



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 15, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0219

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) |

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 | 16.230 - Issuing Tickets and Traffic Warnings 16.230-POL 1. Employees May Use Discretion When Issuing Tickets | Not Sustained - Lawful and Proper (Expedited) |
| # 3 | 8.200 – Using Force 1. Use of Force: When Authorized | Not Sustained - Inconclusive |

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 (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 during a motor vehicle collision investigation Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) treated her differently based on their opinions of her children. The Complainant also alleged NE#2 wrongfully cited and used unjustified force against her.

ADMINISTRATIVE NOTE:

The Complainant also alleged NE#2 and NE#3 failed to write complete, thorough, and accurate primary investigation reports. During its intake investigation, OPA identified minor discrepancies between the officers' Body Worn Videos (BWV) and what NE#2 documented in the Police Traffic Collision Report (PTCR) and what NE#3 documented in the incident report. BWV showed the PTCR failed to document a vehicle passenger and a witness. BWV showed the incident report inaccurately stated two witnesses reported the Complainant ran a red light when there was only one witness with that account. OPA returned those allegations to the chain of command for Supervisor Action:



Requested Action of the Named Employee's Supervisor: Please document by completing a Chain of Command Report, attaching the report to this case, and sending it to OPA through Blue Team.

- Discuss complaint and department policy with Named Employees.
- Please document in [Performance Appraisal System]. Please copy and paste the text of the PAS entry into the Chain of Command Report.

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 Internal Operations and Training 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.*

Additionally, the remaining allegations, except for the excessive force allegation against NE#2, were classified for Expedited Investigation. That means OPA, with the Office of Inspector General's concurrence, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA only interviewed witnesses concerning NE#2's alleged excessive force.

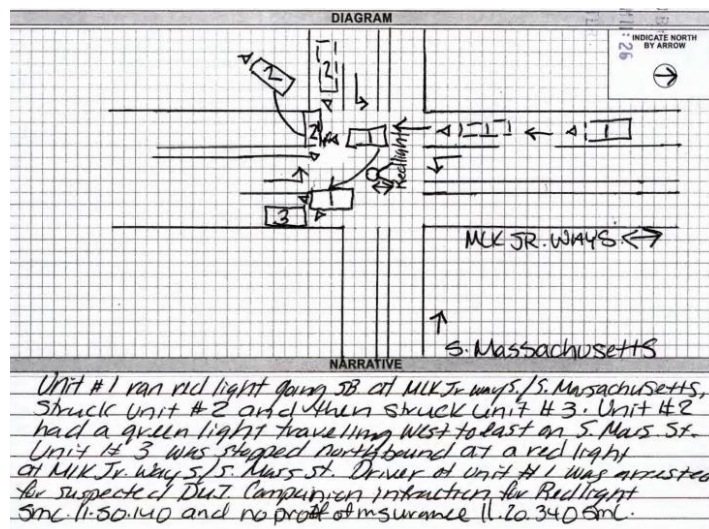
SUMMARY OF INVESTIGATION:

On July 19, 2022, the Complainant left OPA a voicemail alleging officer misconduct. Specifically, the Complainant stated, during a November 6, 2020, encounter, an officer "mentioned my kids [sic] name" and another officer "pushed me aggressively." OPA contacted the Complainant for additional details. The Complainant explained, on November 6, 2020, she had a vehicle collision where officers responded and arrested her for DUI. The Complainant believed she was treated differently because officers were familiar with her two sons. Specifically, the Complainant alleged the officers' familiarity with her sons led them to conclude she caused the vehicle collision. The Complainant also alleged a female officer looked at her "sideways" and "smirked" after her sons' names were mentioned. The Complainant gave a physical description of the officer she accused of pushing her in a hospital hallway. Based on the description and time and location alleged, OPA identified that officer as NE#2. The Complainant alleged NE#2's push was forceful enough to almost cause her to collide with another officer. Last, the Complainant alleged the police report inaccurately claimed her neighbor told officers the Complainant "was known to drink."

OPA opened an investigation. That investigation included reviewing the OPA complaint, Computer-Aided Dispatch (CAD) call report, incident report and attachments, PTCR, BWV and OPA interviews. In summary, OPA found:

The Named Employees responded to a three-car collision. On scene, officers spoke to several witnesses. Driver #1 stated he traveled eastbound on S. Massachusetts and entered the intersection at MLK Jr. Way S. on a green light when the Complainant's car, traveling southbound on MLK Jr. Way S., ran a redlight and collided with his truck's front driver side wheel area. That impact knocked Driver #1's truck off-road and caused the Complainant's car to collide with Driver #2. Driver #2 stated he was northbound on MLK Jr. Way S. stopped at the S. Massachusetts redlight when the Complainant's car collided with his car.

PTCR Diagram (Unit 1= the Complainant; Unit 2= Driver #1; Unit 3= Driver #2)



Driver #1's truck had frontend damage. The entire frontend of the Complainant's car was significantly damaged. Based on the involved drivers' accounts, officers determined the Complainant ran a redlight and caused the collision. The Complainant denied being at-fault and her passenger (her granddaughter) stated the Complainant entered the intersection on a yellow light.

NE#3 interviewed the Complainant and noticed her speech was slurred and she appeared to have difficulty maintaining balance. NE#3's report noted the Complainant's breath smelled of alcohol and her eyes were dilated. The Complainant stated she had "two glasses of wine" earlier that morning. At 10:50 A.M., an officer asked the Complainant if she knew the time. The Complainant responded "4:35 P.M." The Complainant refused a breathalyzer. NE#3 observed an apparent empty wine bottle on the Complainant's front passenger floorboard. Thereafter, the Complainant was arrested.

NE#3 obtained a warrant to draw the Complainant's blood. Officers transported the Complainant to a hospital for the procedure. NE#2, NE#3, Witness Officer #1 (WO#1), and Witness Officer #2 (WO#2) escorted the Complainant inside the hospital. About eight months later, the Washington State Patrol's toxicology laboratory reported the Complainant's Blood Alcohol Content (BAC) was nearly twice the limit to legally operate a vehicle.

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, NE#2, and NE#3 treated her differently based on their familiarity with her sons.

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.

Here, the Complainant alleged WO#1 told other officers on scene the Complainant was related to individuals known to SPD. The Complainant alleged, thereafter officers treated her differently. Specifically, the Complainant alleged



WO#1 mentioned the Complainant's sons which caused NE#3 to smirk and look at her sideways. The Complainant also claimed the familial association caused officers to blame her for the collision. However, WO#1 was not at the scene of the accident. Moreover, OPA's review of the on-scene officers' BWV did not support the allegation. The Complainant's sons were not mentioned until after her arrest. In a conversation with the Complainant's granddaughter, NE#1 asked whether a subject was the Complainant's son. The Complainant's granddaughter responded yes and mentioned the Complainant's other son. Regarding NE#3's alleged reaction, this incident occurred during the height of the COVID-19 pandemic. BWV showed NE#3 wore a facemask throughout the response. Therefore, it is unlikely the Complainant saw NE#3 smirk.

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

For the reasons set for above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

16.230 - Issuing Tickets and Traffic Warnings 16.230-POL 1. Employees May Use Discretion When Issuing Tickets

The Complainant alleged NE#2 wrongfully cited her for the collision.

SPD Policy 16.230 POL 1 requires officers to use their discretion to appropriately warn, cite, or arrest traffic violators to both gain compliance with traffic laws as well as develop driver awareness.

Here, as summarized above, the evidence overwhelmingly showed the Complainant ran a redlight and caused the collision. Driver #1 stated he entered the intersection on a greenlight and saw the Complainant's car run a redlight before striking his truck at high speed. The damage to the driver side front wheel area of Driver #1's truck corroborated his account. Driver #1 also reported pain on his left side. There was also significant damage to the entire front end of the Complainant's car. Also, Driver #2 stated he was stopped at a redlight driving in the opposing direction as the Complainant, which strongly indicates the Complainant also had a redlight. Finally, the Complainant exhibited significant signs of intoxication, some of which were captured on BWV (such as her slurred speech, unsteadiness, and demeanor). Moreover, toxicology results later confirmed the Complainant's intoxication. Overall, NE#2's decision to cite the Complainant was justified.

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

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

Named Employee #2 - Allegation #3

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



The Complainant alleged NE#2 unjustifiably pushed at the hospital.

An officer's use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). 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 to weigh 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, force must be proportional to the threat posed to the officer. *Id.*

Here, the Complainant stated NE#2 applied a "hard push" in a hospital hallway that caused her to almost bump into another officer. NE#2, NE#3, WO#1, and WO#2 escorted the Complainant inside the hospital. None of those officers activated their BWV. *See* SPD Policy 16.090-POL-1(5)(d) ("Employees will not record in . . . the interiors of medical [facilities].") Further, the Complainant reported the allegation to OPA over a year and a half after the incident, so the named and witness officers were interviewed almost two years after the incident.

NE#2 denied pushing the Complainant. NE#2 did not remember applying any force to the Complainant, but stated she possibly touched her to assist her with getting seated for the blood draw. NE#2 recalled the Complainant was "intoxicated...uneasy on her feet...(and) stumbled multiple times but never fell." None of the other escorting officers saw NE#2 push the Complainant. Only WO#1 recalled the Complainant state "You don't have to push me." WO#1 stated NE#2 may have been escorting the Complainant when that comment was made.

Here, despite WO#1's recollection of the Complainant stating she was pushed, there is insufficient evidence that NE#2 pushed her (where there were several officers escorting the Complainant) and the circumstances surrounding the alleged push are unclear. Therefore, if NE#2 did push the Complainant, without context OPA cannot determine whether it was reasonable, necessary, or proportional. Particularly, where BWV captured the Complainant being verbally aggressive and uncooperative on scene.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #3 - Allegation #1

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

For the reasons set for at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

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