




CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0245

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

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

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

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 (Community Member #1 or CM#1) alleged Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) engaged in bias-based policing due to his race following a disturbance between the Complainant and another individual (Community Member #2 or CM#2).

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified that NE#1 may have failed to: (1) de-escalate as required by SPD Policy 8.100(1) ("When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force"), and (2) take enforcement action as required by SPD Policy 15.260-POL-4 ("Sworn Employees Take Enforcement Action in Reportable Non-Felony Collision Investigations"). Those allegations were returned to the chain of command for a Supervisor Action.

SUMMARY OF INVESTIGATION:

CM#1 filed an online OPA complaint. CM#1 stated he was unaware his parked car "slightly [blocked] a drive way." CM#1 wrote, he returned to find his car blocked in and chained to a garbage can. CM#1 wrote he was unable to move



his vehicle and, because it was around 2:00 AM, he was uncomfortable knocking on the door of the home he parked in front of. CM#1 said he called 911 and waited an hour-and-a-half for officers to arrive. CM#1 wrote the three responding officers—NE#1, NE#2, and NE#3—knocked on the door of the home and engaged with CM#2. CM#1 wrote that CM#2 admitted to blocking in CM#1's vehicle and chaining it to a garbage can. CM#1 stated CM#2 "verbally assault[ed]" him, which the officers allowed and did not de-escalate. CM#1 stated officers only directed de-escalation tactics at him, including pushing CM#1. CM#1 wrote officers allowed CM#2 to threaten CM#1 and, again, only de-escalated CM#1. CM#1 wrote that officers did not allow him to observe the chain removal and unjustifiably ticketed CM#1.

OPA opened an investigation. During its investigation, OPA reviewed the OPA complaint, Computer-Aided Dispatch (CAD) data, incident report, Police Traffic Collision Report (PTCR), body worn video (BWV), in-car video (ICV), and Field Training Officer Daily Observation Report. OPA also interviewed the Complainant and named employees.

a. Factual Summary

BWV and ICV captured the relevant portions of the named employees' interactions with both community members. OPA also reviewed the CAD, incident report, and PTCR. In summary, OPA found the following:

At 4:19am on August 1, 2022, the named employees were dispatched to a 911 call where the caller reported a garbage can was chained to his tire's rim. The caller stated he believed the responsible party lived in the house he parked in front of, but the caller stated he was uncomfortable knocking on the door due to the hour.

The named employees arrived on scene and observed a garbage can chained to the wheel of CM#1's car. The trashcan had a large rock inside of it. CM#1 explained he parked at the location but was unaware he partially blocked a driveway because the ground was covered with leaves. CM#1 explained he returned to the location to find his wheel chained to the trashcan and that he did not want to knock on the door of the nearby home because of the late hour and extreme nature of chaining a vehicle's wheel due to a parking dispute.

NE#1 and NE#3 approached the home. NE#2 remained with CM#1. CM#2 answered the door and spoke with NE#1. CM#2 admitted he was responsible for chaining the garbage can to the car. CM#2 explained he worked in healthcare and was frustrated that people continued to block his driveway. NE#1 asked CM#2 to unlock the chain. While NE#1 and NE#3 spoke with CM#2, CM#2 grew agitated and stated he was "fucking done with this shit . . . it happens about once a week." While pointing at CM#1, CM#2 loudly expressed he could not park in his driveway because some "fucking asshole" ignored a sign. CM#1 walked towards CM#2 and stated the sign was pointed away from him and he did not see it. NE#2 stated, "we're not gonna have a decent conversation about this, we're not gonna have an argument on this." CM#1 stated he could not allow someone to "defame" him. NE#1 explained to CM#2 that CM#1 said he did not see the driveway because of leaves. CM#2 replied, "bullshit."

CM#1 and CM#2 continued to argue. NE#1 redirected CM#2 to speak directly to him, facing away from CM#1. NE#2 told CM#1 he was not "helping the situation." CM#1 responded he was "not trying to." NE#2 replied that CM#1's vehicle was illegally parked, to which CM#1 said, "that's fine, ticket me and then ticket all these guys who are all



illegally parked too.” As NE#2 spoke with CM#1, CM#1 claimed NE#2 was “lecturing” him and no one was stopping CM#2 from verbally assaulting him. CM#1 also expressed to NE#2 that it was not a “fair deal” if CM#2 was able to say things to NE#1 and NE#3 without CM#1 having the opportunity to respond.

As CM#1 and CM#2 argued, NE#1, NE#3, and CM#2 walked towards CM#1 and CM#1’s vehicle to unlock the chain. CM#1 and CM#2 argued while CM#2 unlocked the chain from CM#2’s vehicle. As CM#1 and CM#2 argued, CM#1 told the officers he felt the officers allowed CM#2 to be disrespectful, saying “you’re not stopping him at all, that’s BS.” CM#2 stated, “Shut the fuck up. Eat a dick.” NE#2 stated, “Can we both stop talking?” As CM#2 unlocked the chain, CM#2 commented that he felt the experience was worth it and it felt like “Christmas.” CM#1 again stated the officers were not stopping CM#2 from talking. NE#2 repeated, “everyone needs to stop talking.” NE#3 told CM#1 in a low tone, “I’m trying to tell everyone to stop talking.” CM#1 told NE#3, “you are talking to me, you have not said a thing to him as he is sitting here making these stupid ass comments.” NE#3 replied, “there’s another officer talking, right?”

After CM#2 finished unlocking the chain, CM#1 demanded CM#2’s insurance in case there was damage to his wheel. CM#2 responded, “you’re not getting shit from me.” NE#2 informed everyone, “Everyone’s contact information will be listed in the report.” NE#3 told CM#1, “we’ll give you a business card.” As CM#2 walked back into his house, CM#1 and CM#2 continued arguing. CM#1 told CM#2, “I would check your tire pressure man. Hopefully your tire pressure’s good.” CM#2 responded, “is that a threat?” NE#3 stated to CM#1, “So, sir, we’re not going to touch anybody’s tires.” CM#1 expressed that CM#2 had just touched his car.

NE#2 filled out a business card for CM#1. NE#2 walked away from CM#1 to get NE#1 and NE#3’s badge numbers to write on the card. As NE#2 walked back towards CM#1, NE#2 requested the incident number to write on a business card for CM#1. However, before NE#2 could return to give CM#1 a business card, CM#1 left the scene, backing his car into CM#2’s vehicle in the process. NE#2’s BWV recorded CM#1’s vehicle striking CM#2’s vehicle with enough force to make it visibly move.

NE#2 requested dispatch call CM#1 to advise him to stop as he just committed a hit and run. NE#1 and NE#3 followed CM#1. After catching up with CM#1 where he was stopped, CM#1 claimed his car was damaged by CM#2’s vehicle. NE#3 requested CM#1’s insurance information for the collision. While proving his information, CM#1 expressed it was “ridiculous” that the officers were trying to de-escalate him and not CM#2. NE#2 stated, “so we were trying to de-escalate everybody.” CM#1 interrupted, “that is not what that felt right, just so you guys know.” As CM#1 searched for his insurance information on his cell phone, he stated, “I get you’re rushing me through this right now, but you just listened to him and let him tell you this whole piece, and you’re blowing me off, so it’s cool.” NE#1 photographed CM#1’s insurance information.

Later, CM#1 spoke with NE#1 and NE#3. CM#1 expressed his frustration that no one informed CM#2 that chaining his tire was illegal, but one of the officers informed CM#1 that parking in front of CM#2’s driveway was illegal. CM#1 also stated the officers did not control CM#2 and let CM#2 talk down to CM#1. CM#1 also stated “[CM#1] was being detained to stop [CM#2].” CM#1 also expressed how CM#2 took things to an “extreme,” did not care about the



damage he could have caused to CM#1's vehicle, and—when CM#1 mentioned depressurizing CM#2's tires—CM#2 called it a “threat” because CM#1 was “a Black dude around White cops.” CM#1 stated he felt unsafe. NE#3 responded, “Our job, right, is we’re trying to keep everybody calm, right, because [CM#2] wants us to ramp up, he was wanting it to ramp up, right, and he was...I could tell...he was feeding off your energy, he was getting under your skin, like he wanted that right? And, what, and its, we’re just trying to get everybody just to calm down, breath, we want him to go back inside and just stop talking. That was the biggest thing right? He just wanted to keep talking. He wanted to keep talking, talking, talking . . . because he was succeeding right?” CM#1 denied being angry, but admitted he was being petty, and that CM#2 fed off that. CM#1 reiterated that he felt de-escalation tactics were being used on him, but CM#1 did not see the “same effort” to de-escalate CM#2.

NE#1 provided CM#1 with a business card with the case number. NE#1 prepared a PTCR listing the names, contact information, and insurance information for CM#1 and CM#2. CM#1 was cited for “Driving Inattention Less Negligent” pursuant to SMC 11.58.008.

b. OPA Interview – Complainant

OPA interviewed CM#1. CM#1's recitation of events was consistent with his online complaint and statements to officers on BWV.

CM#1 expressed that he felt the officers' body language and demeanor indicated unequal treatment. Specifically, CM#1 felt CM#2, a White man, was allowed to speak to CM#1, a Black man, in a threatening and disrespectful manner without being de-escalated. CM#1 also said he noticed the officers touching their firearms when talking to CM#1. CM#1 also stated two officers put their hands on him without explanation.

CM#1 also thought it was unfair he received a citation for the incident.¹ CM#1 denied hitting CM#2's vehicle. Instead, CM#1 stated he hit the trashcan—which damaged his vehicle—and speculated that the trashcan fell into CM#2's vehicle.

c. OPA Interview – Named Employee #1

OPA interviewed NE#1. NE#1 recalled the events that occurred consistently with the BWV.

NE#1 recalled both parties being aggravated and confrontational but described CM#2 as driving the confrontation. NE#1 described his efforts to de-escalate CM#2 by separating him from CM#1 and trying to have CM#2 speak with his back turned to CM#1. However, NE#1 stated CM#2 did not respond well to de-escalation tactics.

¹ CM#1 believed his citation was for a parking infraction. That is incorrect. CM#1 received a citation for the collision.



NE#1 stated he intended to handle the call as part of his training and that NE#3—his Field Training Officer—would only intervene if things began to “spiral.” NE#1 described receiving feedback from NE#3 regarding scene control and how he could improve in the future.

NE#1 claimed he tried to de-escalate both parties, but CM#1 was the only responsive party. NE#1 denied putting his hand on his firearm. NE#1 said he wrote CM#1 a citation because he deemed CM#1 responsible for the collision that he witnessed. NE#1 said it was policy to write the citation. NE#1 said he did not write CM#2 a citation because the original goal of the call was to resolve the dispute informally and the collision occurred after the original dispute was resolved. NE#1 denied acting with bias.

d. OPA Interview – Named Employee #2

OPA interviewed NE#2.

NE#2 recalled being the “backing officer” on this call and described his role as to remain with CM#1 while NE#1 contacted CM#2. NE#2 described the two sides bickering and being unresponsive to de-escalation attempts. NE#2 stated the goal for the call was to informally mediate the dispute by freeing CM#1’s vehicle. However, NE#2 stated CM#1 backed into CM#2’s vehicle after the original incident was resolved.

NE#2 stated, as the backing officer, he was not responsible for issuing citations. NE#2 also opined that he would not have issued a citation to CM#2 for such a low-level offense that could be handled peacefully. In contrast, NE#2 said the traffic collision was a separate issue that occurred after the original dispute was resolved.

NE#2 denied allowing CM#2 to antagonize CM#1. Instead, he stated he tried to de-escalate CM#1 because that was who he was standing with. NE#2 denied grabbing his firearm.

e. OPA Interview – Named Employee #3

OPA interviewed NE#3. NE#3 stated he was NE#1’s Field Training Officer (FTO). NE#3 stated he had only worked with NE#1 for several days and was still in the process of gauging his skills.

NE#3 recalled, before arriving on scene, telling NE#1 this would likely be a “problem solving” call. NE#3 stated that meant the goal was to informally mediate a dispute between the parties.

NE#3 stated he was unfamiliar with the statute forbidding disabling vehicles, but he admitted he knew it was likely illegal. However, NE#3 stated, that, even if CM#2 committed a crime, the goal was to problem solve, not write infractions.

NE#3 stated when he and NE#1 contacted CM#2, CM#2 appeared to be either intoxicated or exhausted, or some combination of both. NE#3 recalled CM#2 spoke loudly to antagonize CM#1, which led to them arguing.



NE#3 described remaining quiet, waiting for his student officer, NE#1, to intervene. NE#3 stated he would have intervened more assertively to de-escalate CM#2, but it was an important part of the learning process to allow NE#1 to run the call. NE#3 described counseling NE#1 regarding scene control and command presence after the fact. NE#3 said he took more control of the scene and ordered CM#2 to remove the chain. NE#3 said CM#1 and CM#2 continued to argue, and NE#1 allowed CM#2 to pass by CM#1 too closely. NE#3 said after the chain was unlocked, CM#2 refused to remove the chain. NE#3 said he stepped in and removed it.

NE#3 saw CM#1 hit CM#2's vehicle and drive off. NE#3 recalled CM#1 stopped his vehicle around the corner, so he did not regard the situation as a hit and run. NE#3 recalled speaking with CM#1 to "talk[] him off the ledge," and empathized with CM#1's feelings. NE#3 stated he advised CM#1 the ticket would be mailed to him as he felt printing the ticket and serving it at the scene would make things worse.

NE#3 denied grabbing his firearm. NE#3 also denied acting with bias by issuing the citation as it is policy to issue citations when an officer witnesses a collision. NE#3 said had they discovered a relevant statute for the chaining of the vehicle they might have issued CM#2 a citation. But NE#3 said the original goal was not to write citations and, by the time he felt they had to write CM#1 a citation for the collision, the chain was removed.

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 against him based on race.

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.*

Here, OPA is empathizes with CM#1's feelings of insecurity and alarm at CM#2's behavior. CM#1 admitted to blocking CM#2's driveway. In response, CM#2 used his own vehicle to block CM#1 on one side and used a chain to lock CM#1's car to a trashcan (which CM#2 weighed down with a large rock). In the middle of the night, CM#1 waited about an hour and a half for police to respond to mediate the situation. After the police arrived, CM#2 yelled and cursed him out repeatedly. Any reasonable person would have been alarmed by the intensity of CM#2's response to that minor inconvenience.

However, OPA is only charged with evaluating whether the named employees acted within policy. Overall, CM#1 appeared to raise two main theories of bias-based policing: disparate treatment while mediating the dispute and disparate treatment in the issuance of citations. Neither allegation is supported by evidence.

On scene, CM#1 and CM#2 argued and escalated each other in different ways. Although OPA acknowledges, CM#2 appeared to be the primary instigator, CM#1 also made multiple escalating comments including, at points telling



CM#2, “Take a swing so they take you dumbass to jail,” and making a thinly veiled threat to deflate CM#2’s tires. Similarly, the evidence does not support CM#1’s claim that the officers did not try to de-escalate CM#2. Among other things, NE#1 made multiple efforts to divert CM#2 away from CM#1, NE#3 told CM#2 multiple times to stop talking to CM#1, and NE#2 and NE#3 told both parties to stop talking to one another. At its core, de-escalation involves responses to volatility that stabilize the situation. See SPD Policy 8.050. Here, it was also entirely appropriate under these circumstances for the officers to continue to de-escalate CM#1, even if their efforts to de-escalate CM#2 were unsuccessful. Any de-escalation from either party ultimately served the goal of having the chain removed so CM#1 and CM#2 could go their separate ways. Finally, OPA did not observe any other evidence of disparate treatment, such as officers pushing CM#1 back or touching their firearms.

The matter of the citations presents a closer call. OPA understands how, from CM#1’s perspective, it felt unfair that CM#1 received a citation for the collision, but CM#2 was not cited or arrested for immobilizing CM#1’s vehicle. The officers had probable cause to believe CM#2 committed a gross misdemeanor. See RCW 46.55.300 (Vehicle immobilization). However, the vehicle immobilization and collision are not equally situated under SPD Policy. Here, the officers carried out their plan of resolving the vehicle immobilization informally using a “problem solving” mindset. The chain was removed and both parties would receive a report with each other’s information for sorting through civil issues after the fact. Thereafter, CM#1 ran into CM#2’s vehicle causing visible damage.² The fact the officers used their discretion not to cite CM#2 for a misdemeanor did not restrict them from using future police actions against CM#1. Nor did CM#1’s collision require the officers to reverse course and cite CM#2 for vehicle immobilization. Moreover, SPD Policy does not treat those offenses equally. CM#2, at most, breached the peace by committing a gross misdemeanor that did not result in any apparent damage to CM#1’s property.³ Policy stated officers are “expected” to utilize reasonable discretion in such circumstances. See SPD 5.001-POL-6. Conversely, CM#1 was obviously at-fault for a collision, caught on video and in the presence of three officers, resulting in damage to another’s property. Policy required the officers to issue a citation under those circumstances. See SPD 15.260-POL-4.

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

Recommended Finding: **Not Sustained - Unfounded**

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 engaged in bias-based policing against him based on race.

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

² OPA does not see this fact as genuinely in dispute. BWV did not visualize any damage to CM#2’s vehicle prior to the collision. NE#2’s BWV clearly showed CM#1’s vehicle backing up towards CM#2’s vehicle, and then CM#2’s vehicle—an SUV—visibly rocked when hit by CM#1’s Tesla. Thereafter, there was visible damage to CM#2’s vehicle. While CM#1 may genuinely believe he did not hit CM#2’s vehicle, his explanation that the trashcan (even one containing a large rock) fell over and moved an SUV as occurred here seems improbable. Also, NE#1’s ICV appears to show the trashcan on the ground after the collision not touching the SUV.

³ OPA also does not see this fact as genuinely in dispute. NE#3’s BWV depicted CM#1’s wheel as NE#3 removed the chain and the wheel did not appear to have any damage. Moreover, NE#1 noted in his incident report there was no damage to CM#1’s wheel. Both NE#1 and NE#3 made present sense impressions on BWV as well that they did not observe any damage to CM#1’s wheels.



Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

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

The Complainant alleged NE#3 engaged in bias-based policing against him based on race.

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

Recommended Finding: **Not Sustained - Unfounded**