



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 26, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0130

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)

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)

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) used unauthorized force and Named Employee #2 (NE#2)—an unknown employee—engaged in bias-based policing.

ADMINISTRATIVE NOTE:

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

During its intake investigation, OPA found NE#1 did not write a Use of Force report after allegedly aiming a firearm at the Complainant, which, if true, would violate policy. *See SPD Policy 8.400 - Use of Force Reporting and Investigation 8.400-POL-3 Use of Force – Type I Investigations 2. Officers Will Document All Uses of Reportable Force.* OPA returned that allegation to the chain of command for Supervisor Action. Generally, Supervisor Actions involve allegations of minor policy violations or performance issues best addressed through training, communication, or coaching by the employee's supervisor. *OPA Manual 5.4(B)(ii).* OPA sends a memo mandating the employee's supervisor take specific, relevant action with the employee. *Id.* The supervisor has 15 days to complete the action and return the case to OPA for review. *Id.*

The Complainant allegedly told the officers his handcuffs caused discomfort. In response, Witness Supervisor #1 (WS#1) screened the Complainant's concern but failed to generate a handcuff screening template. That allegation, if true, would violate *SPD Policy 8.400 - Use of Force Reporting and Investigation 8.400-POL-2 Use of Force – Handcuff Discomfort Screening 2. Sergeants Will Screen Complaints of Handcuff Discomfort.* Additionally, it was alleged WS#1



did not generate a Type 1 Use of Force template regarding NE#1's alleged use of force, which, if true, would violate *SPD Policy 8.400 – Use of Force Reporting and Investigation 8.400-POL-3 Use of Force – Type I Investigations 2. Officers Will Document All Uses of Reportable Force*. Lastly, it was alleged WS#1 failed to generate a Sergeant Arrest Screening Supplement report for the Complainant's arrest, which, if true, would violate *SPD Policy 6.010 -Arrests 6.010-POL 6. Screening Sergeant Will Approve Report*. OPA returned those allegations to the chain of command for Supervisor Action.

The Complainant alleged Witness Officer #1 (WO#1) said the officers could blow the Complainant's door off and rummage his home, which, if true, would violate *SPD Policy 5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional*. OPA returned that allegation to the chain of command for Supervisor Action.

SUMMARY OF INVESTIGATION:

On April 29, 2022, SPD officers—including NE#1, WO#1, and WS#1—responded to a report of a man pointing a gun at elementary school students. The Complainant was subsequently identified as the suspect.

The Complainant alleged he was grilling in his backyard when the officers arrived. The Complainant alleged NE#1 pointed his firearm at the Complainant, causing great anxiety and fear. The Complainant further alleged unknown employees immediately treated him as guilty, rather than allowing the Complainant to offer his account. The Complainant believed the officers' actions were due to his race. OPA investigated the allegations.

During its investigation, OPA reviewed the original web complaint, Computer-Aided Dispatch (CAD) records, the Incident/Offense report (Incident Report), witness statements, Body Worn Video (BWV) from seven police officers, including NE#1, as well as video and photographic evidence provided by the Complainant's neighbor.

BWV shows responding officers arrive at an elementary school. Upon arrival, they contacted school staff, who reported that five students saw a man with a gun exit a house near school grounds. That subject reportedly told students to "mind their business," and pointed his gun at them. Officers relocated to the house and found the Complainant, who matched the description, in the backyard. Officers' firearms were drawn as they approached the Complainant's house. NE#1 responded with his patrol rifle drawn. Officers attempted to question the Complainant, however, the Complainant was initially upset and unwilling to talk. After some time, the Complainant agreed to speak with the officers. He was handcuffed, detained, and read *Miranda* rights. The Complainant admitted to yelling at the students but denied pointing a gun at them. He provided written consent for officers to search his residence. No firearms were recovered, but officers found a butane torch. The Complainant was released, and no charges were recommended.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 pointed his firearm at the Complainant, causing great anxiety and fear.

SPD Policy 8.200(1) requires uses of force to 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 several 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.*

OPA reviewed BWV and video evidence provided by the Complainant’s neighbor. Although officers, including NE#1, had their firearms drawn as they approached the Complainant’s home, OPA did not observe NE#1 point his firearm at the Complainant. Instead, video evidence depicted officers with their firearms either in a low-ready position or angled slightly downward. Under SPD policy, this is not reportable force. *See SPD Policy 8.400-POL-1* (“pointing of a firearm at a subject” constitutes Type I force) (emphasis added).

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 an unknown employee, NE#2, treated him as guilty, rather than allowing the Complainant to give his account. The Complainant believed that response was due to his race.

SPD policy prohibits bias-based 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*. That includes different treatment based on race. *See id.*

Here, the Complainant was detained and questioned based on probable cause. Specifically, several witnesses identified and accused the Complainant of harassing them with a firearm. BWV does not reflect a portion of the investigation was premised on race, outside obtaining physical descriptions from witnesses. Furthermore, BWV depicted officers taking the Complainant’s account of the incident which, ultimately, resulted in the Complainant being released without charges. Overall, OPA did not observe evidence the responding officers’ actions were motivated by race or any other discernible personal characteristic. The preponderance of the evidence shows that the behavior alleged either did not occur or did not occur as alleged.

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

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