




## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 21, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0305

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

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

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties Section 10. Employees Will Strive to be Professional	Not Sustained - Unfounded

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

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties Section 10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 2	5.001 Standards and Duties POL 11. Employees Will be Truthful and Complete in All Communication	Not Sustained - Inconclusive
# 3	15.180 Primary Investigations Section 5. Officers Shall Document All Primary Investigations on a Report	Not Sustained - Unfounded
# 4	5.140 Bias-Free Policing Section 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 alleged Named Employee #2 (NE#2) lied in a police report and engaged in bias-based policing based on the Complainant's race. The Complainant also alleged NE#2 and Named Employee #1 (NE#1) made unprofessional comments during the jail booking process.

### **SUMMARY OF INVESTIGATION:**

NE#2 wrote an incident report for the Complainant's arrest. In summary, NE#2 noted he responded to a reported protection order violation and possible assault. It listed the Complainant as the suspect, the Complainant's ex-wife (Community Member #1/CM#1) as the victim, and her boyfriend (Community Member #2/CM#2) as a witness. NE#2 wrote before he arrived, he received the following call note:

*"[REPORTING PARTY'S] EX-BOYFRIEND IS THREATENING TO HIT HER AND HER KIDS. NO WEAPONS"*

NE#2 wrote that when he arrived at the scene, all parties were there, along with two children, one of whom the Complainant held. NE#2 wrote he interviewed CM#1 and CM#2. NE#2 also found an active order of protection



allowing the parties to exchange custody of the children. CM#2 reported during the custody exchange, the Complainant threatened him for holding the Complainant's and CM#1's child. NE#2 noted he saw the Complainant push CM#1 when she reached to take her child. CM#1 reported the Complainant shoved her chest with his forearm. NE#2 determined there was probable cause to arrest the Complainant for domestic violence assault. The Complainant questioned whether the named employees were against him "because I am a brown man?" NE#2 wrote the Complainant waived issued Miranda warnings and admitted to threatening CM#2 for holding his child. The Complainant suggested NE#2 look for surveillance footage to prove he did not assault CM#1, but NE#2 wrote the building's office was closed. NE#2 wrote a supplemental report stating he returned to the incident location on May 10, 2022, and retrieved surveillance footage of the incident. NE#2 noted that the video showed the Complainant twice making "unwanted contact" with CM#1's arm during the custody exchange.

On October 10, 2022, OPA interviewed the Complainant. He said during the custody exchange, CM#2 held a child by the crotch. The Complainant noted he politely told CM#2 he should not be there and not to hold his child that way. The Complainant also said he told CM#2 he was not the child's father, and CM#2 replied, "but I'm the one banging your wife." The Complainant said CM#1 tried to take the other child from him, but he pulled away. He said CM#1 called 9-1-1 and reported he refused to relinquish custody. The Complainant said when the named employees arrived, CM#1 claimed he hit her. He said other officers checked surveillance footage in the past, but the named employees refused. The Complainant alleged during his transport to jail, NE#2 lectured him about oppressing CM#1 and called CM#2 "an awesome guy." He said NE#1 called the Complainant a "master manipulator of words." He also stated despite the video proof disproving CM#1's allegation, NE#2's report suggested it showed him making unwanted contact with her. The Complainant stated NE#2's inaccurate report, and his misrepresenting the Complainant's words led him to believe NE#2 was racist.

OPA also interviewed the named employees.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 Standards and Duties Section 10. Employees Will Strive to be Professional***

The Complainant alleged NE#1 directed an unprofessional comment at him.

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...." *Id.*

Here, the Complainant told OPA NE#1 called him a "master manipulator." OPA's BWV review confirmed NE#1 made that comment. NE#1 told OPA he called the Complainant "a master manipulator of words" to describe how he twisted NE#2's words. While NE#1's word choice fell short of exemplifying the department's professionalism standards, it also fell short of violating the professionalism policy. OPA understands the Complainant's disliking of NE#1's comment but cannot reasonably conclude those words undermined "public trust in the Department, the officer, or other officers."

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

Recommended Finding: **Not Sustained - Unfounded**



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

***5.001 Standards and Duties Section 10. Employees Will Strive to be Professional***

The Complainant alleged NE#1 directed unprofessional comments at him.

Here, BWV and ICV captured NE#2 going back and forth with the Complainant about whether CM#2 was more suitable for the Complainant's kids than the Complainant. NE#2 also stated, "from the looks of it, [CM#2's] trying to do the best for your kids." Generally, complimenting a third party can hardly be construed as unprofessional. However, where the third party is an arrestee's ex-wife's boyfriend, whom NE#2 suggested would be a better father for the arrestee's kids, NE#2 encroached the line into unprofessionalism. Understanding NE#2's motivation is challenging unless he intended to agitate the Complainant. However, given NE#2's limited experience and no prior discipline, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with him, review SPD Policy 5.001-POL-10 with NE#2, and provide any retraining and counseling it deems appropriate. Retraining and counseling should be documented and maintained in Blue Team.

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

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

***5.001 – Standards and Duties, 5.001 – POL-11 Employees Will Be Truthful and Complete in All Communication***

The Complainant alleged NE#2's report misrepresented surveillance footage and the Complainant's purported admission to threatening CM#2.

Department employees must be truthful and complete in all communications. SPD Policy 5.001-POL-11. Further, under the Seattle Police Officers' Guild's collective bargaining agreement (SPOG CBA), a sustained complaint involving dishonesty during an officer's official duties carries a "presumption of termination." SPOG CBA, at § 3.1. For termination cases where the allegation is stigmatizing to a law enforcement officer, the standard of review is elevated (i.e., more than a preponderance of the evidence). *Id.*

Here, NE#2's supplemental report suggested the Complainant was captured making "unwanted contact" with CM#1. Specifically, NE#2 summarized:

*There is some interaction between [the Complainant] and [CM#1], and [CM#1] takes custody of one of her children. When [CM#1] attempts to take the second child, [the Complainant] uses his hand to block [CM#1] from getting her child. [CM#1] then attempts to get her child a second time, and again [CM#1] uses his arm to block [CM#1] to getting her child. In the footage, it appears [the Complainant] makes unwanted contact twice to [CM#1's] right arm.*

OPA's review of the surveillance footage is inconclusive at best. The Complainant's and CM#1's arms were not visible when they came face-to-face, nor did CM#1 stumbled back as she initially reported to NE#2. Although OPA's assessment of the footage does not match NE#2's, there is insufficient evidence NE#2's supplemental report was untruthful, particularly where the evidence must meet an elevated standard for this allegation.



Moreover, despite the Complainant's allegation that NE#2's report untruthfully stated he admitted to threatening CM#2, OPA's ICV review confirmed he did make that admission.

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

Recommended Finding: **Not Sustained - Inconclusive**

**Named Employee #2 - Allegation #3**

***15.180 Primary Investigations Section 5. Officers Shall Document All Primary Investigations on a Report***

The Complainant alleged NE#2 conducted an inadequate primary investigation.

A primary investigation requires a thorough and complete search for evidence. SPD Policy 15.180-POL-1.

Here, NE#2 told OPA his decision to arrest the Complainant was based on interviews with CM#1 and CM#2. CM#1 reported the Complainant hit her, and CM#2 said the Complainant threatened him. NE#2 said surveillance video was unavailable because it was Sunday, and the building's office was closed. Nevertheless, NE#2 returned two days later and recovered the video. Although NE#2 established probable cause based on reports from parties antagonistic to the Complainant, there is insufficient evidence NE#2 could have or should have done more to investigate at that time.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #4**

***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 based on his 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. That includes different treatments based on the race of the subject. *See id.*

Here, OPA found no evidence of bias-based policing based on the Complainant's race or any other discernible personal characteristic.

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

Recommended Finding: **Not Sustained - Unfounded**