



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 3, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0283

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties 10. Employees shall strive to remain professional.	Not Sustained - Unfounded (Expedited)
# 2	6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties 10. Employees shall strive to remain professional.	Not Sustained - Unfounded (Expedited)
# 2	6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest	Not Sustained - Lawful and Proper (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 that, on September 4, 2022, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to an assault call with bias elements. The Complainant further alleged the Named Employees were "rude" and refused to arrest the offender.

### **ADMINISTRATIVE NOTE:**

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

### **SUMMARY OF INVESTIGATION:**

OPA reviewed the OPA complaint, Computer-Aided Dispatch data, General Offense (GO)/incident report, and Body-Worn Video (BWV). OPA also unsuccessfully attempted to contact the Complainant via email and phone to arrange an interview. Emails to the Complainant returned as "undeliverable" and the Complainant's cell phone did not accept calls.



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*A. OPA Complaint*

On September 6, 2022, via Blue Team, the Named Employees' supervisor (Witness Employee #1/WE#1) submitted an OPA complaint. That complaint relayed the Complainant's allegations that NE#1 and NE#2 were rude during a primary investigation and failed to arrest the offender. However, WE#1 noted there was insufficient evidence to arrest the offender (Community Member #1/CM#1).

*B. Computer-Aided Dispatch (CAD)*

OPA reviewed the CAD report for the incident. CAD remarks indicated the Complainant called 9-1-1 to report an assault. After NE#1 and NE#2 responded to and left the call, the Complainant called 9-1-1 again to report their conduct. The CAD notes showed the Complainant's phone was "911 only," which means she could only make calls for emergency services.

*C. Body-Worn Video (BWV)*

OPA reviewed NE#1, NE#2, and WE#1's related body-worn video (BWV). In summary, it showed:

NE#1 and NE#2 arrived and contacted the Complainant outside an apartment building. NE#1 engaged with the Complainant while NE#2 acted as a backing officer. The Complainant told NE#1 she was visiting a friend who lived in the building. The Complainant explained, while waiting for her friend to return, CM#1 assaulted her.

Initially, the Complainant reported CM#1 forced her out the building by hitting her back while stating, "get out Black girl," or something to that effect. NE#1 told the Complainant he was familiar with the property and knew visitors were unpermitted in common areas and unallowed to stay overnight. The Complainant denied entering the building for an extended period.

NE#1 questioned the Complainant about the assault. The Complainant stated CM#1 shoved her out the building. NE#1 asked whether CM#1 shoved or hit her, as she initially stated. The Complainant clarified she was shoved from behind. The Complainant stated CM#1 was not a building manager, so he was unauthorized to trespass her. NE#1 and NE#2 made unsuccessful attempts to contact CM#1 on the building's external callbox.

The Complainant asked NE#1 whether CM#1 would be arrested for assault. NE#1 replied it sounded like CM#1 may have used lawful force to remove her for trespassing, but they needed to further investigate by speaking with CM#1. NE#1 advised the Complainant he would write a report and send it to the prosecutor's office.

An uninvolved resident let NE#1 and NE#2 inside the building. NE#1 and NE#2 went to CM#1's unit. NE#1 pointed to a "no trespassing" sign posted in the common area. CM#1 stated he found the Complainant asleep on a lobby couch around midnight, then noticed the Complainant was still there around 5:00 AM. CM#1 stated he asked the Complainant to leave, but that turned into a verbal altercation. CM#1 stated he later saw the Complainant on a bench outside the building but did not acknowledge her.

NE#1 and NE#2 returned outside to the Complainant. NE#1 presented CM#1's account. The Complainant admitted she was inside the building around midnight but denied sleeping there. NE#1 replied the Complainant was unallowed in the building's common areas. The Complainant countered, "So what, it's okay for him to push me?" NE#1 replied,



if CM#1 was removing her for trespassing, it was possibly legal. The Complainant and NE#1 argued about whether she was a trespasser. NE#1 stated the primary investigation and his prior experience with the building's management suggested she trespassed. NE#1 gave the Complainant a business card with his and his supervisor's information. NE#1 restated he would write a report for prosecutorial review.

NE#1 departed, and the Complainant approached NE#2. The Complainant argued CM#1 should have been arrested. NE#2 also gave the Complainant a business card and told her NE#1 had to write a report before further action was taken. NE#2 also gave the Complainant their precinct's address and contact information.

The Complainant called 9-1-1 to request a supervisor. NE#1 and WE#1 returned to the scene. The Complainant told WE#1 she wanted to make a complaint against NE#1 because NE#1 made an "executive decision" that she trespassed. WE#1 asked the Complainant whether there were independent witnesses to her altercation with CM#1. She replied, no.

The Complainant questioned why CM#1 was not arrested. WE#1 explained the alleged misconduct was a misdemeanor, so NE#1 would forward a report to the prosecutor's office to determine whether charges were appropriate. The Complainant argued that because she was previously charged with assault, CM#1 deserved to be charged. WE#1 explained that if CM#1 were arrested, due to a 72-hour charging policy and it being a long holiday weekend, he would be released before a prosecutor reviewed NE#1's report.

WE#1 and NE#1 entered the building and asked several residents whether they had issues with CM#1, but none were reported. WE#1 and NE#1 located CM#1 behind the building. WE#1 questioned CM#1 about the altercation with the Complainant. CM#1 denied using racial slurs or language towards the Complainant. CM#1 stated the altercation started when the Complainant accused him of stealing from her. WE#1 told CM#1 a report would be sent to the prosecutor's office and to avoid contact with the Complainant. WE#1 returned to the Complainant and explained she and CM#1 had different accounts, so since there were no witnesses, the officers would write a report for prosecutorial review.

WE#1 asked the Complainant several times whether she wanted to make a complaint against NE#1 and NE#2, but she did not directly answer. WE#1 gave her OPA's information. As WE#1 and NE#1 walked away, the Complainant shouted she wanted to file a complaint. WE#1 asked whether she wanted him to file the complaint with the Department's chain of command or refer it to OPA. The Complainant did not appear to understand WE#1's question and another argument ensued. WE#1 and the Complainant finally agreed WE#1 would refer the Complainant's allegations to OPA. NE#1 and WE#1 then departed.

#### *D. Named Employee #1's General Offense (GO) Incident Reports*

OPA reviewed NE#1's police report for the incident. That report was consistent with OPA's BWV review. NE#1 also wrote:

*I have been to this location many times for various complaints. Chief among them are trespasser complaints and other incidents involving trespassers. I've also spoken to the management many times regarding trespassers and know they have strict rules regarding visitors due to a continual problem with unauthorized persons staying overnight and for extended periods, and trespassers causing a myriad of other issues. . . . I explained to [the Complainant] that I felt she was likely trespassing and if*



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*an authorized person intended to remove her, and she was uncooperative, it may not be unreasonable for that person to push her.*

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 Standards and Duties 10. Employees shall strive to remain professional.***

The Complainant alleged NE#1 was rude during a primary investigation.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further: “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 reviewed NE#1’s BWV. NE#1 did not use derogatory, contemptuous, or disrespectful language with the Complainant. Rather, NE#1 communicated in a direct but appropriate manner. While the Complainant disagreed with NE#1’s opinion that CM#1 may have used lawful force if she trespassed, NE#1 told her a prosecutor would make the final decision.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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

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

***6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest***

The Complainant alleged NE#1 failed to arrest CM#1 for assault.

Officers must have probable cause to believe a suspect committed a crime when effectuating an arrest. SPD Policy 6.010-POL-1. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient to support a reasonable belief that an offense was or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, OPA reviewed NE#1’s BWV and GO report. NE#1’s primary investigation included interviewing the Complainant and CM#1. WE#1 also interviewed CM#1, and several building residents. The Complainant initially characterized CM#1’s force as a “hit,” then later called it a “shove.” The Complainant further alleged, while shoving her out the building, CM#1 stated, “get out Black girl,” or something to that effect. CM#1’s account was entirely different. He explained the altercation occurred after he asked the trespassing Complainant to leave. CM#1 stated, on a separate occasion, she was asked to leave for using drugs near the building. CM#1 denied using racially charged language or slurs with the Complainant. NE#1 attempted to locate a witness but found none.

NE#1 told the Complainant, and noted in his report, the building had trespasser issues. NE#1’s investigation showed CM#1 viewed her as a trespasser. Moreover, NE#1 told the Complainant he would write a report for prosecutorial review. NE#1 completed an incident report that accurately reflected his investigation. WE#1 also supported NE#1’s decision not to arrest CM#1, stating there was insufficient evidence for it.



Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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

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

***5.001 Standards and Duties 10. Employees shall strive to remain professional.***

The Complainant alleged NE#2 was rude during an investigation.

Here, OPA reviewed NE#2's BWV. NE#2 was a backing officer with minimal interaction with the Complainant. NE#2 briefly conversed with the Complainant to reaffirm that NE#1 would write a report before a final decision was made about whether CM#1 would be charged. NE#2 did not derogatory, contemptuous, or disrespectful language with the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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

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

***6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest***

The Complainant alleged that NE#2 should have placed CM#1 for assaulting her but failed to do so.

Here, OPA reviewed NE#2's BWV and NE#1's written GO report. NE#2's involvement in the assault investigation was limited, as he was a backing officer. Nevertheless, due to insufficient evidence, NE#1's decision to not arrest CM#1 was reasonable.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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