



## CLOSED CASE SUMMARY

ISSUED DATE: APRIL 20, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0392

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

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

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded (Expedited)
# 2	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

***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 Complainants alleged officers unnecessarily aimed an assault rifle at their door, constituting excessive force and bias-based policing.

### **ADMINISTRATIVE NOTE:**

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

### **SUMMARY OF INVESTIGATION:**

OPA received three online complaints from two Complainants—a mother and daughter—who alleged officers “pulled [an AK-47] out” while arresting the Subject—their son and brother, respectively. The Complainants alleged pointing a firearm at the Subject was excessive because the Subject only had a “broken” and “raggedy” BB gun. The Complainants also alleged the officers’ actions were motivated by them being poor and Black. In summary, the complainants alleged the daughter called 9-1-1 because “she was mad,” but the police arrived and pointed an AK-47 at the Subject.

OPA opened an investigation. OPA reviewed the complaints and attempted to locate the incident by description and incident date (October 7, 2022) in the computer-aided dispatch (CAD) system and SPD's internal case management



system (Mark43). OPA could not identify an incident matching the description in the complaints for the date the Complainants provided. However, in their complaints, the Complainants indicated they were unsure of the incident date. OPA attempted to contact the Complainants by email and phone but was unsuccessful. As a result, OPA was unable to interview either Complainant.

OPA located an incident that occurred three weeks before the date provided by the Complainants, on September 18, 2022. That incident involved a BB gun, and that arrestee's name matched the Subject's. OPA reviewed the body-worn video (BWV) for the September 18<sup>th</sup> incident and identified Named Employee #1 (NE#1) as deploying with a department-issued rifle to arrest the Subject. OPA also classified a bias-based policing allegation against an unknown employee, Named Employee #2 (NE#2), to investigate the Complainants' allegation that the officers engaged in bias-based policing.

NE#1's BWV captured the officers' response and the Subject's arrest. It showed NE#1 and other officers arrived at the location, a multi-story apartment building. The officers met with the daughter, Complainant #1. Complainant #1 told the officers her brother, the Subject, threatened to shoot up the apartment. Complainant #1 said the Subject disrupted her home by throwing items in the hallway. The officers explained tenant laws to Complainant #1, noting that unless the Subject broke the law, they could not force the Subject out of the apartment. Complainant #1 said the Subject had a rifle in his hand and threatened to shoot her. Officers verified that information and took the Subject's identifying information from Complainant #1. Complainant #1 said the Subject had a shotgun or a similar weapon and was still in the apartment unit.

NE#1 retrieved his patrol rifle—an AR-15—from his vehicle. NE#1 also obtained a key to the apartment unit from a person at the apartment leasing office. NE#1 and other officers went to the apartment's floor and were met by the mother, Complainant #2. Complainant #2 said she did not see the Subject with a firearm but was uncertain whether he had one. She said, "It is what it is." Officers spoke again to Complainant #1 to confirm whether the Subject possessed a real firearm. Complainant #1 said the gun was "heavy." One of the Complainants also said, "If it's a BB gun, it ain't got nothing in it. If you saw it, you would think it was real." A short time later, Complainant #1 said the gun was a BB gun.

The officers discussed a tactical plan and determined roles for the arrest. NE#1 took cover at a hallway corner, looking down a hallway lined with apartment units. NE#1 kept his patrol rifle pointed down in a low-ready position. The officers called a phone inside the apartment and asked the Subject to come out to the elevator with his hands up. The Subject eventually agreed, and an officer told him, "If you want, you can stay on the phone with me too."

The Subject exited the apartment. Officers told him to walk slowly with his hands up. The Subject complied by walking backward with his hands up. Officers approached and arrested the Subject. He was arrested without incident. NE#1 stayed in position with his patrol rifle at a low-ready and returned it to a sling position with the muzzle pointed at the floor. At no point did NE#1 point his patrol rifle at the Subject.

## **ANALYSIS AND CONCLUSIONS:**

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

#### ***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainants alleged NE#1 used excessive force by pointing an AK-47 at the Subject.



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 that should be weighed 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, the force used must be proportional to the threat posed to the officer. *Id.*

NE#1 did not point his firearm at the Subject. Although policy defines "pointing a firearm at a person" as Type I force, "[s]imply displaying a weapon is not reportable force, nor is holding a firearm without aiming at a person, as with the sul and low ready positions, where the muzzle of the firearm is not pointed at any part of a person's body." SPD Policy 8.050. Accordingly, NE#1 did not use reportable force against the Subject. Moreover, even if merely holding a patrol rifle constituted a use of force—which it does not—NE#1's actions were objectively reasonable, necessary, and proportional to address the potential threat presented.

Since NE#1 did not point a firearm at the Subject or use force against the Subject, this allegation did not occur as reported. Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

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

##### ***5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing***

The Complainants alleged NE#1 engaged in bias-based policing based on their race and economic status.

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 differential treatment based on the race or economic status of the subject. *See id.*

NE#1 responded to a 9-1-1 call from Complainant #1 regarding her brother. After officers arrived, Complainant #1 alleged the Subject threatened her with a firearm, and the Subject was still in the apartment. While responding with other officers, NE#1 retrieved his patrol rifle, took cover, and maintained his patrol rifle in a low-ready position until the Subject was handcuffed. NE#1's actions were within policy, and no evidence suggested anything NE#1—or any other officer—did was motivated by race or economic status. OPA observed no evidence NE#1's actions were motivated by the Complainants' or Subject's race or financial status.

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

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***

The Complainants alleged NE#2—unknown employees—engaged in bias-based policing.

Other than NE#1, OPA could not identify which officers the Complainants alleged engaged in bias-based policing. Overall, OPA did not find evidence that any officer appeared motivated by the Complainants' or Subject's race or economic status.

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

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