



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 3, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0092

### **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 - Unfounded (Expedited)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 3	15.410 Domestic Violence Investigation - 15.410-POL 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)	Not Sustained - Unfounded (Expedited)

#### **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 (Expedited)
# 2	5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports: a. Ensure accuracy and completeness	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:**

The Complainant alleged Named Employee #1 (NE#1) failed to thoroughly investigate before and used excessive force during her arrest. The Complainant also alleged Named Employee #2 (NE#2), a supervisor, failed to ensure NE#1's report was accurate. Finally, the Complainant alleged NE#1 and NE#2's alleged misconduct was bias based.

### **ADMINISTRATIVE NOTE:**

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and approval, believed it could reach and issue recommended findings based solely on its intake investigation, without interviewing the involved employees.

### **SUMMARY OF INVESTIGATION:**



The Complainant made an OPA complaint alleging NE#1 unjustifiably arrested her and NE#2, a supervisor, unjustifiably approved NE#1's arrest report. The Complainant alleged NE#1 handcuffed her, which the Complainant called excessive force. The Complainant also alleged NE#1's report omitted her perspective, making it inaccurate. The Complainant alleged NE#2 failed to correct the errors in NE#1's report. Finally, the Complainant alleged NE#1 and NE#2's misconduct was bias, based on her race, gender, and mental health status.

OPA opened an investigation. OPA reviewed the OPA complaint, Computer-Aided Dispatch (CAD) call report, the incident report and supplements, Body Worn Video (BWV), and photographs. OPA also interviewed the Complainant.

The CAD call report showed officers were dispatched to an apartment building after a male caller (Community Member #1 or CM#1) reported a female (the Complainant) pushed him into a wall. The CAD call report also showed the Complainant screamed she would also call 911. The Complainant called 911 immediately thereafter. The Complainant stated CM#1 grabbed her neck and swung her around.

BWV showed NE#1 and three other officers responded to the incident. The officers entered the building and took an elevator to the Complainant's floor. Officers encountered the Complainant in the hallway. NE#1 spoke to the Complainant, who reported after she and CM#1 had "a romantic thing," CM#1 grabbed her neck and twisted it "like a chicken." There were no visible injuries on the Complainant's neck.

Next, NE#1 spoke with CM#1 inside the apartment. CM#1 denied touching the Complainant. CM#1 told officers he and the Complainant were neighbors but never dated. CM#1 stated the Complainant came over that day for drinks but became violent and attacked CM#1. CM#1 told the officers the Complainant broke his false teeth, that his mouth was cut up, and the Complainant broke a piece of his dresser and hit him with it. NE#1 saw a broken dresser in CM#1's room, blood on CM#1's chin, and CM#1's broken false teeth.

NE#1 returned to the hallway and told the Complainant she was under arrest. NE#1 started handcuffing the Complainant. Again, the Complainant claimed she was victim. The Complainant screamed, "My neck! My neck!" NE#1 handcuffed the Complainant while two other officers held her arms.

NE#1 screened the arrest with NE#2, who arrived after the Complainant's arrest.

During NE#1's follow-up questions with CM#1, CM#1 admitted a sexual relationship with the Complainant about six months earlier but nothing recent.

#### **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 NE#1 was bias, based on her race, gender, and mental health status.

SPD policy prohibits bias-based policing, defined 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.



OPA found no evidence of bias due to the Complainant's race, gender, or mental health status. Contrarily, NE#1 appeared to listen to both accounts about what occurred but relied on corroborating evidence—the Complainant had no visible injury and CM#1's broken property and false teeth—to identify and arrest the primary aggressor. That was what NE#1 was required to do under law and policy. See SPD Policy 15.410-POL-2.

The Complainant also alleged NE#1's paperwork was "one sided" and "biased on its face" because, she claimed, NE#1 "made no reference as to [the] motive for the struggle." That is untrue. NE#1's incident report included the Complainant's alleged strangulation. The Complainant did not clearly describe a motive for the struggle. Essentially, the Complainant described a consensual sexual encounter where CM#1 suddenly turned into "the devil" and strangled her, forcing her to defend herself.

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

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

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

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

The Complainant alleged NE#1 used excessive force by handcuffing her.

SPD Policy 8.200(1) requires officer force be reasonable, necessary, and proportional. Officers must 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 several factors to consider 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.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

BWV captured the Complainant's handcuffing. NE#1, and the two assisting officers, used *de minimis* force to control the Complainant's arms during the process. NE#1 gauged and double locked the handcuffs. That process ensures the handcuffs are not too tight and locks the cuffs so they cannot get tighter. The Complainant was under arrest, so it was reasonable, necessary, and proportional to handcuff her, using control tactics to ensure she did not resist or flee.

In her OPA interview, the Complainant also alleged, while she was in a hospital bed, an officer displayed his handcuffs. She thought that act was excessive force. However, that act alone does not constitute a use of force. See SPD Policy 8.400-POL-1 (delineating different levels of force).

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

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



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**Named Employee #1 - Allegation #3**

***15.410 Domestic Violence Investigation - 15.410-POL 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents (See 15.180-Primary Investigations)***

The Complainant alleged NE#1 failed to conduct a thorough primary investigation of the incident.

SPD Policy 15.410-POL-5 affirms the Department's commitment to a thorough primary investigation of domestic violence incidents. In addition to the requirements set forth in SPD Policy 15.410-POL-3, this section also requires officers conduct a thorough investigation in compliance with SPD Policy 15.180. See SPD Policy 15.410-POL-5. Among other things, SPD Policy 15.180, requires officers to generate complete, thorough, and accurate reports.

Here, the Complainant alleged two inaccuracies in NE#1's report. First, the Complainant alleged NE#1 lied by omission by failing to include her account of the incident. As discussed above at Named Employee #1, Allegation #1, that allegation is unfounded. Relatedly, the Complainant felt NE#1's reference to her having "numerous complaints" in the past was false. However, BWV video depicted one of the Complainant's neighbors telling the officers there were "lots of problems" with the Complainant.

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

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

**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 NE#2 was bias, based on her race, gender, and mental health status.

In the Complainant's OPA interview, she clarified NE#2 was included in her complaint based on his supervisory role over NE#1. OPA observed no evidence of bias by NE#2 due to the Complainant's race, gender, or mental health status.

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

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

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

***5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports: a. Ensure accuracy and completeness***

The Complainant alleged NE#2 failed to identify and correct NE#1's alleged paperwork errors.

SPD Policy 5.100(III) sets forth the general responsibilities of patrol sergeants. Patrol sergeants must ensure the accuracy and completeness of reports. SPD Policy 5.100(III)(B)(6)(a).

NE#1 responded to the scene and screened the call. Further, NE#2 actively participated in asking NE#1 questions and coaching NE#1—a newer officer—to ensure the investigation was complete. NE#1's report accurately reflected his observations. OPA did not find anything in NE#1's reports NE#2 needed to correct.



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

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