



CLOSED CASE SUMMARY

ISSUED DATE: MAY 4, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0428

Allegations of Misconduct & Director's Findings

Named Employee #1

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

Named Employee #2

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

Named Employee #3

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

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:

On September 9, 2021, Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) responded to a disturbance call at a bar on Union Street. The Complainant alleged that once the Named Employees arrived on scene, they placed him under arrest, punched him in his right eye, then placed him in handcuffs. The Complainant went on to allege that these actions were motivated by the Complainant speaking exclusively in Spanish.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.



SUMMARY OF INVESTIGATION:

All relevant portions of the Named Employees' response were captured on Body-Worn Video (BWV). Accordingly, the relevant facts are not in credible dispute.

On September 9, 2021, NE#1, NE#2, and NE#3 were dispatched to a 911 call regarding a disturbance at a bar on Union street. Once on scene, the Named Employees spoke with the 911 caller, who was the manager of the bar. The 911 caller advised the Named Employees that a male had been entering her bar and engaging in unsolicited contact with the patrons, including entering a restroom with a patron and attempting to engage in sexual activity. The 911 caller then pointed toward the Complainant, who she indicated as the suspect from the bar. NE#3 proceeded to approach the Complainant and introduce himself in English.

In response to this introduction, the Complainant spoke to NE#3 in Spanish, at which point NE#3 switched to speaking with the Complainant in Spanish. After NE#3 had taken down the Complainant's contact information, NE#2 approached and advised NE#3 that the Complainant was alleged to have made threats to staff inside the bar, touched people, and followed a patron into the bathroom. Speaking in the Spanish language, NE#3 asked the Complainant about these allegations, to which the Complainant stated that he did not know and that he did not do anything. NE#3 then related this information to NE#2 in English.

During the time that NE#3 spoke with the Complainant, NE#1 spoke with the 911 caller and another witness, who described the Complainant's inappropriate conduct inside the bar, as well as threats that the Complainant had made to the bar patrons. Although the threats were made in the Spanish language, the witness stated that he understood them to be suggestive of grave bodily harm. In order to determine whether King County Jail would book the Complainant, NE#1 and NE#2 decided to screen the matter with a supervisor. After the supervisor approved the arrest, NE#1 and NE#2 approached NE#3 and the Complainant, whereupon NE#1 advised the Complainant that he was under arrest.

As the Named Employees placed the Complainant in handcuffs, NE#3 spoke to the Complainant in the Spanish language and explained the basis of the arrest. Although the Complainant expressed distress at the prospect of being arrested, he was not physically resistant and cooperated with the handcuffing process. After the Complainant was handcuffed, NE#3 read the Complainant his rights under *Miranda* in the Spanish language. NE#3 then advised NE#1 and NE#2 that the Complainant had again expressed that he had not done anything, and that people had wanted to hit the Complainant when he had exited from the bar. NE#1 then searched the Complainant, after which time NE#2 and NE#3 escorted the Complainant to an SPD vehicle.

Once officers had placed the Complainant in the backseat of the vehicle, NE#3 transported the Complainant to the East Precinct, where a sergeant screened the arrest. The sergeant asked the Complainant whether he had any injuries to report, which NE#3 translated into the Spanish language. The Complainant responded that he did not have any injuries, after which point NE#3 continued to transport the Complainant to King County Jail (KCJ), where he was escorted from the SPD vehicle and booked into jail.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that the Named Employees punched him in the right eye before placing him in handcuffs, and that this punch caused his eye to bruise.

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.*)

From BWV of the Named Employees’ response, OPA was able to review the interactions between the Complainant and all three Named Employees. During the course of the Complainant’s interaction with the Named Employees, none of the officers made physical contact with the Complainant beyond that necessary for handcuffing, a pat down, and escorts to and from the police vehicle. Moreover, no injuries to the Complainant’s face are shown from any of the Named Employees’ BWV, nor did the Complainant have any injuries to report during the arrest screening. Finally, OPA received paperwork from KCJ that suggested that the Complainant was involved in a use of force incident on the night of his arrest while in custody at KCJ resulting in an injury to his right eye.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that the Named Employees punched him due to his use of the Spanish language.

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.*)

As stated above (see Named Employee #1 – Allegation #1), OPA found no evidence whatsoever to indicate that any officer made physical contact with the Complainant in the manner alleged by the Complainant. Additionally, BWV showed NE#3 continuously working to speak with the Complainant in the Spanish language, including while taking the Complainant’s statement, explaining the basis of the arrest, providing *Miranda* warnings, and screening the arrest for injuries.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

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

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 (Expedited)**

Named Employee #2 - Allegation #2

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

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

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

Named Employee #3 - Allegation #1

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

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 (Expedited)**

Named Employee #3 - Allegation #2

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

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

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