to be familiar with the operationally sound techniques to ensure both their safety as well as the safety of those they arrest. Accordingly, OPA recommends that 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 8.200(1) with NE#2 and provide any further retraining and counseling that it deems appropriate, to include operational tactics involved in arrests. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #2 - Allegation #3

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation

It was alleged that NE#2 failed to properly report and document his use of force.

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. This policy defines different levels of force and is intended to devote greater resources to reviewing more serious types of force. Id.

After the arrest of the Complainant, NE#2 stated to the supervisory Sergeant that, "There's going to be a use of Force" and as such he complied with policy where officers will verbally notify a supervisor following any use of reportable force, as soon as feasible. On arrival at the Lieutenant at the scene, it was decided that the involved Named Employees



would complete a Type II use of Force report. NE#2 completed his use of Force report. NE#2 stated that he did not report allegations of force against other Named Employees because he did not witness any. Similarly, NE#2 did not note any abrasions sustained by the Complainant because he did see any when he arrested him. The evidence does not establish that this was a willful omission from the report made by NE#2 and accordingly recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

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

The Complainant alleged that NE#3 engaged in bias-based policing.

The fact pattern for initial engagement and detention of the Complainant is as described in Named Employee #1 - Allegation #1. NE#3 was in the vicinity on a traffic post. NE#3 stated that a concerned citizen alerted him to the nearby commotion. Accompanied by NE#2, he went to the separate the fighting parties. NE#3 stated that on arrival he noted that he witnessed the two parties, a male and a female, physically fighting and that the male had the female in a chokehold-type headlock. NE#3 stated that he shouted at the parties, “Knock it off Knock it off” and separated them. NE#2 stated that the Complainant kept trying to advance as that he used his hands to tell him to get back. NE#3 stated that he let the Complainant pick up his hat, which had been knocked off in the struggle, and was near the female. NE#2 had arrived at this juncture and NE#3 stated he turned to speak with the female when he noticed NE#2’s glasses in the air and heard NE#2 state that the Complainant was under arrest. Throughout the detention and handcuffing of the Complainant, NE#3 had no recollection of the Complainant making any statements relating to having “Social security and Disability” and if he had, he would not have associated it as a complaint of bias-based policing against him. NE#3 stated that he was not aware that the Complainant was wearing a medical bracelet and did not recall him talking about it.

NE#3 stated that he did not hear the Complainant say “You want to be racist” or hear him say “the N word, You said the N word, I hear that”. BWV shows that NE#3 was standing with his back to the Complainant and was keeping the CM#1 away from the arrest and engaged in conversation when some of these statements were being made by the Complainant. OPA conducted an extensive review of all BWV of attending officers and did not identify any use the “N” word or any type of derogatory language during this incident. The evidence does not establish that NE#3’s treatment of the Complainant was because of the race or disability status of the subject. NE#3’s initial engagement with the Complainant was as a result of a concerned citizen, witnessing the two parties fighting and the subsequent alleged assault on NE#2.

Accordingly, 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

The Complainant alleged that NE#3 used unauthorized force.

NE#3 was the first officer at the scene to separate the two fighting parties, followed closely by NE#2. NE#3 forgot to activate his BWV and this matter has been dealt with via his Chain of Command. NE#3 explained that after he separated the two fighting parties, the Complainant continued to advance, and he stated he turned to speak with the female when he noticed NE#2 glasses in the air and heard NE#2 state that the Complainant was under arrest.

NE#3 stated that he used his hands, arms extended, to prevent the Complainant advancing on the female. When the Complainant allegedly assaulted NE#2, NE#3 stated that he attempted to put the Complainant's left arm behind his back to handcuff him. NE#3 stated that he learned the movement in "our defensive tactics and on the street knowledge for 29 years." NE#3 did not recall how the Complainant, NE#2, and himself ended up on the cement bollard, stating they just "ended up moving in that direction." NE #3 stated that they were merely attempting to cuff the Complainant who was actively resisting. NE#2 and NE#3 struggled to handcuff the Complainant as he knelt. The Complainant resisted arrested and pulled his hands underneath his body. NE#3 was unsuccessful in trying to move the complainant's sleeve up to find space to handcuff the Complainant's wrist. At this juncture, NE#7 stepped in to assist, and NE#3 stepped out. NE#3 stood with his back to the arrest and told CM#1 to move back. NE#3 was not involved in any more use of force with the Complainant.

NE#3's use of force was within policy. Although—as discussed above at Named Employee #2, Allegation #2—NE#3's tactics were deficient, they were not outside of policy. OPA finds that the force used was reasonable, necessary, and proportional. For the same reasons as Named Employee #2, Allegation #2, OPA does not find that the tactical deficiencies were such which made the use of force unreasonable or disproportional to the totality of the circumstances.

Accordingly, for the same reasons set forth above at Named Employee #2, Allegation #2, OPA recommends that this matter proceed as a Not Sustained Referral which should focus on operational tactics involved in arrests.

- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policy 8.200(1) with NE#3 and provide any further retraining and counseling that it deems appropriate, to include operational tactics involved in arrests. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #3 - Allegation #3

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation

It was alleged that NE#3 failed to properly report and document his use of force.

NE#3 stated that he discussed the incident with the supervisory Sergeant at the scene. As such he complied with the verbal notification to a supervisor as is required by policy. NE#3 also completed a use of Force statement as is required by policy. NE#3 stated that he did not report the Complainant's allegations of use of force against other officers



“because I didn’t see it, I was dealing with the other gentleman.” OPA does not believe that this was a willful omission from the report made by NE#3.

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

Recommended Finding: Not Sustained - Lawful and Proper

Named Employee #4 - Allegation #1

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

The Complainant alleged that NE#4 engaged in bias-based policing.

NE#4 arrived when the Complainant was still in the forward kneeling position over the cement block. NE#4 stated that the attending officers were trying to get a second handcuff on the Complainant. He stated he assisted by taking him to the ground to handcuff him. Immediately after the handcuffing of the Complainant when he was stating “I know my rights, I know my rights,” NE#4 stated, “knock it off...knock it off” and then stated, “You’re being stupid right now man, knock it off.” This commentary was processed as an allegation of professionalism as a Supervisory Action via the Chain of command.

Immediately after this, the Complainant stated, “You want to be racist” and said “the N word, You said the N word, I hear that.” NE#4 stated that he did not hear the Complainant state, “You don’t care, huh, you don’t care cause I’m Black.” OPA conducted an extensive review of all BWV of attending officers and did not identify any use the “N” word or any type of derogatory language during this incident.

Throughout NE#4’s engagement with the Complainant, the Complainant intermittently made statements about having seizures. Accompanied by NE#7, NE#4 lifted the Complainant from the ground and walked him to the patrol car. The Complainant actively resisted being brought to the vehicle and NE#4 firmed his grip while moving the Complainant to the vehicle. When being searched at the vehicle, the Complainant continued to state that he had seizures. NE#4 asked, “Is punching people part of your seizure?” The Complainant shouted at both NE#4 and NE#7 “Read my bracelet,” which neither Named Employee did. NE#4 stated to OPA that he believed that the Complainant was making an allegation of having seizures in order to avoid going to jail. The CM#1 then approached both NE#4 and NE#7 and stated “He got a seizure,” numerous times. NE#4 responded by telling CM#1 to get back. NE#4 then called for a spit sock alleging that the Complainant had spit twice. When asked by OPA, NE#4 stated that he saw no signs of any seizures. When NE#5 asked about using the spit sock, NE#4 stated that he had calmed down a bit and as such the sock was not used.

OPA does not believe that NE#4 violated policy with respect to engaging the different treatment based on the race or disability status of the subject. However, OPA is concerned that even though NE #4 heard allegations of seizures that he chose to disregard them because “he didn’t see any.” OPA acknowledges that arrestees sometimes use medical excuses to try and remove themselves from the situation or to negate the possibility of going to jail. However, as the Complainant was handcuffed and restrained, it would have been an opportune time to examine the bracelet and confirm, with the available evidence, if the Complainant suffered from a disability, as he alleged. NE#4 chose to ignore the available evidence, even though he heard and commented on the Complainant’s stated disability. NE#4 did not treat the Complainant any differently because he did not confirm whether or not the Complainant suffered from a medical condition, but his failure to do so when he was able must be addressed.



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

- **Training Referral:** NE#4's chain of command should discuss OPA's findings with NE#4, review SPD Policies 16.130-POL-2 with NE#4 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #4 - Allegation #2

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

It was alleged that NE#4 used unauthorized force.

NE#4 was involved in the handcuffing, searching, and placing the Complainant into the vehicle. When NE#4 arrived at the scene, the Complainant was still in the forward kneeling position at the cement bollard. BWV depicted NE#4 holding the Complainant's lower right arm to engage in a takedown technique from the cement bollard to the ground. NE#4 stated that he grabbed the Complainant's upper arm and wrist and took the Complainant to the ground. NE#4 was unsure as to the level of force which this related to but stated that he did not hear any complaints of pain relating to the force he used.

NE#4 assisted in bringing the Complainant to the vehicle. En route to the vehicle the Complainant resisted and pulled away from NE#4. NE#4 stated that at this juncture, he merely tightened his grip on the Complainant. When NE#4 was searching the Complainant at the front of the vehicle, he called for a spit sock alleging that the Complainant had spat twice. OPA notes that this was never connected to any possibility of a seizure by attending Named Employees. When asked, NE#4 stated that he saw no signs of any seizures. When NE#5 asked about using the spit sock, NE#4 stated that he had calmed down a bit and as such the sock was not used. NE#4 also stated to the Complainant to stop trying to scrape him when he searched him. This allegation was not captured on BWV.

NE#4 stated that the Complainant resisted being placed in the car and he used *de minimis* force in pulling him into the vehicle. BWV confirms this and captures NE#4 stating, "C'mon bro, we are not trying to hurt you, put your leg in (the vehicle) to which the Complainant stated, "You hurt me, You beat me the F*** up and I've seizures." The Complainant alleged that his tooth was broken and that his shoulder was "out of place" due to his arrest by the Named Employees. BWV depicted that the Complainant's tooth was intact throughout his entire detention by SPD. BWV captured two possible injuries sustained by the Complainant during his arrest. One appears to be an abrasion on the top of his right hand, near his little finger. The second one appears to be an abrasion on the inside of his left hand, nearest his thumb. OPA finds that these injuries are consistent with the way he failed to cooperate during his arrest.

The evidence demonstrates that the force used by NE #4 was objectively reasonable force, proportional and necessary in light of the circumstances surrounding the event. Accordingly, OPA recommends that the allegation be Not Sustained – Lawful and Proper.

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



Named Employee #5 – Allegation #1

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

The Complainant alleged that NE#5 engaged in bias-based policing.

NE#5 was the primary officer on the call. She arrived after the arrest and detention of the Complainant. CM#1 approached NE#5 and NE#2 and stated that he, the Complainant, “he got seizures, he’s gonna die” and stated that an ambulance needed to be called. NE#5 stated that medics would be called and then asked the Complainant if he got seizures. NE#5 asked, “Sir do you get seizures?” as he was being searched by NE#7 and NE#4. The Complainant did not reply directly to NE#5. NE#5 then commented, “Ok, Well he’s not answering.” When the Complainant was in the back of the vehicle, NE#5 called through the window to him, “Don’t hit your head on it, or anything Ok.”

NE#5 briefed the supervisory Sergeant, NE#1, and informed him that the Complainant’s brother said the Complainant has had seizures, the Complainant started saying that he had seizures. NE#5 stated that the Complainant was hostile and that SFD did not examine him because of this.

When interviewed by OPA, NE#5 stated that “I didn’t believe that he was making that claim (of bias).” NE#5 stated that, “Just based on my training and experience, a lot of people will say anything after they’re arrested just to make sure that they’re not arrested and to delay going to jail.” NE#5 was not present when the Complainant made statements about his medical bracelet and as such did not have the same information available to be able to even confirm that the Complainant had a medical condition. Similarly, NE#5 was not present when allegations of racism was made by the Complainant.

While OPA does not believe that there is evidence available to support a violation of the policy, NE#5’s attempt at confirming whether the Complainant did suffer from seizures was, at best, half-hearted. In essence, NE#5 did not violate the treatment of the Complainant owing to his disability, because she was unaware of its existence. The Complainant had already been arrested by the time NE#5 attended the scene and as such there is no evidence to suggest that policy was violated relating to the Complainant’s race.

Accordingly, 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

The Complainant alleged that NE#5 used unauthorized force.

NE#5 assisted in placing the Complainant in the patrol vehicle. She stated that as he was being placed in the vehicle, he made a complaint of pain. BWV comports with NE#5’s version of use of force where she pulled on his top to get him into the vehicle. The Complainant is heard stating, “I’m hurting, I’m hurting, you’re hurting me, you’re hurting me.” NE#5 completed a Use of Force statement and notified the Sergeant of the allegations made. Here, NE#5’s use of force was reasonable under the totality of the circumstances, necessary to effect NE#5’s lawful purpose of putting the Complainant into the police vehicle, and proportional to the level of resistance the Complainant was offering.



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

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

Named Employee #6 – Allegation #1

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

The Complainant alleged that NE#6 engaged in bias-based policing.

NE#6 and NE#7 were working in a two-person car and were notified of the incident via radio. When NE#6 arrived at the scene he immediately went and spoke with nearby witnesses and the victim. He stated he did this to provide team control support.

NE#6 told OPA that he had no recollection of why he did not report the Complainant stating that he had seizures to anyone. NE#6 state that he may, at that time, have assumed that another officer would have reported these statements. NE#6 had no recollection after he heard the Complainant relate to his medical bracelet and seizures that he did not probe this information further. BWV captured NE#6 in the presence of NE#2 when he informed SFD about the Complainant having seizures. It was at this juncture that NE#6 informed SFD that the Complainant was also complaining of having a separated shoulder.

Additional BWV was shown to NE#6 where the Complainant looks directly at NE#6 and stated, “my shoulders out of place, I have seizures and shit. And you don't care because I'm Black.” NE#6 stated that he did not believe that he reported this to anyone and offered no explanation as to why he did not, stating, “I believe at the time it wasn't a bias towards me specifically, but I don't recall exactly.” NE#6 state that he believed that the Complainant was “kind of just saying things out of anger and distress essentially.”

Similarly, NE#6 heard the Complainant make statement relating to those officer’s present being racist but did not recall if he reported it to anyone. When asked by OPA as to a reason why he may not have reported it, NE#6 stated, “I didn't know who he was directing it to or why he was saying that.” NE#6 agreed that it would have been best practice to screen it with a Sergeant.

Per policy, employees who engage in, ignore, or condone bias-based policing will be subject to discipline. OPA is concerned with the failure of NE#6 to ensure that these allegations were reported, and does not support the reasoning of “I didn't know who he was directing it to or why he was saying that” as a valid excuse for failure to do so. NE#6 was also on the periphery of the arrest and was better positioned than his colleagues who were actively engaged in the physicality of the arrest to note and report on such comments to a supervisor. OPA recognizes that the responsibility of such reporting often lies with the primary officer to report such matters. However, the primary officer was not there when such comments were made and was such the onus rests with the named employee who was there to report them.

All employees share responsibility for preventing bias-based policing and employees who have observed or are aware of others who have engaged in bias-based policing shall specifically report such incidents to a supervisor, providing all information known to them before the end of the shift during which they make the observation or become aware of the incident. While OPA finds that NE #6 did not engage in bias-based policing himself, his failure to ensure the allegations were reported on, is of concern. Accordingly, OPA recommends Not Sustained – Training Referral.



- Training Referral: NE#6's chain of command should discuss OPA's findings with NE#6, review SPD Policies 5.140-POL-4 and 5.140-POL-5 with NE#6 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #6 – Allegation #2

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

The Complainant alleged that NE#6 used unauthorized force.

NE#6 stated that his partner, NE#7 assisted in getting the struggling Complainant under control to be handcuffed. NE#6 approached the Complainant when he was face down on the ground and handcuffed and briefly searched the front of his person. He stated that he did this because, "He (The Complainant) continued to reach towards his front waistband and clenched his fist. So based on his demeanor, and it was unknown if he had been searched or patted down at this point, it was unknown if he had something still a potential weapon in his waistband, wanted to make sure he wasn't grabbing something that could injure himself or anybody and the officer, anybody else on scene

BWV depicted the Complainant stating, "my shoulders out of place." NE#6 stated that he did not report this as he "assumed the other officers would." NE#6 stated that he believed that "things he was saying wasn't specifically directly or anything in particular, he was kind of just saying things out of anger and distress essentially."

NE#6 followed behind NE #2 and NE # 4 escorting the Complainant to the vehicle. NE#6 stated that he did not observe the abrasions on the Complainant's hands, which were bleeding, on the Complainant's hands. NE#6 stated that because he did not see the abrasions, he did not report them.

NE #6 stated that he did not complete a Use of Force Statement, because he stated he "didn't use any force for the policy and...(the) screening sergeant, he didn't order me to complete one." NE#6 stated that the force he used at this juncture was *de minimis*. Upon review of NE#6's use of force OPA concurs.

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

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

Named Employee #6 – Allegation #3

11.020 - Transportation of Detainees 11.020-POL 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property

It was alleged that NE#6 failed to take reasonable steps to ensure the safety of a detainee in his custody.

The Complainant was placed into the back of the patrol vehicle by NE#5, NE#7, and NE#4. NE#6 and NE#7's vehicle was being used to transport the Complainant. NE#5 pulled on the Complainant's top from the far side of the vehicle to try and situate him in the vehicle. NE#7 was focused on trying to move the Complainant's leg into the vehicle which he had hooked to the door to prevent being taken into the vehicle, and NE#4 was focused on the Complainant's torso. The Complainant was initially belted into the seat and the door was closed. The Complainant subsequently undid the



buckle while handcuffed. BWV depicted NE#6 asking a witness officer if the Complainant was unbuckled to which the witness officer responded, "Yes" that the Complainant was not buckled in. As such, NE#6 was fully aware that the Complainant had no seatbelt on.

The Complainant was agitated and began kicking the inside of the vehicle and banging his head against the Perspex partition. NE#6 was aware that the Complainant was at scene in the back of the vehicle for approximately twenty minutes before leaving to go to the jail. NE#6 acknowledged that the Complainant was not only kicking but hitting his head and hitting it on, "...bars to his left or the plastic partition in front of him which I believe he was hitting the plastic partition around." OPA noted that the Complainant hit his head approximately 80 times on the front partition while he was seated in the vehicle waiting to be transported to jail. NE#6 confirmed he told the Complainant "multiple times to stop hitting his head" and "Stop kicking," but the Complainant did not listen. NE#6 stated, "there were no other reasonable alternatives" with respect to getting him to desist. NE#6 repeatedly told the Complainant to stop banging his head as he "Didn't want him to hurt himself."

NE#6 spoke with SFD and informed then the Complainant was complaining of a separated shoulder. NE#6 opened the vehicle door and spoke with the Complainant and asked whether he would like to be examined by the paramedics. The Complainant became aggressive and was not examined. The Complainant was unbuckled at this juncture. NE#6 was aware that SFD did not examine the Complainant owing to his agitate state and confirmed that the Complainant was not cooperating. BWV supports this explanation.

NE#6 stated that based on the initial incident of trying to get the Complainant into the car, the dangers (of him being unbuckled) outweighed the Complainant being buckled. BWV showed NE#6 advising the Complainant, "stop kicking, it is not going to change anything," to no avail. NE#6 placed the Complainant's property in a brown bag and securing it in the rear of the vehicle.

OPA finds that NE#6 took reasonable steps to ensure the safety of the Complainant. However, owing to the agitated and aggressive nature of the Complainant it was unreasonable to expect any officer to continually try to restrain him the in the rear of the vehicle.

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

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

Named Employee #6 - Allegation #4

11.020 - Transportation of Detainees 11.020-POL 4. Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees

It was alleged that NE#6 violated policy by failing to restrain the Complainant with a seatbelt.

SPD Policy 11.020-POL-4 states that officer will use the transport vehicle's seat belts to secure detainees. However, there is an exception to this policy where "circumstances do not allow the officer to safely secure the detainee." The officer is then required to document the specific reason for the unsecured transport in the GO report.

The facts are as stated above in Named Employee #6 - Allegation #3. NE#6 admitted that he did not document why the Complainant was not buckled, nor did he notify NE#5, the primary officer, who was completing the



Incident/Offense Report. NE#6 couldn't recall why he didn't tell NE#5. He stated, "I didn't probably think it was pertinent at the time or pertinent to the investigation."

The failure to document or notify the primary officer of the lack of seatbelt is of note, particularly because NE#6 was already aware that the Complainant had complained of a separated shoulder. This could have consequences for any future allegations made by the Complainant, *i.e.* that his shoulder was injured during transportation. However, given the overall confusion of this scene, OPA finds that NE#6's failure to report his reasoning for not securing the Complainant to the primary officer possibly violated policy, this was not a willful omission. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#6's chain of command should discuss OPA's findings with NE#6, review SPD Policies 11.020-POL-4 with NE#6 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #7 – Allegation #1

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

The Complainant alleged that NE#7 engaged in bias-based policing.

NE#7 arrived at the scene when the Complainant was already being detained by NE#2 and NE#3. Both Named Employees were in the process of attempting to handcuff the Complainant. NE#7 made the decision for them to move the Complainant to the ground to handcuff him. When the Complainant was on the ground, NE#7 was present when the Complainant stated, "You want to be a racist" and "(the) N-word? You said the n-word. I heard that" and "You don't care because I'm black, huh?" NE#7 stated that he thought the Complainant was talking to someone else and did not recall the Complainant making any other racist allegations.

NE#7 noted that during the detention of the Complainant that he "did say that something to regards that he has seizures." NE#7 stated that "I've witnessed a few seizures, you know, through my life experience and such and I was not...based on my training and experience, I did not believe that the subject was having a medical (emergency)." NE#7 did not review the bracelet worn by the Complainant to confirm whether he suffered from any medical disability.

The evidence does not show that NE#7 violated policy with respect to engaging the different treatment based on the race or disability status of the subject. However, OPA is concerned that despite hearing the Complainant's allegations of seizures, NE#7 chose to disregard them because "he did not witness any." As explained above at Named Employee #4, Allegation #1, OPA acknowledges that arrestees sometimes use medical excuses to try and remove themselves from the situation or to negate the possibility of going to jail. However, as the Complainant was handcuffed and restrained, it would have been an opportune time to examine the bracelet and confirm, with the available evidence, if the Complainant suffered from a disability, as he alleged. NE#7 chose to ignore the available evidence, even though he heard and commented on the Complainant's stated disability. NE#7 did not treat the Complainant any differently because he did not confirm whether or not the Complainant suffered from a medical condition, but his failure to do so when he was able must be addressed.



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

- **Training Referral:** NE#7's chain of command should discuss OPA's findings with NE#7, review SPD Policies 16.130-POL-2 with NE#7 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #7 – Allegation #2

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

The Complainant alleged that NE#7 used unauthorized force.

NE#6 and NE#7, who were in a two-person car, arrived to assist during the arrest of the Complainant. NE#7 arrived at the scene and immediately moved CM#1 away from where the Named Employees were trying to arrest the Complainant. NE#7 then attempted to assist in restraining and handcuffing the Complainant. BWV depicted the Complainant "turtling" as the Complainant refused to give his hands to be handcuffed. NE#7 stated, "Let's get him on the ground" to NE#2 and NE#3. NE#3 stepped out from trying to restrain the Complainant and NE#7 then took his position in attempting to handcuff the Complainant. NE#6 also then assisted at this juncture in bringing the Complainant to the ground. NE#6 stated that he had "No idea" why the Complainant was on the bollard on his arrival but he knew that "Based on SPD training and, like the control tactics and defensive tactics, especially in this situation, it's much easier to control a subject when he's fully prone on the ground. That way we can create like a barrier against him, so he doesn't have any momentum to swing up." During this process NE#6 recalled the Complainant stating "something about his arm being—or his shoulder being pulled out." However, he believed that the Complainant was "directing that to someone else, the officer elsewhere or to the left of him.

The Complainant was placed on the ground by NE#2, NE#6, and NE#7, and continually resisted being handcuffed. The Named Employees struggled to pull his arms out from underneath him. NE#7 placed his knee on the Complainant's shoulder/upper back. NE#7 successfully pulled the complainants left arm out from underneath him and he was handcuffed. NE#4 arrived at the scene. NE#7 stated that he was using "movements to guide (the Complainant) without any intent of creating harm to the subject," and he believed it was *de minimis* force. As per policy, Type I Use of Force includes "Transitory pain." Type II Use of Force includes "physical Injury (greater than transitory pain)," force "reasonably expected to cause physical injury," and/or "complaint of injury." NE#6 was subsequently directed to complete a Type II use of Force statement by his Lieutenant.

When placing the Complainant into the vehicle, NE#6 is seen lifting the Complainants leg into the vehicle. Throughout this the Complainant is shouting "I'm hurting, I'm hurting, you're hurting me." NE#7 stated that he believed that these comments were directed at another officer.

NE#7 believed that his use of force during this incident was objectively reasonable, necessary, and proportional to the situation. OPA concurs. However, there are immediate concerns over NE#7's comprehension and understanding of the use of force, the different levels of force, and what they require for reporting purposes. This will be addressed under Named Employee #7, Allegation #3.



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

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

Named Employee #7 – Allegation #3

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation

It was alleged that NE#7 did not properly report or document his use of force.

The facts are as stated above in Named Employee #7 – Allegation #2. In addition to this, during the arrest the Complainant sustained cuts to his hands which appeared to be bleeding. NE#7 stated that he recalled seeing the blood but did not believe it was a cut but was, instead, a blood transfer from NE#2. When NE#7 was asked about the abrasions seen on the Complainant's hands as depicted in BWV, he stated that he did not see them and that his body cam "is significantly lower than my eye line."

Throughout this incident, the Complainant continually complained of pain to his shoulder and that that he suffered from seizures. Under policy, this was required to be reported. NE#7 acknowledged that he did not voluntarily go up to any supervisory staff to advise any of them that he was involved with the Complainant's arrest (when force was used). He stated, "...at the time I was tasked to, you know, take this subject to the Precinct—or to the King County Jail. And then when I—as soon as I returned back to the Precinct, I docked my body cam to be viewed by whoever was screening the incident." When asked, NE#7 stated that he "did not recall directly" if he discussed his involvement on the call with any supervisor that was on scene.

OPA finds that NE#7 is somewhat deficient in his knowledge understanding of the Use of Force policy and reporting requirements. As such OPA recommends that he receive retraining in this and associated policies. OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#7's chain of command should discuss OPA's findings with NE#7, review SPD Policy 8.400-POL-1 with NE#7 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #7 - Allegation #4

11.020 - Transportation of Detainees 11.020-POL 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property.

It was alleged that NE#7 failed to take reasonable steps to ensure the safety of the Complainant.

NE#7 and NE#6's vehicle was used to transport the Complainant to jail. NE#7 heard the Complainant banging in the back of the vehicle and stated, that he "did not know that he was hitting his head." He stated, "I was under the impression that he was kicking...I was not aware that those were his head." NE#7 stated that he was focused on completing the super form so that the Complainant could be processed at the jail. NE#7 was aware of the available



internal car camera in the backseat that he can bring up on his screen (in the front) to monitor. He did not do so and stated that he was focused on the form and did not engage with the Complainant.

OPA asked NE#7 if there were alternatives other than telling the Complainant to stop hitting his head. NE#7, "I could've look back and realize that he wasn't kicking the partition between myself and the area." He stated they "...could have had AMR come and transport the subject" but that wasn't done because he believed they "...would have had to use force to get him out of the vehicle, and that didn't seem reasonable or feasible.

From a review of ICV, OPA accepts that the Complainant was uncooperative during his detention and willingly engaged in self-harming behavior while detained, namely banging his head against the Perspex partition in the vehicle and kicking at the inside of the car. OPA also noted that at least three named employees told him to stop kicking and banging his head, to no avail.

NE#7 was present when the Complainant refused to cooperate and initially enter the vehicle. NE#7 assisted in buckling the Complainant into the vehicle. While best practice would be to continually monitor a detainee, OPA recognizes the difficulty of processing a detainee when dealing with an uncooperative individual when numerous officers are involved. The failure to actively monitor someone in your custody is of concern, particularly when the individual has alleged that he suffered from seizures. Indeed, in the absence of any medical evaluation one could find it difficult to determine whether the head banging was associated with such a medical condition. Accordingly, OPA believes that the Named Employee would benefit from additional training in respect of this and as such recommends that the allegation be processed as Not Sustained – Training Referral.

- **Training Referral:** NE#7's chain of command should discuss OPA's findings with NE#7, review SPD Policy 11.020-POL-1 with NE#7 and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team

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