

**Issued Date:** DECEMBER 15, 2023

**From:** Gino Betts, Office of Police Accountability



**Case Number:** 2023OPA-0297

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

### **Named Employee #1**

1. **Allegation:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Lawful and Proper
2. **Allegation:** 8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Unfounded
3. **Allegation:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
  - a. **Finding:** Not Sustained - Unfounded (Expedited)

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### **Named Employee #2**

1. **Allegation:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Lawful and Proper
2. **Allegation:** 8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Unfounded
3. **Allegation:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
  - a. **Finding:** Not Sustained - Unfounded (Expedited)

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## Named Employee #3

1. **Allegation:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Lawful and Proper
2. **Allegation:** 8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Unfounded
3. **Allegation:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
  - a. **Finding:** Not Sustained - Unfounded (Expedited)
4. **Allegation:** 16.090 – In-Car and Body-Worn Video, 16.090-POL-1. Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity (Effective October 1, 2020)
  - a. **Finding:** Not Sustained - Training Referral

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**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:**

Named Employees #1, #2, and #3 (NE#1, NE#2, and NE#3) assisted the Seattle Department of Transportation (SDOT) in an abatement action against Community Member #1 (CM#1) for unlicensed vendor activity. The Complainant interjected during the abatement. The named employees arrested the Complainant for obstruction and assault. The Complainant alleged the named employees failed to de-escalate, used excessive force during her arrest, and were racially biased when they confiscated only her property. It was also alleged that NE#3 failed to activate his body-worn video (BWV) to record police activity.

### **Administrative Note:**

All bias-based policing allegations were approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. As such, OPA did not interview the named employees on the bias-based policing allegations. On August 14, 2023, OIG certified OPA's Expedited Investigation as thorough, timely, and objective.

The remaining allegations proceeded to a full investigation. On November 17, 2023, OIG certified OPA's full investigation as thorough, timely, and objective.

## **Summary of the Investigation:**

OPA received a complaint and opened an investigation. During its investigation, OPA reviewed the OPA complaint, incident and supplement reports, BWV, and use of force report. OPA also interviewed an SDOT employee (SDOT#1) and the named employees. The Complainant's attorney declined OPA's request to interview the Complainant.

### **A. OPA Complaint**

On July 10, 2023, an acting sergeant submitted a Blue Team complaint to OPA on behalf of the Complainant. The acting sergeant documented the Complainant's allegations. The Complainant alleged officers used excessive force during her arrest. The Complainant alleged she was pregnant but, according to her doctor, would lose her baby. The Complainant also alleged officers were racially biased when they confiscated her property but no one else's.

### **B. Incident and Supplement Reports and Body-Worn Video (BWV)**

NE#3 wrote an incident report. NE#3 wrote that on June 11, 2023, he was part of the Joint Enforcement Team (JET), comprising of, among other agencies, SPD and SDOT. NE#3 wrote that SPD officers escorted SDOT employees to Community Member #1 (CM#1)—a vendor. NE#3 wrote that SDOT previously contacted CM#1 seven times for failing to obtain a permit, so SDOT seized CM#1's stand. NE#3 wrote that SDOT employees compromised with CM#1, allowing him to take certain items but not his grill. NE#3 wrote that the Complainant argued with SDOT employees. NE#3 described the Complainant's arrest consistent with the events captured on BWV, summarized below.

NE#1's and NE#2's BWV was activated, but not NE#3's. Collectively, BWV captured the following events. NE#3 wrote in his incident report that after the Complainant's arrest, he realized his BWV "was dead and did not activate," so he "notified radio and made sure a supervisor was aware."

The Complainant and CM#1 packed their belongings while the named employees and SDOT employees supervised. The Complainant and CM#1 appear to be siblings. NE#3 approached the Complainant and placed his hand on her back, prompting her to repeatedly say, "Don't touch me." NE#3 wrote in his incident report that the Complainant took a table that SDOT did not authorize her to take, so he told her that she would be arrested for obstruction if she continued. NE#3 also wrote that SDOT then allowed the vendors to keep their tables. The Complainant moved a suitcase out of the stand. CM#1 told the SDOT employees that they were taking his property. The SDOT employees discussed what they were going to take, then one SDOT employee pointed to a grill.

The Complainant returned and grabbed the grill. The named employees immediately attempted to pull the Complainant away while she screamed and held onto the grill's handle. The named employees forcibly removed the Complainant's hands from the handle, but she grabbed the handle again using both hands. An officer said, "Let it go. You're under arrest." The named employees

lowered the Complainant to the ground on her back, then rolled her onto her stomach. The Complainant, while screaming, tucked her arms underneath her chest while the named employees tried pulling her arms out. NE#1 shouted, "Don't bite me! Do not bite me! You're under arrest now for a felony!" NE#1 wrote in his supplement report, "[The Complainant] attempted to bite me (on my hand) as I attempted to grab ahold of her hand." NE#1 was on the Complainant's left side while NE#3 was on her right side. NE#1 and NE#3 placed one knee on the Complainant's back while NE#2 held down her legs. NE#1 and NE#3 moved the Complainant's arms from underneath her and put them behind her back. NE#1 handcuffed the Complainant.

NE#1 told the Complainant, "You're under arrest for a felony." An officer asked NE#1, "Did she bite you?" NE#1 replied, "She tried to." NE#3 said, "She tried to bite me on the leg, too." NE#3 wrote in his incident report, "I felt [the Complainant] turn her head and try to bite my leg as well. I felt her teeth on my leg but I was able to move it away before being bit." The Complainant had blood on her left hand from a cut. NE#1 looked at his hands, which had blood on them. An officer asked NE#1, "Are you bit, bro?" NE#1 replied, "No, it's her hand." NE#2 and NE#3 assisted the Complainant to her feet, escorted her to a patrol car, and placed her in the back seat. An officer transported the Complainant to the East Precinct.

### **C. Use of Force Report**

NE#1 and NE#2 each wrote a use of force statement consistent with NE#3's use of force statement, described below.

NE#3 wrote a use of force statement consistent with his incident report. NE#3 wrote, among other things, that officers stood by for nearly an hour while SDOT employees worked out an agreement with CM#1, though SDOT remained firm on seizing specific items like the grill. NE#3 wrote that he warned the Complainant multiple times that she needed to comply with SDOT's instructions or else she would be arrested for obstruction, but she refused when she grabbed the grill. NE#3 wrote that the Complainant pulled the grill toward him, which he thought could harm him because he felt the grill was hot. NE#3 wrote that he decided to arrest the Complainant because she refused to let go of the grill. NE#3 wrote that he ensured NE#1 and NE#2 assisted with the arrest while other officers maintained scene security because a crowd formed during her arrest.

A watch lieutenant reviewed the use of force investigation and wrote, "I believe the force was reasonable, necessary and proportional. The subject grabbed a metal grill handle after being told not to interfere with the abatement process. The subject was subsequently pulled away from the grill by the officers as they repeated commands. The officer work in concert of each other, communicated and only used trained tactics." The watch lieutenant concluded, "I approve the force used in this incident" and described the force used as "consistent with law, policy and training."

A captain described the use of force investigation as "thorough and complete." The captain concluded, "I approve of the force used by the Officers. The [named employees and a witness officer] went hands on with the Subject to arrest her for Obstructing. The Subject resisted arrest and was taken down to the ground for prone handcuffing. The Officers used team tactics and

trained techniques to place the Subject in handcuffs. BWV shows the Officers' action were necessary, reasonable and proportional."

## **D. OPA Interviews**

### **1. SDOT Employee #1 (SDOT#1)**

OPA interviewed SDOT#1 on August 3, 2023. SDOT#1 said he worked for SDOT's Street and Sidewalk Vending Program and abated against unpermitted or unlicensed vendors. SDOT#1 said he abated against CM#1 on June 10, 2023, because CM#1 continued selling food unlicensed despite multiple warnings and citations. SDOT#1 said abatement, which occurred after verbal warnings and citations, allowed SDOT to confiscate property involved in unlicensed selling. SDOT#1 said, during a pre-briefing with JET, he anticipated this vendor may interfere with SDOT's abatement. SDOT#1 said officers understood that they may need to arrest the vendor if he interfered.

SDOT#1 said the Complainant approached CM#1's stand, injected herself during the abatement, and was unhappy about it. SDOT#1 said the Complainant and CM#1 packed their items, though he did not allow them to take everything. SDOT#1 said SDOT needed to seize substantial items, like the grill, to penalize the vendors. SDOT#1 said he alerted officers that he was not going to physically intervene if the Complainant failed to follow instructions. SDOT#1 described what occurred after the Complainant grabbed the grill consistent with the evidence summarized above. SDOT#1 believed the Complainant had opportunities to "stop doing what she was doing." SDOT#1 also believed officers' use of force was "not excessive" and additional officers were not needed for the Complainant's arrest.

SDOT#1 said JET spoke with seven Latino vendors and one Caucasian vendor who failed to follow the rules. SDOT#1 said most vendors were Latinos. SDOT#1 said JET enforced the rules equally on all vendors, including CM#1 and the Complainant, by warning, citing, and abating. SDOT#1 denied that officers engaged in bias-based policing because they followed SDOT's direction by providing security during SDOT's abatement action.

### **2. Named Employee #1 (NE#1)**

OPA interviewed NE#1 on October 31, 2023. NE#1 described the events leading up to the Complainant grabbing the grill consistent with the evidence summarized above. NE#1 also described how officers arrested the Complainant consistent with the evidence summarized above. NE#1 said the grill was off limits and that officers would arrest the Complainant for obstruction if she attempted to take it, which she was warned about multiple times. NE#1 said the Complainant was noncompliant and resisted arrest by screaming, flailing her arms, using her body weight, refusing to go on her stomach, turtling her arms after she was on her stomach, and attempting to bite him and NE#3.

### **3. Named Employee #2 (NE#2)**

OPA interviewed NE#2 on October 31, 2023. NE#2 described the events leading up to the Complainant grabbing the grill consistent with the evidence summarized above. NE#2 also described how officers arrested the Complainant consistent with the evidence summarized above. NE#2 said the Complainant and officers were aware that she would be arrested if she tried to take the grill. NE#2 said the Complainant defied officers' orders, grabbed the grill, and actively resisted by screaming, tensing up her body, and preventing officers from handcuffing her. NE#2 believed any force used to arrest the Complainant was not excessive, noting that officers did not strike her. NE#2 said officers were not aware that the Complainant was pregnant. NE#2 said officers would have arrested the Complainant, even if they knew she was pregnant, but would have been more careful with her.

### **4. Named Employee #3 (NE#3)**

OPA interviewed NE#3 on October 27, 2023. NE#3 described the events leading up to the Complainant grabbing the grill consistent with the evidence summarized above. NE#3 said the Complainant was escalated due to SDOT's abatement action. NE#3 said that, while the Complainant packed, he warned her at least four times that she would be arrested for obstruction if she interfered. NE#3 said he was certain that the Complainant understood and did not need a translator because she argued in English. NE#3 said he sought direction from SDOT#1 because SDOT#1 led the abatement action. NE#3 said that SDOT#1 allowed the Complainant to take certain items, but not the grill. NE#3 said he was next to the grill and activated his BWV but did not look down at it. NE#3 said he later determined his BWV was dead by the time he arrived at CM#1's stand. NE#3 said his BWV did not make a sound, as it was supposed to do, when it was low on battery life. NE#3 said his BWV had about a 10.5-hour battery life, and he worked 10-hour shifts. NE#3 said he worked overtime that night, so it likely died. NE#3 said he notified a sergeant. NE#3 said he now charges his BWV when he drives.

NE#3 said the Complainant "shoved" her way to the grill and grabbed the handle. NE#3 said if the Complainant let go of the grill—even though he had probable cause to arrest her for obstruction at that point—he would not have arrested her, but she refused to let go. NE#3 said the Complainant gripped the handle so tightly that officers struggled pulling her hand off, causing a cut on her finger. NE#3 described how officers arrested the Complainant consistent with the evidence summarized above. NE#3 said the Complainant moved so much that officers lost their grip on her throughout their struggle. NE#3 said officers utilized a "team takedown" by controlling the Complainant and slowly guiding her to the ground. NE#3 said the Complainant resisted arrest by turtling her arms underneath her chest, rocking side to side, and spinning around. NE#3 said an arrest became "exponentially harder" if a person resisted. NE#3 said officers checked NE#1 for bite marks on his hands but found none. NE#3 said the Complainant's blood was on NE#1's hands. NE#3 said he, as the primary officer, decided to arrest the Complainant while NE#1 and NE#2 were secondary officers.

NE#3 denied using excessive force, saying officers had to put her on the ground because she actively fought the police. NE#3 believed officers used so little force that he characterized it as

*de minimis* force that only became Type II because the Complainant cut her finger on the grill's handle. *De minimis* force is physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to, or are reasonably likely to, cause any pain or injury. SPD Interim Policy 8.050 (effective April 24, 2023). Type II is force that causes, or is reasonably expected to cause, physical injury greater than transitory pain but less than great or substantial bodily harm. *Id.* Force that causes a laceration would qualify as Type II force. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023).

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## **Analysis and Conclusions:**

### **Named Employee #1 – Allegation #1**

#### **8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)**

The Complainant alleged NE#1 used excessive force during her arrest.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). The reasonableness must consider that officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Id.* The reasonableness inquiry in an excessive-force case is an objective one— whether the officers' actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances where “a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to [e]ffect the legal purpose intended or to protect against the threat posed to the officer or others.” SPD Interim Policy 8.050 (effective April 24, 2023). A proportional use of force must “reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied.” *Id.*

Here, the named employees arrested the Complainant for attempting to take the grill. Under the totality of the circumstances, the named employees' use of force was objectively reasonable, necessary, and proportional.

First, the named employees' use of force was objectively reasonable. The Complainant was on notice that she would be arrested if she interfered with the abatement process. NE#3 warned the Complainant at least four times not to interfere, and the named employees gave her ample opportunity and time to comply with their orders. When the Complainant attempted to take the grill, the named employees ordered her to let go, but she refused. The named employees

removed the Complainant's hands from the grill's handle, guided her to the ground, rolled her to the prone position, and handcuffed her—all while the Complainant resisted. What was likely a *de minimis* use of force incident escalated to Type II only because the Complainant likely cut her finger from gripping the grill's handle so tightly. The named employees used a team approach to bring her to the ground and maneuvered her body to handcuff her. The named employees also displayed restraint by refraining from using a higher level of force when the Complainant allegedly attempted to bite NE#1 and NE#3. The named employees' use of force was objectively reasonable under these circumstances.

Second, the named employees' use of force was necessary. There was no reasonably effective alternative to the named employees' use of force. The named employees used what was likely *de minimis* force to arrest the Complainant, who disobeyed officers' orders and resisted arrest. The named employees neither struck at the Complainant nor slammed her on the ground. The amount of force used was also reasonable and proportional. The Complainant resisted arrest using her entire body, even with three officers trying to arrest her. Ultimately, the named employees' team approach to physically control the Complainant yielded a successful arrest without injury beyond her cut finger. The named employees' use of force was necessary under these circumstances.

Third, the named employees' use of force was proportional. The amount of force the named employees applied reflected the totality of the circumstances surrounding the situation, even if the Complainant was pregnant. The named employees supervised the abatement and issued verbal commands, but when the Complainant disobeyed, they used a proportional amount of force to arrest her despite her resistance. The named employees relied on their training by guiding the Complainant to the ground, maneuvering her body to the prone position, and handcuffing her. The named employees' use of force was proportional under these circumstances.

Recommended Finding: **Not Sustained - Lawful and Proper**

#### **Named Employee #1 – Allegation #2**

##### **8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)**

The Complainant alleged NE#1 failed to de-escalate before her arrest.

When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force. SPD Interim Policy 8.100-POL-1 (effective April 24, 2023). Officers are encouraged to use team approaches to consider whether any officer has successfully established a rapport with the subject. *Id.* Selecting de-escalation options will be guided by the totality of the circumstances. *Id.* The policy lists several examples of de-escalation, emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, the named employees appropriately de-escalated before the Complainant's arrest. The named employees provided security while SDOT abated CM#1's stand. NE#3 was the primary



officer while NE#1 and NE#2 were secondary officers who took NE#3's lead. NE#3 communicated to the Complainant at least four times that she would be arrested if she interfered with the abatement. There was no reason to believe that the Complainant misunderstood due to a language barrier because she argued with SDOT employees in English. The Complainant was also captured on BWV telling NE#3 not to touch her in English. The named employees provided ample time for CM#1 and the Complainant to comply with the abatement. The named employees stood by for nearly an hour while SDOT employees worked out an agreement with CM#1. The named employees maintained their distance when CM#1 and the Complainant packed their belongings. After the Complainant repeatedly defied SDOT's instructions, NE#3 approached her multiple times to warn her about an arrest. Finally, the named employees could not have reasonably utilized shielding by, for example, placing barriers between themselves and the Complainant. They were there to provide security and supervise the abatement.

Had the Complainant fully complied with SDOT's instructions, she would not have been arrested. De-escalation was no longer feasible after the Complainant, despite repeated warnings, attempted to take the grill, refused to let go, and resisted arrest.

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

Recommended Finding: **Not Sustained - Unfounded**

#### **Named Employee #1 – Allegation #3**

##### ***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 by abating only CM#1's stand.

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.* Officers are forbidden from both (1) making decisions or taking actions influenced by bias, and (2) expressing any prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140-POL-2.

Here, the named employees followed SDOT's lead in abating CM#1's stand. The named employees did not select CM#1's stand for abatement. SDOT#1 said JET enforced the rules equally on all vendors, including CM#1 and the Complainant, by warning, citing, and abating. SDOT#1 denied that the named employees engaged in bias-based policing because they followed SDOT's direction by providing security during SDOT's abatement. There is no evidence that the named employees targeted any stand based on the vendor's race.

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

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

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**Named Employee #2 – Allegation #1****8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)**

The Complainant alleged NE#2 used excessive force during her arrest.

For the reasons set forth about at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

**Named Employee #2 – Allegation #2****8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)**

The Complainant alleged NE#2 failed to de-escalate before her arrest.

For the reasons set forth above at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 – Allegation #3****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 by abating only CM#1's stand.

For the reasons set forth above at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

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**Named Employee #3 – Allegation #1****8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)**

The Complainant alleged NE#3 used excessive force during her arrest.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

**Named Employee #3 – Allegation #2**

**8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)**

The Complainant alleged NE#3 failed to de-escalate before her arrest.

For the reasons set forth above at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #3 – Allegation #3**

**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 by abating only CM#1's stand. For the reasons set forth above at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

**Named Employee #3 – Allegation #4**

**16.090 – In-Car and Body-Worn Video, 16.090-POL-1. Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity (effective October 1, 2020)**

It was alleged that NE#3 failed to activate his BWV to record police activity.

When safe and practical, employees will record dispatched calls, starting before employees arrive on the call to ensure adequate time to turn on cameras, as well as questioning of victims, suspects, or witnesses. SPD Policy 16.090-POL- 1(5)(b) (effective October 1, 2020). Officers may exercise reasonable discretion in not recording under certain situations. SPD Policy 16.090-POL- 1(5)(c) (effective October 1, 2020). Among the permissible exceptions is “when the respect for an individual’s privacy or dignity outweighs the need to record an event.” SPD Policy 16.090-POL- 1(5)(f) (effective October 1, 2020). That exception provides examples of where it is applicable, including “natural death scenes, death notifications, child or sexual assault victim interviews, cultural or religious objections to being recorded, and when the use of BWV would impede or limit the cooperation of a victim or witness.” *Id.*

Here, NE#3's BWV did not record the Complainant's arrest. NE#3 said he stood next to the grill and activated his BWV not knowing it was dead. NE#3 also said his BWV did not make a sound, as it was supposed to do, when it was low on battery life. NE#3 documented the BWV issue in his incident report and notified his supervisor. The evidence indicates that NE#3's failure to activate his BWV was an unintentional error. OPA appreciates that NE#3 recognized the limitations of his BWV's battery life and remedied future technical failures by charging his BWV while driving.

Before responding to a scene, NE#3 should ensure his BWV is adequately charged. See SPD Policy 16.090-TSK-1 (requiring an employee to verify that “all indicators show that BWV camera is fully charged”). Under these circumstances, OPA finds that there was a potential, but not willful, violation of policy that does not amount to serious misconduct. NE#3’s chain of command should provide appropriate training and counseling.

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

- **Training Referral:** NE#3’s chain of command should discuss OPA’s findings with NE#3, review SPD Policies 16.090-POL-2 and 16.090-TSK-1 with NE#3, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

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