



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 1, 2023

FROM: DIRECTOR GINO BETTS JR.
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0244

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
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Sustained

Imposed Discipline

Written Reprimand

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) was unprofessional and engaged in bias-based policing. Specifically, while escorting the Complainant out of Climate Pledge Arena, NE#1 allegedly made unprofessional comments and treated the Complainant differently based on his ethnicity and/or disability.

SUMMARY OF INVESTIGATION:

The Complainant contacted OPA multiple times by telephone and online. OPA reviewed the allegations and opened this investigation. During its investigation, OPA reviewed the complaints and related body worn video (BWV). OPA also interviewed the Complainant and NE#1.

a. Body Worn Video

BWV captured NE#1's entire interaction with the Complainant. The first minute of BWV does not include audio, due to a standard buffering period.

BWV showed NE#1 following a uniformed security officer. NE#1's BWV audio activated as he approached the Complainant, who stood surrounded by three other security officers. NE#1 ordered the Complainant to leave. The Complainant stated he was about to leave, but he did not immediately move. NE#1 asked the security officers "Do you need anything else but him out?" A security officer nodded, appearing to confirm they wanted the Complainant gone. NE#1 again instructed the Complainant, "Let's go."

The Complainant requested a wheelchair. NE#1 replied, "You can't walk? How'd you get up the stairs?" The Complainant replied, "I can't . . . like, like, my feet are frozen." NE#1 asked, "Your feet are frozen?" The Complainant



responded affirmatively. NE#1 said, "Okay, but you managed to walk up the stairs and cause a disturbance? That's pretty kick ass." The Complainant responded, "Do you want me to fall? Is your camera on?"

NE#1 again directed the Complainant to walk towards an exit. NE#1 and the Complainant went back and forth about whether the Complainant—who stood unassisted—was able to walk. NE#1 told the Complainant, "Okay, you can start walking or I can physically drag you out. Those are your two choices." NE#1 also said, "Okay, keep in mind, you've been told you're no longer welcome. If you refuse to leave, I'm going to trespass you. That is a crime." The Complainant responded, "Okay . . ." NE#1 stated, "You can walk your ass to jail, or we can walk outside."

The Complainant took slow deliberate steps with an unsteady gait while flanked by officers and security. The Complainant's arms were bent with his slightly shaky hands raised in front of him, as if he were balancing himself. NE#1 asked, "Did you use a wheelchair to get in here? So why are your feet frozen?" The Complainant responded, "I, I'm leaving." NE#1 replied, "Yes, I understand you're leaving in slow motion." As the Complainant maintained a slow pace, NE#1 stated, "I got all night. They're paying me by the hour." NE#1 also stated, "If it takes you two hours for you to get out, that's great. You're just making yourself look like a fool." The Complainant responded, "You called me a fool." NE#1 replied, "I didn't call you a fool. I said you're acting like a fool. Those are two different things." The Complainant replied, "...because I'm shaking, I'm acting like a fool?" NE#1 said, "No, because you didn't use a wheelchair to get in here..." The Complainant responded, "Yes, but I'm stressed out now and you're stressing me out more, you understand that?" NE#1 replied, "Had you left in the very beginning, you wouldn't be so stressed out. The reason we're here is because you caused a disturbance with the staff."

The Complainant asked for water, which NE#1 refused. The Complainant asked to use the restroom. NE#1 responded, "Now you need to use the restroom?" The Complainant replied, "Yeah. Do you want me to pee here? You force me, I pee here. I don't know your name, are you a sergeant or?" NE#1 said, "No, my name is [NE#1]. Okay, let's make a deal then, I let you go to the bathroom, you walk a lot faster on the way out." The Complainant responded, "I try . . . I'm moving as fast as I can do it." NE#1 asked, "That's the fastest you can physically walk?" The Complainant responded, "For now, yes. Oh yeah, physically, spiritually, financially . . . you can name it, that's my fastest."

A security officer told NE#1 a wheelchair was on the way. NE#1 arranged with the security officer to have the wheelchair waiting outside the bathroom. NE#1 said to the Complainant, "Let's go. That way. I'm not convinced you need a wheelchair, but we're getting you a wheelchair. That way I can push it a lot faster." While walking toward the bathroom, still with a slow and unsteady gait, the Complainant said, "You're making me mentally walk slow." NE#1 asked, "I'm making you mentally walk slow?" The Complainant responded, "Yeah..." NE#1 replied, "I'm like Darth Vader."

A wheelchair arrived. NE#1 stated, "Hey, here's your wheelchair. Have a seat." The Complainant turned, with his hands in his pockets, and appeared to take four or five unlabored steps towards the wheelchair. The Complainant turned and sat in the wheelchair unassisted. While NE#1 and a security officer discussed the Complainant's request to use the restroom, the Complainant abruptly stood up unassisted and turned towards the security officer. NE#1 said to the Complainant, "Hey, if you would like to use the bathroom, sit in the wheelchair." The Complainant pointed at the security officer and accused the security officer of discrimination for making him leave the arena. NE#1 instructed the Complainant, "Listen, now is not the time for you to talk. If you would like to use the bathroom, sit in the wheelchair."

After a brief exchange, the Complainant sat in the wheelchair and NE#1 wheeled him towards the bathroom. At the bathroom door, the Complainant got up unassisted and walked slowly and unsteadily into a bathroom stall. NE#1



instructed the Complainant, "If this takes slightly more than a reasonable amount of time, you're going straight to jail from here."

The Complainant exited the stall and walked, noticeably faster and unlabored, to a sink. He washed and dried his face and hands and exited the bathroom. The Complainant bypassed the wheelchair and continued walking at a fast and easy pace. NE#1 told his partner, Witness Officer #1 (WO#1), "Apparently we're walking."

As NE#1 and WO#1 escorted the Complainant, the Complainant removed his cell phone from his pocket and indicted he wanted a selfie with a plant display inside the arena. NE#1 and WO#1 denied that request. NE#1 stated, "Going over to take a picture is not the same as leaving. You lost your right to take your picture and stuff. This is directly to the exit and out the building."

The Complainant walked unassisted, at a standard pace, and with a steady gait from the bathroom to an exit. NE#1 instructed the Complainant, "Out the door, right there, follow the stair all the way to the top." The Complainant responded, "Oh, I cannot do a stairs, is there an elevator?" Security suggested the Complainant take the escalator. The Complainant replied, "I want to choose my ride, you know?" The Complainant also stated, "I cannot walk the stairs." NE#1 responded, "Because you started off faking like you couldn't walk so we got you a wheelchair." The Complainant replied, "Oh, okay, that's a crime, you cannot say I faked this." NE#1 stated, "You're walking great now. You walked full speed through the bathroom... So, you had to pee so bad you couldn't walk?" The Complainant responded, "Are you a medical professional, you're dressed like a police officer. You're not a medical professional." NE#1 replied, "I'm not a medical professional." The Complainant stated, "... mental breakdown..." NE#1 responded, "Oh, mental breakdown that you fixed by peeing." The Complainant replied, "Yeah." NE#1 and the Complainant continued back and forth. The Complainant asked, "How do you know I don't have a disability?" NE#1 responded, "I didn't ask if you had a disability... I told you to exit the building."

NE#1, WO#1, and the Complainant arrived at a staircase with an escalator. The Complainant reiterated he could not use the stairs. NE#1 suggested he use the escalator. The Complainant said, "Okay, no, you cannot tell me I stand all night." NE#1 interrupted, "you can sit on it, I don't give a shit." The Complainant rode the escalator, unassisted, with NE#1 and WO#1. After stepping off the escalator, the Complainant, NE#1 and WO#1 approached an exit. The Complainant said, "Don't touch me, I'm leaving." The Complainant stopped walking. NE#1 asked, "Do you have to pee again?" The Complainant slowly walked with an unsteady gait. The Complainant said, "No, I'm walking . . . that's my fastest walk." NE#1 said, "This is your fast walk now? So, is this real or is this fake again?" The Complainant exited the building. NE#1 aimed his BWV towards his face and stated, "Asshole."

b. The Complainant's OPA Interview

On August 8, 2022, OPA interviewed the Complainant. He told OPA police responded to a disagreement between him and arena security. The Complainant stated the disagreement was about security not allowing the Complainant to enter a particular gate. He said NE#1 arrived and told him to leave. The Complainant said NE#1 "harassed" him, "ruined" his night, and embarrassed him. The Complainant alleged NE#1 was unprofessional and possibly racist because the Complainant is "a minority."

The Complainant stated he experienced a mental breakdown due to his disabilities: Post Traumatic Stress Disorder (PTSD), depression, anxiety, and "some physical disabilities." The Complainant stated the encounter triggered his ailments, causing him to be "momentarily paralyzed." The Complainant stated his mental health providers gave him



techniques to cope with episodes of momentary paralysis. The Complainant stated he walked normally after using the bathroom because he “just relieved the stress.” The Complainant stated he walked to the concert and does not typically use a wheelchair but “occasionally” requires one.

When asked why the Complainant suspected NE#1 was racially motivated, he did not offer specifics but stated, “It’s [a] possibility because I’m a minority I look different, and he didn’t ask what happened and why he’s forcing me to go out and why he’s telling me I’m trespassing.” The Complainant stated he attended the concert alone and consumed one beer there.

c. NE#1’s OPA Interview

On November 18, 2022, OPA interviewed NE#1. NE#1 stated he was at the arena working overtime for a concert when he and WO#1 were contacted security. NE#1 said security asked for assistance escorting an individual from the property. NE#1 said he did not ask security why the Complainant was being ejected. NE#1 said he assumed it was due to the Complainant’s “significant level of intoxication.”

OPA asked NE#1 to explain statements he directed at the Complainant captured on BWV:

1. NE#1’s BWV statement: “Okay, but you managed to walk up the stairs and cause a disturbance, that’s pretty kick ass.”
 - NE#1’s explanation to OPA: NE#1 admitted the comment was unnecessary, but stated he was trying to gain the Complainant’s cooperation by mentioning the Complainant had already walked up several stairs to reach the area.
2. NE#1’s BWV statement: “Okay, you can start walking or I can physically drag you out. Those are your two choices.”
 - NE#1 explanation to OPA: NE#1 stated a level of force was justifiable to remove the Complainant but admitted he could have chosen better wording.
3. NE#1’s BWV statement: “You can walk your ass to jail, or we can walk outside.”
 - NE#1 explanation to OPA: NE#1 admitted the word “ass” was unnecessary, but said he used it to get the Complainant’s attention.
4. NE#1’s BWV statement: “If it takes you two hours for you to get out, that’s great. You’re just making yourself look like a fool.”
 - NE#1 explanation to OPA: NE#1 admitted those comments were unnecessary. However, NE#1 stated the Complainant seemed “overly concerned about being recorded and all the other people around,” so NE#1 intended to make the Complainant realize he was drawing attention to himself.
5. NE#1’s BWV statement: NE#1’s refusal to get the Complainant water.
 - NE#1 explanation to OPA: NE#1 stated he denied the Complainant’s water request because he suspected it was a stalling tactic.
6. NE#1’s BWV statement: “I’m like Darth Vader.”



- NE#1's explanation to OPA: NE#1 described it as a "poor joke" in response to the Complainant's claim that NE#1 was "controlling his mental state."
- 7. NE#1's BWV statement: "If this takes slightly more than reasonable amount of time, you're going straight to jail from here."
 - NE#1's explanation to OPA: NE#1 stated he intended to convey that if the Complainant spent an unreasonable time—such as an hour— in the bathroom he risked being arrested for trespassing. NE#1 acknowledged he could have phrased it differently.
- 8. NE#1's BWV statement: NE#1 suggesting the Complainant faked a medical condition and "fixed" his "mental breakdown" by "peeing."
 - NE#1's explanation to OPA: NE#1 acknowledged he could have refrained from accusing the Complainant of faking.
- 9. NE#1's BWV statement: "You can sit on it. I don't give a shit."
 - NE#1's explanation to OPA: NE#1 stated he could have avoided profanity but used it to get the Complainant's attention.
- 10. NE#1's BWV statement: "Asshole."
 - NE#1's explanation to OPA: NE#1 stated it was necessary for his own "mental well-being" to "voic[e] his frustration" because the Complainant "was being an asshole."

NE#1 stated he did not believe the Complainant suffered from a physical or mental disability. NE#1 based that conclusion on his "day to day interaction with the other drunk people." NE#1 acknowledged, "how I treated him was based on our interaction. So, If I thought that he was causing a disturbance because of some type of mental or physical issue, then yeah, I believe I would have probably dealt with it differently... It depends on what the mental or physical issue was. I'm just making it up at this point because I don't believe he had one."

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 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. Employees are forbidden from making decisions or taking actions that are "influenced by bias, prejudice, or discriminatory intent." SPD Policy 5.140-POL-2. Also, employees may not express "any prejudice or derogatory comments concerning personal characteristics." *Id.* However, officers "are expected to consider relevant personal characteristics of an individual when determining whether to provide services designed for individuals with those characteristics." SPD Policy 5.140-POL-3.

Here, the Complainant believed NE#1 exhibited bias possibly based on the Complainant's race. However, OPA found no evidence to support that claim. NE#1 engaged the Complainant based on arena security's report that he caused a



disturbance. NE#1's impatience with the Complainant appeared to stem from his belief the Complainant was inebriated and uncooperative. Whether NE#1 behaved unprofessionally is discussed below, but there is no evidence the Complainant's race was a factor. Therefore, OPA found this portion of the allegation unfounded.

Here, the Complainant also believed NE#1 exhibited bias possibly based on the Complainant's disabilities. However, there is insufficient evidence to conclude NE#1's attitude and behavior was motivated by that factor.

First, there is insufficient evidence to conclude the Complainant suffered mental and physical conditions that impaired his ability to walk. Beyond the Complainant's assertion, there is scarce objective evidence of those ailments. Contrarily, several factors suggested to NE#1 that the Complainant was a malingerer, including him being alone at a large event without mobility aids, appearing to stand and walk with ease at various points, and twice opting to walk rather than use the wheelchair. Nevertheless, despite NE#1's suspicions, only qualified medical professionals can determine whether someone is feigning or exaggerating symptoms. Particularly where it is not impossible for someone's mental state to impair their physical ability suddenly and intermittently, as the Complainant claimed to experience.¹

Second, BWV and NE#1's OPA interview suggest NE#1 did not believe the Complainant was disabled. Instead, NE#1 believed the Complainant was intoxicated and intentionally uncooperative to undermine lawful orders to leave the arena. Undoubtedly, NE#1 could have handled the situation more professionally, but OPA cannot conclude by a preponderance of the evidence NE#1's behavior was motivated to mistreat the Complainant due to his claimed physical and mental disabilities.

Finally, other than unprofessional commentary, NE#1 took no adverse actions against the Complainant. NE#1 allowed the Complainant access to a restroom and a wheelchair (which the Complainant later refused). For those reasons, OPA found this portion of the allegation inconclusive.

However, ultimately OPA recommends a training referral. Particularly where it was safe and feasible for NE#1 to accommodate the Complainant's initial request for a wheelchair. A different decision would have likely circumvented the combativeness that followed.

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

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policies 5.001-POL-10 and 5.140-POL-2 with NE#1 and provide any further retraining and counseling it deems appropriate. Any retraining and/or counseling should be documented and maintained in Blue Team.

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

¹Psychogenic movement disorder is an unwanted muscle movement such as a spasm or tremor that is caused by an underlying psychological condition. Also, 'hysterical' gait disorders have been described in the literature for the last 150 years when astasia (inability to stand) and abasia (inability to walk) was noted in patients with intact leg function. 'Astasia-abasia' eventually became a euphemism for hysterical gait disturbance, sometimes characterized by acrobatic near-falls that appear to require more strength and balance than normal standing and walking. Gait may be very slow and buckling of the knees is common. Although gait is often slow, turns are often normal. Useful clues suggesting psychogenic balance and gait disorders are abrupt onset, selective disability, relation to minor trauma, and improbable longitudinal courses." R. Sanders, MD & P. Gillig, MD, PhD, Gait and its assessment in psychiatry, Psychiatry (Edgemont), July 2010, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2922365/>.



Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional

The Complainant alleged NE#1 was unprofessional.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. *Id.* Additionally, the policy instructs employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.* Moreover, “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” *Id.*

Here, OPA found NE#1’s interaction with the Complainant unprofessional.

Where, SPD Policy 5.001-POL-10 commands employees to “strive to be professional” and avoid “behavior that undermines public trust,” NE#1’s overall behavior missed the mark. NE#1 was confronted with an individual committing, at most, misdemeanor criminal trespass. *See* SMC 12A.08.040. After ordering the Complainant to leave, the Complainant claimed he was unable to walk and required a wheelchair. Despite the fact it was safe and feasible to obtain a wheelchair, NE#1 engaged in a contentious, lengthy, ineffective, and public back and forth about whether the Complainant could walk and whether the Complainant’s slow and unsteady gait made him look “like a fool.” Moreover, NE#1’s language was needlessly snide almost from the start of his interaction with the Complainant. Setting aside whether the Complainant was indeed disabled—which OPA cannot determine based on the available evidence—OPA found NE#1’s attitude toward the Complainant would more likely than not undermine public trust. NE#1 began his fifteen-minute interaction with the Complainant with a snide comment (“that’s pretty kickass”) and ended by deliberately creating a public record calling the Complainant an “Asshole.” OPA finds the public would expect a law enforcement officer to manage a claimed disability with more patience and respect than NE#1 demonstrated.

Specifically, NE#1 needlessly escalated the incident and did not apply Department trained LEED (Listen and Explain with Equity and Dignity) principles. Rather than wait for a wheelchair (which security arranged and took about seven minutes to arrive), NE#1 forced the Complainant to start walking by stating:

- “Okay, you can start walking or I can physically drag you out. Those are your two choices.” and
- “You can walk your ass to jail, or we can walk outside.”

After the Complainant started slowly walking, NE#1 commented:

- “If it takes you two hours for you to get out, that’s great. You’re just making yourself look like a fool.”

In the bathroom, NE#1 told the Complainant:

- “If this takes slightly more than reasonable amount of time, you’re going straight to jail from here.”

Getting on the escalator, NE#1 told the Complainant:

- “You can sit on it. I don’t give a shit.”



Although NE#1 never applied force on the Complainant, his commentary and disposition were unnecessarily provoking and escalatory.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**